



Marisa Pollock
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File No. 24-1432

March 21, 2025

Via E-Filing

Catherine Gilbert
Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, ON M5G 2P1

Dear Ms. Gilbert:

**Re: Association of Management, Administrative and Professional Crown Employees of Ontario and the City of Toronto - Application for Certification
OLRB File No. 2929-24-R**

We represent the Applicant, the Association of Management, Administrative and Professional Crown Employees of Ontario (“AMAPCEO” or the “applicant”). These are AMAPCEO’s post-vote submissions.

BACKGROUND

On March 6, 2025, AMAPCEO filed an application to be certified as the exclusive bargaining agent for the staff employed in the Offices of the Mayor and Councillors in the City of Toronto [TAB 1].

The Responding Party (the “City”) filed its response to the certification application on March 10, 2025. In its response, the City made three main arguments:

- (a) The City is not the employer of the staff that are the subject of the certification application. Rather, all of the staff in issue are the employees of the individual City Councillors and the Mayor (though the City did not give notice to the individual Councillors or the Mayor, and no other party has sought to intervene in these proceedings).
- (b) The employees in issue do not have a community of interest with one another; and,
- (c) If the employees in issue are employees of the City of Toronto, many of them are excluded under subsection 1(3)(b) of the *Act*.

[TAB 2]

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The City asserts in its response that there are 242 people in the bargaining unit it proposes if it is the employer. It gave notice under section 8.1 of the *Act* but agreed that the ballots should be counted. [TAB 2]

In its decision of March 11, 2025, the Board ordered that a representation vote be taken and that the ballot box be sealed [TAB 3]. The representation vote was held on March 13 and 14, 2025. The Vote Officer's Report [TAB 4] reflects that 199 people cast ballots:

Vote Information:

Number of Persons on Voters List	243
Number of Persons who Voted	199
Number of Ballots in Ballot Box	0
Number of Segregated Ballots on Voters List	199
Number of Segregated Ballots Not on Voters List	0

PROCEDURE

As noted above, the City in its response to the certification application gave notice under section 8.1 of the *Act* but agreed that the votes could nonetheless be counted. In its correspondence dated March 12, 2025 [TAB 5], however, the City appears to have changed its position. It now asks that that the Board first determine the issue it has raised with respect to its status as the employer and that the ballot box remain sealed until this issue has been litigated and decided by the Board. AMAPCEO's position is that the ballots should be counted *before* any litigation commences. One reason for this request is that the result of the vote count – specifically, if AMAPCEO loses the vote – could be dispositive and render the litigation of the City's status as employer unnecessary. This and other considerations for counting ballots at the earliest stage possible have been recognized by the Board's jurisprudence for many years.

In *Toronto Star* [1999] OLRB Rep. March/April 352, The Board addressed the importance of early vote counts as follows:

18. ...The normal and usual expectation of a vote in a democratic society is that those interested in the vote are informed of the outcome, as soon as possible after the close of the poll. The early knowledge of the outcome adds legitimacy to the voting process. Variations from this norm should be the exception, not the rule. Indeed the Board's experience to date suggests that, even applying Bill 31, the sealing of the ballot box is the exception not the rule. Besides the democratic reasons for an early count of a vote, there is a practical reason why a vote should usually be counted. The union may be unsuccessful in the representation vote and knowledge of that result will put an end to the application, then and for a year following, avoiding an unnecessary hearing, which would otherwise involve cost to the parties and the unnecessary consumption of the Board's limited resources.

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AMAPCEO's position is that there is no labour relations (or other) reason not to count the ballots prior to determining whether the City is the employer of the persons in issue in this application. Right now we only blanket reasons for exclusions with every ballot challenged. AMAPCEO requests that the Board order the City to take a position on the challenges and provide particulars of same in the ordinary course and as provided for in Information Bulletin No. 4:

c) Parties File and Deliver Submissions on the Substantive Aspects of Status Issues

Each party that asserts that an individual or individuals should not be on the list or in the bargaining unit must file with the Board and deliver to the other party written submissions providing the reasons for each of their challenges and a summary of the material facts upon which they intend to rely by 5:00 p.m. on the Friday following the Regional Certification Meeting. Each party that resists a challenge to the status of an individual must file with the Board and deliver to the other party its response to each of the challenges, summarizing the material facts upon which they intend to rely by 5:00 p.m. on the following Wednesday.

[emphasis added]

[TAB 1]

In light of Bulletin No. 4, AMAPCEO requests the City identify its challenges and provide particulars as soon as possible and no later than April 4, 2025.

THE CITY IS THE EMPLOYER

One has only to visit the City's website to conclude that the City is the employer of the staff in issue in this certification application. Published on the City's website is a document about Council staff entitled: *Human Resources Management and Ethical Framework for Members' Staff* [TAB 6]. Relevant excerpts from this document include the following:

1.1 Preamble

The Human Resources Management and Ethical Framework for Members' Staff is a consolidated Framework that sets out the roles and responsibilities of Members of Council for managing the City employees under their authority, and affirms applicable City Human Resources policy requirements for Members' staff...

...

1.2 Definitions

MEMBER

A Member of Toronto City Council, including the Mayor and Councillors.

MEMBERS' STAFF

Individuals retained in Councillors' Offices and the Mayor's Office, including:

- All Full-time and Part-time staff employed on either indefinite-term or fixed-term contracts, regardless of base position held (even if base position is with the Toronto Public Service).
- Staff who are managed by the Deputy City Clerk, Members Services & Program Support during the period where the seat of the Member of Council is vacant.

...

1.3 Application

While Members' staff are City of Toronto employees, they are not members of the public service and therefore are not subject to the Toronto Public Service By-law, except for Article V, section 192-26. However, being government employees, they have similar ethical and employment requirements albeit with necessary modifications to reflect their unique status as Members' staff. Consequently, Members have responsibilities for managing these staff and are required to enforce human resource and ethical policies to ensure both they and the City are meeting their legislative obligations and responsibilities.

...

1.4 Purpose

The Human Resources Management and Ethical Framework for Members' Staff is developed under the following context:

- Members' staff are not members of the public service. Rather, they are political staff and a unique subgroup of City of Toronto non-union employees. The City, as the employer, has certain statutory requirements and corporate responsibilities as do the Members as the immediate managers of staff working in their offices.
- While they are City employees, Members' staff are distinct from members of the Toronto Public Service and are governed by this Human Resources Management and Ethical Framework for Members' Staff and not the Toronto Public Service By-law, except for Article V, section 192-26.
- ...

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1.6 Roles and Responsibilities

...

1.6.4. City

The City is the employer of Members' staff and in this role is legally responsible for fulfilling its statutory requirements and other corporate responsibilities and obligations to protect City interests

2. MEMBERS' ROLE IN HUMAN RESOURCES MANAGEMENT OF MEMBERS' STAFF

Individuals employed in the offices of Members of Council are City of Toronto employees. However, Members' staff are a special sub-group of City of Toronto non-union employees falling under one of the following employment arrangements:

- a. Indefinite term full-time employees
- b. indefinite term part-time employees
- c. fixed-term full-time employees; and
- d. fixed-term part-time employees.

...

2.4. Terms and Conditions of Employment

- Members' staff are employed under one of the following employment arrangements: Indefinite term full-time employees, indefinite term part-time employees, fixed-term, full-time employees or fixed-term part-time employees with the City and the terms and conditions of their employment are standardized and stipulated therein.

The City in clear and unequivocal terms broadcasts to the public that it is the employer of the staff in issue in this application and that the Councillors function as the supervisors or managers of the staff:

2.1. Members' [Councillors'] Responsibilities

Members [Councillors], as supervisors/managers of City employees_working in their offices, have control and direction over their staff and are responsible for the following...

[emphasis added]

[TAB 6]

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Unsurprisingly, the employment contracts of the staff in issue are between the staff person and the City, and the City pays the staff.

In proceedings before the Information Privacy Commissioner of Ontario (“IPC”) (Appeal MA-990240-1), the City, in its capacity as employer of the Council staff members in issue in this certification application, relied on a “labour relations” exclusion to resist a request to provide documents under the *Municipal Freedom of Information and Protection of Privacy Act* (“FOIPPA”). The request was for records relating to the job descriptions of Executive Assistants, Constituency Assistants and Councillor's Assistants—all positions that fall within AMAPCEO's proposed bargaining unit. [TAB 7]

The City's position in this IPC Appeal was that certain records should not be disclosed because they fell outside the scope of the FOIPPA pursuant to sections 52(3)2 and 3 of FOIPPA. Section 52(3)2 and 3 of FOIPPA provide:

(3) Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

...

2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.

3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

The City made submissions that it did not have to provide certain documents related to Council staff because:

... this collection, preparation, maintenance and usage of the records is in relation to negotiations and anticipated negotiations between the City and Council staff members and their representatives.

...

In the circumstances of this appeal, as part of the overall labour relations process, the Executive Director and/or Human Resources staff met with Council staff to obtain their views and input with respect to the City's review of their job descriptions, salaries and other conditions of employment. The records at issue reflect these ‘negotiations’ between the City and Council staff.

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The City also submits that until City Council adopts recommended job descriptions and other conditions of employment, current and future meetings and discussions about these matters constitute ongoing negotiations.

[TAB 7]

As stated above, the implementation of revised job descriptions and salary scales will collectively affect all Council staff. There is a reasonable expectation that this may impact on the City's obligations under collective agreements that apply to the Council staff and further negotiations may therefore take place. The City's legal position and submissions in the IPC appeal emphasize not only the role of the City as employer, but the across-the-board application of terms of employment to the staff in issue as a collective, and the centralized nature of the City's labour relations system as it applies to the staff in issue.

COMMUNITY OF INTEREST

The City's position with respect to community of interest appears to be premised on the assumption that each councillor is an employer on an island of their own, which is a key issue in dispute. Should the employer pursue this argument, AMAPCEO will require further particulars and documentation and will respond on receipt of same.

AMAPCEO notes however that a community of interest analysis often includes consideration of common terms and conditions of employment as well as the other factors that are relied on by the City in the IPC Appeal referred to above.

SUMMARY AND CONCLUSION

The ballots should be counted before any issues in dispute are litigated. For this to occur, the City needs to make the status submissions that are required in the ordinary course before the hearing scheduled for April 7, 2025.

There is no basis for the City's assertion that it is not the employer of the employees that are the subject of this certification application. The employer has indicated the contrary to the general public and to another tribunal.

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AMAPCEO reserves the right to seek further particulars, and request production of documents, once it has had the opportunity to review any submissions filed by the employer.

Yours truly,



Marisa Pollock

kmc/cope 343

cc: J. Pacheco (via Email)
J. Mills (via Email)
M. Kennedy (via Email)
C. Rix (via Email)
C. Serrano-Valdivia (via Email)
E. Robinson (via Email)

1417-0695-4772, v. 2

TAB 1



Marisa Pollock
Direct Line: 416.979.6441
Fax: 416.591.7333
mpollock@goldblattpartners.com

March 6, 2025

Paul Johnson, City Manager
City Manager's Office, City of Toronto
Toronto City Hall, 4th Floor, East Tower
100 Queen Street West
Toronto, ON M5H 2N2

John Elvidge
City Clerk's Office, City of Toronto
Toronto City Hall, 13th Floor
100 Queen Street West
Toronto, ON M5H 2N2

Cesar Serrano-Valdivia
Canadian Union of Public Employees
(CUPE) Local 79
34 Patrick Street
Toronto, ON M5T 1V1

To Sirs/Madam:

**Re: Association of Management, Administrative and Professional Crown Employees
of Ontario and the City of Toronto - Application for Certification**

We are counsel to the Applicant, the Association of Management, Administrative and Professional Crown Employees of Ontario with respect to the above-noted matter.

Please find enclosed the following:

1. Form C-1: Notice to Employer of Application for Certification;
2. Form A-1: Application for Certification;
3. Form A-2: Response to Application for Certification, including Schedules A and B with instructions;
4. Form A-124: Confirmation of Posting;
5. Information Bulletin Nos. 1, 3 and 4;
6. Part III of the Board's Rules of Procedures.

All of these documents are being served upon you in accordance with the Board's Rules.

Yours truly,

Marisa Pollock
MP/cope 343
Encl.

cc: J. Pacheco (via Email)

Form C-1
Notice to Employer of Application for
Certification

Form C-1

LABOUR RELATIONS ACT, 1995

**NOTICE TO EMPLOYER OF
APPLICATION FOR CERTIFICATION**

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

ASSOCIATION OF MANAGEMENT, ADMINISTRATIVE AND PROFESSIONAL
CROWN EMPLOYEES OF ONTARIO

Applicant,

- and -

CITY OF TORONTO

Responding Party.

TO THE RESPONDING PARTY:

1. The applicant has initiated an application with the Ontario Labour Relations Board for certification as bargaining agent of your employees in a bargaining unit described in the Application for Certification enclosed with this notice.
2. This notice and other material are being sent to you because you are the Responding Party. **An application for certification is a legal proceeding and may affect your legal rights and obligations. You may wish to seek legal advice immediately.**
3. Enclosed with this notice are the following documents:
 - (a) a copy of the Application for Certification (Form A-1);
 - (b) a blank Response to Application for Certification (Form A-2), including Schedules A & B (List of Employees) and the Instructions for filing Excel Schedules with the Board, found at Tab 4 of the Spreadsheet;
 - (c) a blank Confirmation of Posting (Form A-124);
 - (d) a copy of Information Bulletin No. 1 - Certification of Trade Unions;

Form C-1

- (e) a copy of Information Bulletin No. 3 - Vote Arrangements;
 - (f) a copy of Information Bulletin No. 4 - Status Disputes in Certification Applications; and
 - (g) a copy of Part III of the Board's Rules of Procedure.
4. **Your Response to the application (including Schedules A and B) must be filed with the Board no later than two (2) days after the Application for Certification was delivered to you.**

In addition to the version filed with the Board, the Schedules should also be sent to the Board in Excel format by email to vote.coordinator@ontario.ca (please note that the Board will accept ONLY these Schedules by email – no other material can be filed with the Board by email). Pre-formatted Excel versions of these documents may be found on the Board's website (www.olrb.gov.on.ca).

Copies of the schedules should also be provided by email to the primary contact for the Applicant. The Applicant should indicate its challenges on the appropriate column in the Schedule, and send them by email to vote.coordinator@ontario.ca, with a copy to the primary contact for the Employer.

You must also file the Confirmation of Posting [Form A-124] no later than one day after filing your Response.

You must also ensure that a copy of your Response (including Schedules A and B) is delivered to the applicant and to any affected trade union identified by you or by the applicant in paragraph 7 of the application before or at the same time that you file these documents with the Board. You must also complete a Certificate of Delivery.

- 5. Please note that periods of time referred to in this notice, in other Board forms and notices, and in the Board's Rules of Procedure do not include weekends, statutory holidays, or any other day that the Board is closed.
- 6. **It is an offence punishable on summary conviction to fail to comply with a direction of the Board -- see section 104 of the Labour Relations Act.**
- 7. If the Board determines that 40 percent or more of the individuals in the bargaining unit proposed in the application for certification appear

Form C-1

to be members of the union, the Board will direct that a representation vote be taken among the individuals in a voting constituency determined by the Board.

Section 8(5) of the Labour Relations Act directs the Board to hold the representation vote within five (5) days after the day on which the application for certification is filed with the Board, unless the Board otherwise directs.

8. Any direction from the Board to conduct a representation vote and any determination by the Board regarding a voting constituency for such a vote will be contained in a Decision of the Board which will be sent to you. If the Board directs that a representation vote be held, a notice indicating the time and the place the vote will be held will be sent to you for posting in the workplace.
9. The Board's Rules of Procedure require the Applicant to deliver the enclosed application to you (and to any affected union named in the application) before filing it with the Board. Once the application is filed, the Board sends to the parties a confirmation of the filing and a Board file number. If you do not hear from the Board within two days after you receive the application, you may wish to contact the Board.
10. In the normal course, an Officer of the Labour Relations Board will be contacting you to discuss this application with you.

DATED March 6, 2025.

The Registrar
Ontario Labour Relations
Board

NOTE: All communications should be addressed to:

The Registrar
Ontario Labour Relations Board
505 University Avenue
2nd Floor
Toronto, Ontario
M5G 2P1
Tel. (416) 326-7500

Form C-1

IMPORTANT NOTES

The Board's forms, Notices, Information Bulletins, Rules of Procedure and Filing Guide may be obtained from its website <http://www.olrb.gov.on.ca> or by calling 416-326-7500 or toll-free at 1-877-339-3335.

FRENCH OR ENGLISH

Vous avez le droit de communiquer et recevoir des services en français et en anglais. La Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate and receive services in either English or French. The Board does not provide translation services in languages other than English or French.

CHANGE OF CONTACT INFORMATION

Notify the Board immediately of any change in your contact information. If you fail to do so, correspondence sent to your last known address (including email) may be deemed to be reasonable notice to you and the case may proceed in your absence.

ACCESSIBILITY and ACCOMMODATION

The Board is committed to providing an inclusive and accessible environment in which all members of the public have equitable access to our services. We will aim to meet our obligations under the *Accessibility for Ontarians with Disabilities Act* in a timely manner. Please advise the Board if you require any accommodation to meet your individual needs. The Board's Accessibility Policy can be found on its website.

FREEDOM OF INFORMATION and PROTECTION OF PRIVACY

Personal information is collected on this form under the authority of the Board's governing legislation to assist in the processing of cases before it. Information received in written or oral submissions may be used and disclosed for the proper administration of the Board's legislation and processes. Any relevant information that you provide to the Board must in the normal course be provided to the other parties to the proceeding. The *Freedom of Information and Protection of Privacy Act* may also address the collection, use and disclosure of personal information. If you have any questions, contact the Solicitors' Office at the numbers listed above or in writing to the OLRB, 505 University Ave., Toronto, ON, M5G 2P1.

E-FILING AND E-MAIL

The Rules of Procedure and Filing Guide set out the permitted methods of filing. **In the event of emergencies or other circumstances, the Board may post a Notice to Community on its website, which will prevail over the Rules of Procedure and Filing Guide. You should check the Board's website prior to filing.** Note that the e-filing system is not encrypted. Contact the Client Services Coordinator at the numbers listed above if you have questions regarding e-filing or other filing methods. If you provide an e-mail address with your contact information, the Board will in most cases

Form C-1

communicate with you by e-mail from an out-going only generic account. Incoming emails are not permitted.

HEARINGS and DECISIONS

Hearings are open to the public unless the Board decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library and www.canlii.org. Some summaries and decisions may be found on the Board's website.

A-1

Application for Certification

Form A-1

LABOUR RELATIONS ACT, 1995

APPLICATION FOR CERTIFICATION

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

ASSOCIATION OF MANAGEMENT, ADMINISTRATIVE AND PROFESSIONAL
CROWN EMPLOYEES OF ONTARIO

Applicant,

- and -

CITY OF TORONTO

Responding Party.

**PLEASE READ INFORMATION BULLETIN NO. 1 – CERTIFICATION OF
TRADE UNIONS BEFORE COMPLETING THIS FORM.**

The applicant applies to the Ontario Labour Relations Board for certification of the employees of the responding party in a unit described below.

1. (a) Name, address, telephone number, facsimile number and e-mail address of the applicant:

**1 Dundas Street West, Suite 2310, PO Box 72
Toronto, Ontario, M5G 1Z3
Tel: 416-595-9000
Fax: 416-340-6461**

Attention to:

**Jennifer Pacheco – pacheco@amapceo.on.ca
Jennifer Sherwood – sherwood@amapceo.on.ca
Dave Bulmer – bulmer@amapceo.on.ca**

-
- (b) Name, address, telephone number, facsimile number and e-mail address of a contact person for the applicant (Please Note: this individual **must** be regularly available by phone during the five

Form A-1

days leading up to the date set for the vote. Your contact person should be an individual with the authority to enter into agreements on your behalf):

**1 Dundas Street West, Suite 2310, PO Box 72
Toronto, Ontario, M5G 1Z3
Tel: 416-595-9000
Fax: 416-340-6461**

**Jennifer Pacheco
Tel: 416-899-8713
E: pacheco@amapceo.on.ca**

Form A-1

- (c) E-mail address of representative and assistant (if any):

x Counsel: Marisa Pollock, Counsel
Goldblatt Partners LLP
20 Dundas Street, Suite 1039
Toronto, ON M5G 2C2
Tel: 416-979-6441
E: mpollock@goldblattpartners.com

Assistant: Katharine Crawford
(kcrawford@goldblattpartners.com)

[Periods of time referred to in this application, in other Board forms and notices, and in the Board's Rules of Procedure do not include weekends, statutory holidays, or any other day that the Board is closed.]

- (d) Name, address, telephone number, facsimile number and e-mail address of the responding party and contact person:

City of Toronto, City Manager's Office
Toronto City Hall, 4th fl. E., East Tower, 100 Queen St. W.
Toronto Ontario, M5H 2N2
Telephone: 416-392-8673
Fax: 416-392-1827
Email: cmofeedback@toronto.ca

c/o City Manager, Paul Johnson
Email: Paul.R.Johnson@toronto.ca
Telephone: 416-392-3551

City of Toronto, City Clerk's Office
Toronto City Hall 13th fl. W., 100 Queen St. W.
Toronto ON, M5H 2N2
Telephone: 416-392-8016
Fax: 416-392-4900
Email: clerk@toronto.ca
c/o City Clerk, John Elvidge
Email: john.elvidge@toronto.ca
Phone: 416-392-8641

Form A-1

[Before you file your application with the Board, you must deliver to the responding party: a copy of your application, a blank response form (A-2, including Schedules A and B and the Instructions for filing Excel Schedules with the Board, found at Tab 4 of the Spreadsheet, a blank Confirmation of Posting (A-124) , a Notice to Employer of Application for Certification (Form C-1) with the names of the parties and the date inserted, a copy of Information Bulletin No. 1 -- Certification of Trade Unions, a copy of Information Bulletin No. 3 -- Vote Arrangements, a copy of Information Bulletin No. 4 -- Status Disputes in Certification Applications, and a copy of Part III of the Board's Rules of Procedure. You must also complete the attached Certificate of Delivery.]

2. Detailed description of the unit of employees of the responding party that the applicant claims to be appropriate for collective bargaining, including the municipality or other geographic area affected:

All employees of the City of Toronto retained in Toronto City Council's Councillors' Offices and the Mayor's Office in the City of Toronto, save and except persons exercising managerial functions or employed in a confidential capacity in matters relating to labour relations under subsection 1(3)(b) of the Labour Relations Act.

3. Number and addresses of locations where affected employees work (Please list):

**100 Queen St. West
Toronto, Ontario
M5H 2N2**

All affected employees have the same work address, that of City Hall (100 Queen St. West). Each member of City Council has their own suite number, but employees do not necessarily or consistently work out of those suites. Employees may work out of city hall, one of the civic centres, or in constituency offices in the community or out of the suite.

See item 4 below for a breakdown of the approximate number of employees that are retained in the various Councillors' Offices and in the Mayor's Office.

Form A-1

4. The number of employees the applicant believes to be in the proposed unit 170

(Please provide a breakdown by location listed in paragraph 3)

To the best of the applicant's knowledge, the number of people, broken down by office, is as follows:

170

**Ward 1- 8 employees
Ward 2- 4 employees
Ward 3- 8 employees
Ward 4- 7 employees
Ward 5- 4 employees
Ward 6- 5 employees
Ward 7- 9 employees
Ward 8- 8 employees
Ward 9- 6 employees
Ward 10- 6 employees
Ward 11- 7 employees
Ward 12- 5 employees
Ward 13- 7 employees
Ward 14- 6 employees
Ward 15- 5 employees
Ward 16- 5 employees
Ward 17- 4 employees
Ward 18- 8 employees
Ward 19- 6 employees
Ward 20- 8 employees
Ward 21- 3 employees
Ward 22- 4 employees
Ward 23- 8 employees
Ward 24- 5 employees
Ward 25- 5 employees
Mayor's Office- 19 employees**

5. General nature of the responding party's business:

Toronto City Council is the legislative body that governs the city of Toronto. It is made up of the mayor and 25 councillors. Responsibilities include developing policies, determining services, ensuring accountability of the city's operations, maintaining

Form A-1

the city's finances, passing municipal legislation, approving city spending, and overseeing the services provided by the city and its agencies.

6. Does the proposed bargaining unit include guards?

☐ Yes

☒ No

7. Name, address, telephone number, facsimile number and e-mail address of any trade union known to the applicant which claims to represent any employee(s) who may be affected by this application:

Canadian Union of Public Employees (CUPE), Local 79
34 St Patrick St, Toronto, ON M5T 1V1

Cesar Serrano-Valdivia
National Representative
Canadian Union of Public Employees, Local 79
34 St. Patrick St.,
Toronto, ON M5T1V1
Tel: 365-442-3841
Fax: 416-977-9546
E: cserrano-valdivia@cupe.ca

CUPE Local 79 does not represent the employees who are the subject of this application. It does represent "inside" employees of the City of Toronto. The applicant is providing CUPE Local 79 with notice as a courtesy.

[Before you file your application with the Board, you should deliver to the union(s) named in paragraph 7: a copy of this application, a blank intervention form, a copy of Information Bulletin No. 1 -- Certification of Trade Unions, a copy of Information Bulletin No. 3 -- Vote Arrangements, a copy of Information Bulletin No. 4 -- Status Disputes

Form A-1

in Certification Applications, and a copy of Part III of the Board's Rules of Procedure. You must also complete the attached Certificate of Delivery.]

8. Membership evidence relating to this application accompanies this application and

☒ does

☐ does not

represent membership evidence on behalf of 40 percent or more of the employees in the proposed bargaining unit.

[Section 7(13) of the Act provides that the application for certification shall be accompanied by a list of names of union members in the proposed bargaining unit and evidence of their status as union members, but the trade union shall not give this information to the employer.]

9. Other relevant statements (attach additional pages if necessary):

None.

Vote Arrangements (Please read Information Bulletin No. 3 - Vote Arrangements before completing this portion of the form.)

10. Do you assert that a vote should commence on the fifth day after the date on which this application is filed with the Board?

☒ Yes

☐ No

If no, please explain fully. As well, please state the date on which you believe the vote should commence, and explain why:

Form A-1

11. Except in exceptional circumstances, the Board conducts votes electronically. Do you assert that a representation vote should **not** take place electronically?

☐ Yes

☒ No

If yes, please explain fully and provide all submissions in support of your assertion.

12. Please state the name of the Agent you have selected to represent you for the vote:

Jennifer Pacheco or Designate

Telephone: 416-899-8713

Email: pacheco@amapceo.on.ca

13. Please indicate the name of the applicant as you wish it appear to voters:

The Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO)

Complete paragraphs **14, 15 and 16 only if you request an in-person vote.**

14. Please list the proposed hours for the vote specifying the start and finish times and either a.m. or p.m.:

Please explain the reasons for your proposed vote times (e.g., shift change, employee start times, etc.):

15. Please indicate the location you propose for the poll(s):

Poll #1

Room, or other description of the location:

Floor:

Form A-1

Address:

City:

Poll #2 (only if multiple locations are necessary):

Room, or other description of the location:

Floor:

Address:

City:

Please explain the reason for your proposed poll location(s):

16. Please state the name of the Scrutineer you have selected to represent you at each poll:

Poll #1:

Poll #2 (only if multiple locations are necessary):

DATED March 6, 2025



**Signature for the
Applicant**

ATTACHMENTS

THE FOLLOWING DOCUMENTS MUST ACCOMPANY THIS APPLICATION WHEN IT IS FILED WITH THE BOARD:

- (A) ANY MEMBERSHIP EVIDENCE RELATING TO THIS APPLICATION;

Form A-1

- (B) ONE COPY OF A LIST OF EMPLOYEES, IN ALPHABETICAL ORDER, CORRESPONDING WITH THE MEMBERSHIP EVIDENCE FILED; AND
- (C) A COMPLETED DECLARATION VERIFYING MEMBERSHIP EVIDENCE (FORM A-4)

NOTE: THE MEMBERSHIP EVIDENCE, LIST OF EMPLOYEES CORRESPONDING WITH THE EVIDENCE, AND THE DECLARATION VERIFYING EVIDENCE ARE NOT TO BE DELIVERED TO THE EMPLOYER OR ANY AFFECTED TRADE UNION.

Form A-1

CERTIFICATE OF DELIVERY

1. I certify that the following documents were delivered to the employer, as follows:
 - a copy of the Application for Certification (Form A-1);
 - a blank copy of a Response to Application for Certification (Form A-2) including Schedules A & B (List of Employees);
 - a blank Confirmation of Posting (A-124);
 - a completed copy of the Notice to Employer of Application for Certification (Form C-1), **with the names of the parties and the date inserted**;
 - a copy of Information Bulletin No. 1 -- Certification of Trade Unions;
 - a copy of Information Bulletin No. 3 -- Vote Arrangements;
 - a copy of Information Bulletin No. 4 -- Status Disputes in Certification Applications; and
 - a copy of Part III of the Board's Rules of Procedures.

Name of Organization and name
title of person to whom
documents were delivered

Address or facsimile number to and
which documents were
delivered

2. **[Complete this section only if you identified an affected trade union in paragraph 7 of the application.]**

I certify that the following documents were delivered to the trade union(s) named in paragraph 7 of the application, as follows:

- a completed copy of the Application for Certification (Form A-1);
- a blank copy of an Intervention in Application for Certification (Form A-3);

Form A-1

- a copy of Information Bulletin No. 1 -- Certification of Trade Unions;
- a copy of Information Bulletin No. 3 -- Vote Arrangements;
- a copy of Information Bulletin No. 4 -- Status Disputes in Certification Applications; and
- a copy of Part III of the Board's Rules of Procedure.

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were
delivered

[Complete either section 3 or section 4 below.]

3. The documents were delivered by [] facsimile transmission or []
hand delivery on _____ at _____ a.m./p.m.
(Date)

4. The documents were given to _____ on
(Name of Courier)
_____, and I was advised that they would be delivered
(Date)
not later than _____, at _____ a.m. /p.m.
(Date)

NAME: _____

TITLE: _____

SIGNATURE: _____

Form A-1

IMPORTANT NOTES

The Board's forms, Notices, Information Bulletins, Rules of Procedure and Filing Guide may be obtained from its website www.olrb.gov.on.ca or by calling 416-326-7500 or toll-free at 1-877-339-3335.

FRENCH OR ENGLISH

Vous avez le droit de communiquer et recevoir des services en français et en anglais. La Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate and receive services in either English or French. The Board does not provide translation services in languages other than English or French.

CHANGE OF CONTACT INFORMATION

Notify the Board immediately of any change in your contact information. If you fail to do so, correspondence sent to your last known address (including email) may be deemed to be reasonable notice to you and the case may proceed in your absence.

ACCESSIBILITY AND ACCOMMODATION

The Board is committed to providing an inclusive and accessible environment in which all members of the public have equitable access to our services. We will aim to meet our obligations under the *Accessibility for Ontarians with Disabilities Act* in a timely manner. Please advise the Board if you require any accommodation to meet your individual needs. The Board's Accessibility Policy can be found on its website.

COLLECTION AND DISCLOSURE OF INFORMATION AND DOCUMENTS

Any relevant information that you provide to the Board must in the normal course be provided to the other parties to the proceeding. Personal information collected on this form and in written or oral submissions may be used and disclosed for the proper administration of the Board's governing legislation and case processing. In addition, the *Tribunal Adjudicative Records Act, 2019* requires that the Board make adjudicative records (which include applications filed and a listing of such applications) available to the public. The Board has the power to make part or all of an adjudicative record confidential. The *Freedom of Information and Protection of Privacy Act* may also address the treatment of personal information. More information is available on the Board's website www.olrb.gov.on.ca. If you have any questions concerning the collection of information or disclosure of adjudicative records, contact the Solicitors' Office at the number listed above or in writing to the OLRB, 505 University Ave., 2nd floor, Toronto, ON M5G 2P1.

Form A-1

E-FILING AND E-MAIL

The Rules of Procedure and Filing Guide set out the permitted methods of filing. **In the event of emergencies or other circumstances, the Board may post a Notice to Community on its website, which will prevail over the Rules of Procedure and Filing Guide. You should check the Board's website prior to filing.** Note that the e-filing system is not encrypted. Contact the Client Services Coordinator at the numbers listed above if you have questions regarding e-filing or other filing methods. If you provide an e-mail address with your contact information, the Board will in most cases communicate with you by e-mail from an out-going only generic account. Incoming emails are not permitted.

HEARINGS AND DECISIONS

Hearings are open to the public unless the Board decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library and www.canlii.org. Some summaries and decisions may be found on the Board's website.

Form A-2
Response to Application for Certification (Blank)
and Schedules A and B, and instructions

Form A-2

LABOUR RELATIONS ACT, 1995

File No. _____

RESPONSE TO APPLICATION FOR CERTIFICATION

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

- and - **Applicant,**

Responding Party.

The responding party states in response to the application:

1. (a) Correct name of the responding party:

- (b) Address, telephone number, facsimile number and e-mail address of the responding party:

- (c) Name, address, telephone number, facsimile number and e-mail address of a contact person for the responding party (Please Note: this individual **must** be regularly available by phone during the five days leading up to the date set for the vote. Your contact person should be an individual with the authority to enter into agreements on your behalf):

Form A-2

(d) E-mail address of representative and assistant (if any):

- | | |
|--|-------------------|
| <input type="checkbox"/> Counsel: | Assistant: |
| <input type="checkbox"/> Paralegal: | Assistant: |
| <input type="checkbox"/> other: | Assistant: |

[Periods of time referred to in this response, in other Board forms and notices, and in the Board's Rules of Procedure do not include weekends, statutory holidays, or any other day that the Board is closed.]

2. General nature of the responding party's business:

3. ☐ The responding party agrees with the applicant's estimate of the number of individuals in the bargaining unit included in the application for certification.

OR

☐ The responding party disagrees with the applicant's estimate of the number of individuals in the bargaining unit included in the application for certification and says that there are _____ individuals in that bargaining unit.

4. ☐ The responding party agrees with the description of the bargaining unit included in the application for certification.

OR

☐ The responding party disagrees with the description of the bargaining unit included in the application for certification and proposes the following bargaining unit description (*include the municipality or other geographic area affected*):

and says that there are _____ individuals in this bargaining unit.

Form A-2

5. If the responding party disagrees with the description of the bargaining unit included in the application, does the responding party also assert that the description of that unit could not be appropriate?

☐ Yes
☐ No

If the answer is yes, please provide full particulars in support of your position:

6. Is the responding party giving notice under section 8.1 of the Act?

☐ Yes
☐ No

If the answer is yes, does the responding party agree that ballots cast in the representation vote should be counted?

☐ Yes
☐ No

7. If the bargaining unit applied for includes guards, is the responding party objecting under section 14(2) of the Act?

☐ Yes
☐ No

If the answer is yes, please provide full particulars of the basis of your objection:

Is the responding party objecting under section 14(3) of the Act?

☐ Yes
☐ No

Form A-2

If the answer is yes, please provide full particulars of the basis of your objection:

8. The name, address, telephone number and facsimile number of any trade union that claims to represent any employee(s) who may be affected by this application that was not identified by the applicant in paragraph 7 of the application.
9. The date on which the trade union named in paragraph 8 was certified or voluntarily recognized:
10. Is or was the responding party bound by a collective agreement covering any of the employees in the applicant's proposed bargaining unit?
☐ Yes
☐ No

If the answer is yes, state below the date on which it was signed, the effective date and the expiry date, and enclose a copy with this response.

11. Other relevant statements (attach additional pages if necessary):

Form A-2

Vote Arrangements (Please read Information Bulletin No. 3 – Vote Arrangements before completing this portion of the form.)

12. Should a vote commence on the fifth day after the date on which this application for certification was filed with the Board?

☐ Yes
☐ No

If the answer is no, please explain fully and state the date(s) on which you believe the vote should commence and the reasons why:

13. Do you agree with the method of vote proposed in paragraph 11 of the applicant's Form A-1?

☐ Yes
☐ No

Please explain fully.

14. Please state the name of the agent you have selected to represent you for the vote:

Complete paragraphs 15, 16 and 17 only if you or the applicant requests an in-person vote.

15. Do you agree with the hours of vote proposed in the applicant's Form A-1 at paragraph 14?

☐ Yes
☐ No

If the answer is no, please explain fully and state your suggested hours (specifying start and finish times and a.m. or p.m.), and the reasons for them:

Form A-2

16. Do you agree with the location of the poll(s) proposed in the applicant's Form A-1 at paragraph 15?

[] Yes
[] No

If the answer is no, please explain fully and state your suggested location of the poll(s), and the reasons for them:

17. Please state the name of the Scrutineer you have selected to represent you at each poll:

Poll #1:

Poll #2 (only if multiple locations are necessary):

DATED _____

**Signature for the
Responding Party**

Form A-2

CERTIFICATE OF DELIVERY

1. I certify that a completed copy of the Response to the Application for Certification was delivered to [] the applicant and [] any affected trade union named in paragraph 7 of the application as follows. In addition, I certify that a copy of the completed Application, Response and related materials was delivered to [] any affected trade union named in paragraph 8 of the Response.

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were delivered

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were delivered

[Complete either section 2 or section 3 below.]

2. The documents were delivered by [] facsimile transmission or []

hand delivery on _____ at _____ a.m./p.m.
(Date)

3. The documents were given to _____ on
(Name of Courier)

_____, and I was advised that they would be delivered
(Date)

Form A-2

not later than _____, at _____ a.m. /p.m.
(Date)

NAME: _____

TITLE: _____

SIGNATURE: _____

Form A-2

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Form A-2

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[illegible]

This list has been prepared by me or my instructions, and I confirm that it is accurate.					
			Signature		
#	Last	Name First	Job Classification	Employment Type	Challenged
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[illegible]

This list has been prepared by me or my instructions, and I confirm that it is accurate.					
			Signature		
#	Last	Name First	Job Classification	Employment Type	Challenged
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INSTRUCTIONS

SCHEDULE A (CERTIFICATION - INDUSTRIAL) (LIST OF EMPLOYEES)

List in alphabetical order all employees who were in the bargaining unit proposed by the applicant who had an employment relationship with the employer on the date the application was delivered to the employer. Employees having an employment relationship include employees on maternity leave, sick leave, vacation, workers' compensation, lay-off, etc., so long as there is a reasonable expectation of their return to employment.

Under "Employment Type," please indicate if the employee is:

FT full-time (employed more than 24 hours per week)

PT part-time (employer for not more than 24 hours per week)

S students employed for more than 24 hours per week during a school vacation period

SCHEDULE B (CERTIFICATION - INDUSTRIAL)

List in alphabetical order all employees who had an employment relationship with the employer on the date the application for certification was delivered to the employer who are not in the bargaining unit applied for by the applicant, but who are in the bargaining unit proposed by the employer. Employees having an employment relationship include employees on maternity leave, sick leave, vacation, workers' compensation, lay-off, etc., so long as there is a reasonable expectation of their return to employment.

Under "Employment Type," please indicate if the employee is:

FT full-time (employed more than 24 hours per week)

PT part-time (employer for not more than 24 hours per week)

S students employed for more than 24 hours per week during a school vacation period

SCHEDULE C (TERMINATION - INDUSTRIAL)

List in alphabetical order all employees who were in the bargaining unit for which the applicant seeks to terminate bargaining rights, who had an employment relationship with the employer on the date of application. Employees having an employment relationship include employees on maternity leave, sick leave, vacation, workers' compensation, lay-off, etc., so long as there is a reasonable expectation of their return to employment.

If you do not know the date of application, please contact the Board.

Under "Employment Type," please indicate if the employee is:

FT full-time (employed more than 24 hours per week)

PT part-time (employer for not more than 24 hours per week)

S students employed for more than 24 hours per week during a school vacation period

Delivery

Except in an application for List of Employees, an electronic copy of the applicable Excel Schedules should be provided by the Responding Party or Intervenor to the Applicant at the email address provided in the Application.

Electronic copies of these Schedules (and only these Schedules) can be filed with the Board at vote.coordinator@ontario.ca.

The Applicant should indicate its challenges in the appropriate column on the Schedules and send them by email to vote.coordinator@ontario.ca.

Form A-124
Confirmation of Posting (Blank)

ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

CONFIRMATION OF POSTING

Instructions: Each Employer or Employer's Representative and Union or Union Representative must fill out this form after posting, or verifying the posting, of applicable documents and send it to the Registrar of the Board. Although the Application and Notice to Employees must be posted immediately, the Employer may wait to complete this form to indicate posting of Application, Notice to Employees and Response, and then file this form along with its Response.

Forms indicating immediate posting of OTHER documents should be filed with the Board as and when the documents are posted.

Name of Employer:

Name and Title of Person completing this Form on behalf of Employer:

Name of Union Representative completing this Form:

I declare that the above-named Employer has posted, according to the above instructions, copies of the following documents **(if and as applicable)** at the workplace(s) or at worksite(s) where the documents are most likely to come to the attention of the employees or other individuals affected by the Application.

DOCUMENT	NUMBER OF COPIES POSTED	DATE POSTED	TIME POSTED
Application and Notice to Employees of Application			
Response			
Decision and Notice of Vote, Vote Poll(s), Vote Count, Meeting, Hearing			
Vote Officer's Report			

DATE:

(p. 1 of 1)

SIGNATURE:

(August, 2022)

Information Bulletin Nos. 1, 3 and 4

ONTARIO LABOUR RELATIONS BOARD

INFORMATION BULLETIN NO. 1

Certification of Trade Unions

This Information Bulletin describes the procedures that must be followed when a union applies to represent a group of employees at a workplace. It does not describe the procedures that apply in applications made with respect to workplaces in the construction industry. For information on those procedures, please refer to Information Bulletin No. 6 - Certification of Trade Unions in the Construction Industry.

It is important that the parties involved in a certification application read and comply with the directions in this Bulletin and the Board's Rules of Procedure. Failure to do so may result in the application or other materials not being processed by the Board.

If 40 percent or more of the employees in the bargaining unit proposed by the union appear to be members of the union that has applied for certification, the Board is required to conduct a representation vote. The vote usually commences five days after the date the certification application is filed. In limited circumstances the vote may be delayed one or more days.

The materials that are required to file a certification application can be obtained from the Board at any time. The materials that are required for an employer to respond to an application for certification are delivered to it by the applicant union. The materials that are required for an affected trade union to intervene in an application are usually delivered to it either by the applicant or the responding party, depending on the circumstances.

Parties to an application for certification are required to "deliver" to the other parties and "file" with the Board a variety of documents within a specified number of "days". The words "day", "deliver" and "file" are defined in the Board's Rules of Procedure to have very specific meanings. It is very important that you apply the following meanings to each of these words whenever they appear in this Bulletin.

- "Day" - does not include weekends, statutory holidays or any other day on which the Board is closed. (Rule 1.5)
- "Delivered" - Material is considered to be "delivered" on the day that it is actually received by the party to whom it is sent. (Rule 6.7) Where delivery is permitted and is accomplished by facsimile transmission, the fax confirmation sheet should be retained by the sender in case delivery, or the time of delivery, is later challenged.

- "Filed" - Material is considered to have been "filed" with the Board on the date it is actually received by the Board provided that it is received between the hours of 8:30 a.m. and 5:00 p.m. on a day on which the Board is open. Materials received after 5:00 p.m. will be deemed to have been filed with the Board on the following business day. (Rules 3.4 and 3.5)

I. DELIVERY AND FILING OF THE CERTIFICATION APPLICATION

In order to apply for certification, a union must fulfill the following delivery and filing requirements.

1) Delivery of Certification Package to Employer

The union must deliver a Certification Package to the employer before it files its Application with the Board. The package may be delivered by any means permitted by Rule 6.4.

The Certification Package consists of the following materials arranged in the following order:

- (i) one **Notice to Employer of Application for Certification** (Form C-1). The union must fill in its name and the employer's name on page 1 and the date on page 3 of the Notice before making the delivery;
- (ii) one copy of the completed **Application for Certification** (Form A-1);
- (iii) one blank **Response to Application for Certification** (Form A-2), including **Schedules A and B** (list of employees) and the Instructions for filing Excel Schedules with the Board, found at Tab 4 of the Spreadsheet;
- (iv) one **blank Confirmation of Posting (A-124)**;
- (v) one **Information Bulletin No. 1 - Certification of Trade Unions**;
- (vi) one **Information Bulletin No. 3 - Vote Arrangements**;
- (vii) one **Information Bulletin No. 4 - Status Disputes in Certification Applications**; and
- (viii) one copy of Part III of the **Board's Rules of Procedure**.

(Rule 9.3)

Note: The union is NOT to deliver to the employer a list of names of union members, evidence of their status as union members, or a copy of the Declaration Verifying Membership Evidence (Form A-4).

2) **Delivery of Application to Affected Trade Unions**

If the applicant is aware of any union that claims to represent any employees who may be affected by the application, it must deliver the material listed below to that affected union. This material may be delivered by any means permitted by Rule 6.4 and must be received by the affected union(s) no later than the date the employer receives the Certification Package.

- (i) one copy of the completed **Application for Certification** (Form A-1);
- (ii) one blank **Intervention in Application for Certification** (Form A-3);
- (iii) one **Information Bulletin No. 1 - Certification of Trade Unions**;
- (iv) one **Information Bulletin No. 3 - Vote Arrangements**;
- (v) one **Information Bulletin No. 4 - Status Disputes in Certification Applications**; and
- (vi) one copy of Part III of the **Board's Rules of Procedure**.
(Rule 9.4)

Applicants should make every effort to identify and notify affected unions as failure to do so may result in the vote being delayed.

3) **Filing of Certification Application with the Board**

Not later than two days after delivering the Certification Package to the employer, the applicant must file its application with the Board. The application may be filed by any means, except facsimile transmission, e-mail or registered mail, and must include:

- (i) one signed completed **Application for Certification** (Form A-1);

- (ii) any **membership evidence** relating to the application. This evidence must be in writing and signed by each employee concerned, and it must indicate the date each signature was obtained;
- (iii) a **list of employees**, in alphabetical order, corresponding with the membership evidence filed; and
- (iv) a Declaration Verifying Membership Evidence (Form A-4).

(Rules 6.2 and 9.1)

If the applicant does not file the application with the Board within two days after delivering the Certification Package to the employer, the matter will be terminated. (Rules 6.10 and 6.12)

II. BOARD CONTACTS THE PARTIES TO CONFIRM THAT THE APPLICATION HAS BEEN FILED

On the Application Filing Date (the day the application is received by the Board), the Board sends a Confirmation of Filing of Application for Certification to the union and employer (and any affected party(ies)). This letter confirms that the application has been filed with the Board, provides the Application Filing Date and Board File Number, reiterates the employer's obligations that are set out in its Notice to Employer of Application, and directs the employer to make and post copies of the Notice to Employees and the Application for Certification (Form A-1).

The Board may also contact the employer by telephone on the Application Filing Date, or the following day, to again confirm that the application has been filed, to clarify the employer's obligations, to advise that a vote will normally commence five days after the Application Filing Date, and to inform the employer that it can expect a Board Officer to contact it after it files its response.

The employer should contact the Board to determine whether or not the application has been filed only if it has not received a Confirmation of Filing of Application by the end of the second day after the employer received the Certification Package. If an application is not filed within two days after the employer received the Package, the employer will be advised by the Board that the matter is terminated. (Rule 6.12)

III. EMPLOYER'S OBLIGATIONS

1) Post Application and Notice to Employees

Upon receipt of the Confirmation of Filing, the employer must IMMEDIATELY make and post copies of the Application for Certification (Form A-1) and the Notice to Employees of Application for Certification. These documents are to be posted with each another in a sufficient number of locations so that they are likely to come to the attention of all employees affected by the application.

The Notice to Employees of Application for Certification advises employees that a union is applying for certification and directs them to the related Application for Certification for details about the application. The Notice also notifies the employees that a secret ballot vote will likely commence five days after the Application Filing Date. In addition, the Notice advises employees of their rights, including the right to make statements to the Board about the application, and alerts them to look for future postings that will inform them of voter eligibility, the date, time and location of the vote, **and the date and location of meetings with Mediators and hearings.**

2) **File and Deliver a Response**

No later than two days after it received the Certification Package, the employer is required to post and deliver its response to the applicant union and file its response with the Board. The response may be delivered to the union by any means permitted by Rule 6.4. The Response should be filed with the Board, as described below. The response must consist of the following materials:

- (i) **Response to Application for Certification** (Form A-2).
- (ii) **Schedules A & B (Employee Lists).** The Schedules assist the Board in determining which employees are eligible to vote. The employer must include on these Schedules the names of all employees who fall within the union's proposed bargaining unit and, if the employer is proposing a bargaining unit that is different from the union's, the names of employees who fall within the employer's proposed unit.

All employees who fall within the union's and employer's proposed bargaining units who have an ongoing employment relationship with the employer on the Application Filing Date are to be included on the Schedules. For example, employees who are on vacation, maternity leave, sick-leave or other leave, workers' compensation, or lay-off on the Application Filing Date are to be included on

the Schedules if there is a reasonable expectation of their return to employment.

In addition to hard-copy versions attached to the Response, the Schedule(s) (i.e. the List(s) of Employees) should also be sent to the Board in Excel format by email to vote.coordinator@ontario.ca (please note that the Board will accept ONLY these Schedules by email – no other material can be filed with the Board by email). Pre-formatted Excel versions of these documents may be found on the Board’s website (www.olrb.gov.on.ca).

Copies of these schedules should also be provided by email to the primary contact for the Applicant Union. The Union should indicate its challenges on the appropriate column in the Excel Schedules, and send them by email to vote.coordinator@ontario.ca, with a copy to the primary contact for the Employer (and other Union(s), if applicable).

3) **File the Confirmation of Posting (Form A-124)**

- (a) No later than one day after its Response is due the employer must confirm that it has posted the Application, Notice to Employees, and its Response.

4) **Deliver to Affected Trade Unions**

(a) Affected Trade Union Identified by Applicant Union

The employer is also required to deliver a copy of its response to any affected trade union identified by the union in paragraph 7 of the Application for Certification no later than two days after it received the Certification Package. The response may be delivered by any means permitted by Rule 6.4, and must consist of the Response to Application for Certification (Form A-2) and Excel Schedules A & B (Employee Lists).

(b) Affected Trade Union Not Identified by Applicant Union

The employer is required to deliver the documents listed below to any trade union that the employer is aware claims to represent an employee who may be affected by the application, which was not identified as an affected trade union by the applicant union. These documents may be

delivered by any means permitted by Rule 6.4, and must be delivered no later than two days after the employer received the Certification Package.

- (i) a copy of the completed **Application for Certification** (Form A-1);
- (ii) a copy of the completed **Response to Application for Certification** (Form A-2), including **Excel Schedules A & B** (Employee Lists);
- (iii) a blank copy of **Intervention in Application for Certification** (Form A-3);
- (iv) a copy of **Information Bulletin No. 1 - Certification of Trade Unions**;
- (v) a copy of **Information Bulletin No. 3 - Vote Arrangements**;
- (vi) a copy of **Information Bulletin No. 4 - Status Disputes in Certification Applications**; and
- (vii) A copy of Part III of the **Board's Rules of Procedure**.

IV. AFFECTED TRADE UNION (IF ANY) FILES AND DELIVERS INTERVENTION

If any trade union that claims to hold bargaining rights for any of the employees affected by the application is notified of the application and wishes to participate in the proceedings, it must file an Intervention in Certification Application (Form A-3) with the Board and deliver a copy of it to both the applicant and employer. The Intervention must be received by the Board, the applicant, and the employer no later than two days after the affected union received the application. The intervention may be filed with the Board by any means except e-mail, registered mail or facsimile transmission. The intervention may be delivered to the applicant and employer by any means permitted by Rule 6.4. One copy of the intervention should be filed with the Board.

(Rules 6.2, 6.3 and 6.4)

Note: The vote will likely be delayed by two days in cases where the affected trade union is first identified by the employer.

V. BOARD ORDERS THE VOTE

1) Vote Arrangements Determined

The Board's Vote Co-ordinator examines the vote arrangement proposals filed by the union and employer (and intervenor, if any) and sets the vote arrangements.

Except in extraordinary circumstances, the Board will generally conduct the vote by way of electronic and telephone voting, with the poll being open for a 24 hour period, but will consider the parties' submissions, the number of voters, the employees' regular working hours, and the cost to the Board should any party request a variation from the Board's general practice. The Co-ordinator will consider any agreed upon arrangements, but if it is determined that they are unsuitable because they are too costly or do not adequately allow employees the opportunity to vote, or if there is no agreement, the Co-ordinator normally sets the arrangements without further consultation with the parties.

In the normal course, the vote takes place by way of electronic and telephone voting commencing five days after the Application Filing Date.

For more detailed information on vote arrangements, refer to Information Bulletin No. 3 - Vote Arrangements.

2) Voting Constituency Determined and Vote Ordered

The Board determines the appropriate voting constituency (a description of the portion of the employer's workforce that is eligible to vote) after considering the union's and employer's proposed bargaining units. If the statutory criteria for holding a vote are met, the Board orders that a vote be held among the employees in the voting constituency. (Please note that the voting constituency does not necessarily correspond with the bargaining unit that will ultimately be found to be appropriate for collective bargaining.)

A Board Decision ordering the vote and a Notice of Vote and of Hearing is sent to the union and employer (and any intervenor). These documents set out the voting constituency, the date, time and method of vote, directions concerning sealing the ballot box or segregating or counting the ballots where appropriate, and the

dates, times and locations of both the Regional Certification Meeting with a Mediator and of the Hearing before the Board.

The employer (and any intervenor) is also provided with a copy of the applicant's Declaration Verifying Membership Evidence (Form A-4) at this time.

3) **Employer to Post Decision and Notice to Employees**

Upon receipt, the employer must immediately post copies of the Decision and the Notice of Vote and of Hearing with each of the earlier posted Notices to Employees of Application for Certification. The employer must then confirm to the Board that it has completed the postings by filing with the Board a completed Confirmation of Posting (Form A-124).

VI. PRE-VOTE CONSULTATION PROCESS

After the vote has been ordered but before it is held, a Board Officer contacts the parties in an effort to reach agreement between the parties on all issues surrounding the vote, including: the bargaining unit description (the union and employer may agree on a bargaining unit that is smaller than the voting constituency ordered by the Board, in which case employees who fell within the voting constituency but not within the agreed upon bargaining unit are entitled to vote, but their ballots are segregated and are not counted); the voters list, which is developed from Excel Schedules A and B (the lists of employees provided by the employer); the correct name of the employer; the status of the trade union; and the timeliness of the application.

Agreements reached by the parties during the pre-vote consultation process are confirmed by the Officer in writing and sent to the parties. In the interests of fairness and finality, parties cannot later raise issues about matters to which they have earlier agreed.

VII. VOTING DAY

1.(a) Conduct of the Vote – Electronic Vote

The Board contracts with an outside electronic voting provider to conduct the electronic vote.

The systems used by the voting companies have significant security measures to ensure the secrecy of the ballot is maintained throughout.

The companies create and maintain a website and phone line to facilitate the vote.

In a decision, the Board orders that a vote is to be conducted electronically in a decision of the Board. In that same decision, the Board may also direct the employer to provide the email addresses and phone numbers of the voters.

The Notice of Vote is issued by the Board once the vote has been ordered. This notice of vote will contain voting instructions, the hours during which the electronic poll will be open and the phone number for the Help Desk and the hours it will be open.

In some circumstances the Notice of Vote will be posted on the OLRB website.

1. (b) How to Vote

Voters will have a choice to cast their secret ballot either by phone or online, in either English or French.

The provider sends each voter an email with a phone number and a URL to a website, together with a unique personal identification number (PIN). The PIN may only be used once.

A ballot is provided either on a recorded message on the phone or on the computer/mobile device screen. The union(s) and employer(s) who are parties to the vote will be identified in the message and on the screen.

By phone, the voter receives automated prompts to submit their PIN and cast a ballot, pressing 1 or 2 to vote in response to the ballot question. The voter is asked to confirm their choice before their vote is cast.

In the online vote, the voter submits their PIN and selects a checkbox on the ballot displayed on the computer/mobile device screen. The voter is asked to confirm their choice before the vote is completed.

No record is kept or recovered which would allow identification of how votes were cast by a PIN ie. an individual.

1. (c) The Help Desk

Voters can call the Help Desk if they have questions or encounter any issues with the e-voting process. The Help Desk hours and phone number are included in the Notice of Vote. The Help Desk is staffed by a Board Vote Officer and is open for a period of time each day the poll is open.

Individuals who call the Help Desk will be asked to verify their identity. Once verified, the Help Desk may assist voters with a variety of issues. This can include when an individual did not receive an email or they misplaced their PIN.

If the Help Desk is not able to verify the caller's status as an eligible voter, the individual is considered "not on the list" or NOL, as they would be at an in-person vote, and a new PIN will be provided. The resulting ballot will be segregated to be discussed with the parties at the close of the vote.

If a PIN has already been used but a voter has contacted the Help Desk for a new PIN, both ballots will be segregated for post-vote discussions with the parties.

1.(d) Updates on Voter Participation

The Board is able to provide updates to the parties during the course of the vote as to which voters have voted and which voters have not. This allows the parties to contact eligible voters should they wish to do so. No record is kept or recorded about how an individual voted.

The Board's general practice is to email an update at 4:30 p.m. each day of the vote and one hour before the Help Desk opens on the last day of voting. One final update is sent at the close of voting. The Board Officer might alter that schedule in consultation with the parties, where appropriate.

1.(e) Voters List – Before, During and after the Vote

Prior to the vote, both parties will be given a copy of the voters list and will have the opportunity to review it. As with an in-person vote, parties can add voters' names to the voters list and also challenge the eligibility of certain voters in advance of the poll starting.

During the vote, ballots cast by challenged voters are segregated by the voting system. Challenges to voters may be made during the vote, as is the usual process at an in-person vote, but on e-votes this can also be done up to the point that the Board directs a count of ballots and a report is produced.

After the vote, the Vote Officer works with the parties to attempt to reach agreements on voter challenges, segregated ballots and any other issues. The Vote Officer will advise the parties if any issues arose during the vote, for example, voter identification issues raised at the Help Desk. This allows parties to reach agreements or take this final opportunity to challenge the eligibility of any voters.

1.(f) Counting the Ballots

Once the Vote Officer is finished post-vote discussions with the parties, the Vote Officer will generate the results of the vote from the electronic voting system. This is then released to the parties electronically in a Board Report.

The tabulation of votes by the electronic system is far quicker than physically counting ballots. Ballots which continue to be challenged remain segregated in the system to be dealt with in the normal course.

2. (a) Conduct of the Vote – In-Person Vote

The vote is conducted by a Vote Officer. Individuals who have been selected by the parties to be scrutineers must arrive at the polling place 15 minutes in advance of the voting to receive instructions, examine the ballot box, and otherwise assist the Vote Officer in the preparation of the polling place.

At the outset of the voting, each scrutineer is provided with a copy of the agreed upon voters list (if any). They are asked to assist in the identification of voters and to mark voters' attendance on the list as they present themselves to the Officer to vote. Scrutineers are advised that any questions asked by individuals regarding their eligibility to vote or any other matter should be directed to the Board Officer.

The names of any individuals whose eligibility to vote is challenged are marked as such on the voters list by the Vote Officer and their ballots are segregated. Individuals whose names do not appear on the voters list are permitted to vote and their ballots are also segregated.

Except in displacement applications, generic ballots that do not identify the union or employer by name are used. The names of the parties are set out in a Notice that is placed in every voting booth.

The scrutineers are given an opportunity to sign a Conduct of Vote form after the vote is completed. Signatories to this form certify that the balloting was fairly conducted, that all eligible voters were given an opportunity to cast their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

2) **Further Settlement Discussions**

On the day of the vote, the Board Officer who conducts the vote engages the parties in settlement discussions on any issues that remain in dispute. All agreements are recorded in writing.

If the parties have resolved all issues raised up to that point, or agree to the point that a hearing is not required to resolve outstanding issues, this will be reflected in the Certification Worksheet. This document sets out the parties' agreements and confirms that the parties have waived their right to a hearing subject to their right to file representations relating to any new matter in the five days following the vote or to respond to representations filed by any other party.

3) **Counting the Ballots**

Ballots may or may not be counted on the day of the vote, depending on the directions of the Board, the agreements of the parties, and the discretion of the Board Officer. It may be necessary in some circumstances to seal the ballot box until outstanding disputes have been resolved.

4) **Report of Vote Provided and Posted**

The Board Officer who conducts the vote normally provides a copy of the Board Officer's Report of Vote to the parties on the day of the vote. This Report sets out whether the ballots were counted and, if so, the outcome of the vote, and explains that the parties and employees have five days to file objections to the vote. Upon receipt, the employer is required to immediately post copies of the Report with each of the earlier posted Notices to Employees of Application for Certification, and then confirm that it has completed the postings by filing with the Board a Confirmation of Posting (Form A-124). The union must also, at the earliest opportunity, advise the Board as to whether the employer has completed the postings by filing with the Board a Confirmation of Posting.

VIII. AFTER THE VOTE

1) **Statement of Representations**

Any person who wishes to say something to the Board concerning the vote or any other previously unidentified issue remaining in dispute must file a statement of representations with the Board and deliver a copy of the statement to the union, employer, and any affected trade union, whose names and addresses can be found on the Application for Certification. (The name and address of an affected trade union that was first identified by the employer will not be on the Application for Certification. The Board will send a copy of any representations it receives to such a union.) This statement may be filed by any means except for e-mail, registered mail or facsimile transmission and must be received by the Board and the other parties no later than five days after the day of the vote. (Rule 11.3)

The Board reviews any representations it receives. If the parties have agreed on all issues in dispute and no relevant representations have been received, a final decision will normally issue and the Regional Certification Meeting and Hearing will be cancelled. If issues remain in dispute and/or relevant representations are received, the matter will proceed to the Post-Vote Mediation Process.

2) **Post-Vote Mediation Process**

A Board Officer contacts the parties, usually by telephone, to discuss and attempt to resolve all outstanding issues. This contact normally takes place in the period after the end of the five day representation period and before the scheduled Regional Certification Meeting. If issues are still in dispute after the Waiver Process, the matter proceeds to a Regional Certification Meeting.

3) **Regional Certification Meeting**

A Regional Certification meeting is a meeting with a Board Officer is usually conducted by videoconference on the Wednesday of the third week after the week in which the vote is held. At this meeting, a Board Officer again assists the parties in an attempt to resolve, or at least narrow, the remaining issues.

For information on what occurs at and after the Regional Certification Meeting when there is a dispute as to whether an individual is properly on the voters list, see Information Bulletin No. 4 -- Status Disputes in Certification Applications (Non-Construction).

4) **Hearing**

If issues remain in dispute after the Regional Certification Meeting, a hearing will normally be held on the Monday of the fourth week after the week in which the vote is held.

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and Recent Decisions of Interest at www.olrb.gov.on.ca.

IMPORTANT NOTE

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**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 3**

Vote Arrangements

All parties to certification applications and to termination applications made under section 63 of the *Labour Relations Act, 1995* are required to file proposals for vote arrangements as part of their application, response, or intervention. The purpose of this Information Bulletin is to assist these parties in completing their proposals.

Except in extraordinary circumstances, the Board will conduct the vote by way of electronic and telephone voting, with the poll usually being open for a 24-hour period. The Board will consider any arrangements that are agreed upon by all parties. However, if it is determined that the vote arrangements agreed to by the parties are not suitable, the Board normally sets the arrangements without further consultation with the parties. As such, it is important for the parties to clearly set out all of their reasons for their proposed arrangements when completing their form.

Please read the following before completing the vote arrangements portion of your form.

1) DATE OF VOTE

In certification applications, the date the vote usually commences is the fifth day (excluding weekends and holidays on which the Board is closed) after the date on which the application is filed with the Board (the "Application Filing Date").

In termination applications, the date of the vote will usually commence five to eight days after the Application Filing Date.

If there is a specific date or dates close to the date on which the vote may reasonably be expected to be held that would not be appropriate for a vote to be held, you should identify such dates and state why they are not appropriate.

The Board does not conduct advance polls or allow voting by proxy.

2) HOURS OF VOTE

a) Electronic Vote

Except in extraordinary circumstances, the Board will conduct the vote by way of electronic and telephone voting. Generally, the poll be open for a 24-hour period. The Board will consider the parties' submissions regarding the duration of the vote. The Co-ordinator will consider any

agreed upon arrangements, but if it is determined that they are unsuitable, the Co-ordinator normally sets the arrangements without further consultation with the parties.

b) In-person vote

If requesting an in-person vote, when proposing the hours for the vote, parties should balance the Board's resources with the general rule that the vote should be arranged so that most employees have the opportunity to vote during regular working hours.

Generally, not more than one hour should be allowed for each 60 eligible voters. If multiple polling locations are necessary, parties should make every effort to allow for one Mediator to travel to different locations rather than requiring more than one Mediator at simultaneous polls.

3) LOCATION OF POLL(S)

The Board will normally conduct the vote by way of electronic and telephone voting. In-person votes may be requested but are only granted where circumstances warrant. Agreement of the parties is not determinative of the method of vote.

In the event that an in-person vote is ordered, the vote takes place on the employer's premises in all but the most unusual circumstances. The polling place should be as free from noise as circumstances permit, readily recognizable by name or description, and easily accessible to all employees. Votes are typically held in places such as lunchrooms, cafeterias, and empty offices.

The polling place should be equipped with a table and chairs for the Mediator and each party's Scrutineer.

4) CONTACT PERSON

Each party must provide the Board with the name, phone number and e-mail address of an individual who is regularly available by phone during the period of time (excluding weekends and holidays on which the Board is closed) leading up to the vote to discuss the application. These individuals should have authority to act for the party they represent and to bind them with their agreements.

5) FORM OF BALLOT

Generic ballots that do not identify the union or employer by name are used when there is only one union involved in the application. Instead, the names of the union and employer are listed above the electronic ballot (or in an in-person vote, set out in a Notice in every voting booth). In Certification Applications where the applicant is applying to displace

an incumbent union, both unions' names appear on the ballot. The name of the incumbent union appears at the top of the ballot with the name of the applicant union below it.

In both Applications for Certification and Applications to Terminate Bargaining Rights, the union(s) is asked to indicate its name as it wishes it to appear on the Notice on the ballot or above the ballot. The name that appears is usually the union's correct legal name. If a union's correct legal name is long and/or cumbersome and it is known by a shorter name, the union may ask to have the shorter name used.

6) NAMES OF AGENT FOR VOTE ARRANGEMENTS AND COUNTING OF BALLOTS

a) Electronic Votes

For electronic votes each party must select one representative to act as an agent who must be available before, during and after the vote to receive the voters' list, vote updates, and post-vote teleconference and vote counts.

Parties should select as their Agent a person who is familiar with the individuals who will be voting and who is available to act during the voting period.

b) In-Person Votes

In the event that an in-person vote is ordered, each party must select one Scrutineer for each polling place. Individuals may act as Scrutineer at more than one polling place as long as the polling places are not open simultaneously. Scrutineers have the following duties and privileges:

- a) to assist in the identification of voters;
- b) to mark voters' attendance on the Voters List;
- c) to challenge prospective voters on the basis of identity, or to challenge any person whose right to vote appears doubtful; and
- d) to otherwise assist in the conduct of the vote as required by the Mediator.

Parties should select as their Scrutineer a person who is familiar with the individuals in the plant or operation who will be voting and who is available to act during the entire time the poll is open. Scrutineers should report to the Mediator at least 15 minutes before the poll opens to receive instructions, examine the ballot box and assist in the preparations for the opening of the poll.

Each party must select a representative to act as its agent at the counting and tabulation of the ballots. The person you select to act as your representative will be presumed to have your authority to participate in discussions with the Mediator and enter into agreements on your behalf. Following the vote, the Mediator will attempt to resolve any outstanding issues, including the bargaining unit description, any challenges to whether persons/employees are in or out of the bargaining unit, and spoiled ballots. At the conclusion of these discussions each party will be provided with a copy of the worksheet for their records.

IMPORTANT NOTE

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**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 4**

Status Disputes in Certification Applications (Non-Construction)

This Information Bulletin describes how the Board deals with "status" disputes in the context of certification applications. These disputes arise in two ways. The first is when the parties cannot agree on whether certain individuals should be on the voters' list or in the appropriate bargaining unit. The other way is when an employer disagrees with the union's estimate of the number of individuals in the bargaining unit proposed in the certification application and the employer has given notice to the Board under section 8.1 of the Act.

"Status" disputes typically focus on whether certain individuals exercise managerial functions, are employed in a confidential capacity in matters relating to labor relations, perform work of a classification that is or ought to be excluded from the bargaining unit or have a sufficient connection to the workplace to warrant inclusion in a bargaining unit.

This Bulletin does not describe the Board's procedures with respect to status disputes in the construction industry. Please refer to Information Bulletin No. 9 - Status Disputes in Certification Applications in the Construction Industry for information on those procedures.

I. IDENTIFICATION OF INDIVIDUALS IN DISPUTE

Where there is a dispute about whether certain individuals should or should not be on the list for the count under section 8.1 of the Act or on the voters' list or in the bargaining unit, each party must identify in writing those individuals whose inclusion on the list or in the bargaining unit it is challenging no later than the conclusion of the balloting on the day of the representation vote. Challenges that are made after the conclusion of the balloting will not be considered except in exceptional circumstances. In addition, in the interests of fairness and finality, parties cannot raise issues about the list to which they have earlier agreed.

II. SETTLEMENT DISCUSSIONS

A Board Officer contacts the parties at various stages in the certification process in an effort to reach an agreement on the status disputes and all other issues surrounding the application. These contacts are made before the vote is held, on the day of the vote, during the period after the end of the 5-day representation period

after the vote and before the Regional Certification Meeting, and at the Regional Certification Meeting, which is ordinarily held in the regional centre closest to the workplace on the Wednesday of the third week after the week in which the vote was held.

III. WHAT HAPPENS IF STATUS ISSUES REMAIN IN DISPUTE AFTER SETTLEMENT DISCUSSIONS ARE EXHAUSTED

a) Procedure for Status and Other Issues in Dispute

All certification applications in which issues remain in dispute after the Regional Certification Meeting are automatically scheduled to be heard by a panel of the Board on the Monday of the fourth week after the week in which the vote was held. Status issues are deferred for a further week. (A consultation may only be held in connection with matters under section 8.1 of the Act.) This re-scheduling allows time for the parties to provide a written summary of the material facts upon which they intend to rely detailing the reasons for their positions and to permit an opportunity for the procedural issues connected with the status issues to be determined by the Board. **All other issues remaining in dispute will be addressed at the hearing on the Monday of the fourth week after the vote.**

b) Settlement Discussions and Submissions With Respect To Status Issues

Once it is evident at the Regional Certification Meeting that there are unresolved status disputes that must be decided by the Board, the meeting is devoted to assisting the parties in reaching agreement on the procedural aspects of the upcoming hearing or consultation. Procedural aspects include the identification of "representative witnesses", the question of who is responsible for ensuring that the individuals in dispute attend the hearing or consultation (by summons or otherwise), the sequence in which individuals will be called as witnesses, and the days on which witnesses will be called.

The party that asserts that an individual should be on the list or in the bargaining unit has the responsibility for ensuring that individual's attendance at the hearing or consultation, unless the Board orders otherwise.

The party that has the responsibility for ensuring an individual's attendance at the hearing or consultation will be responsible for calling that individual as a witness. There may be circumstances in which a party calling a

witness is allowed to cross-examine that individual. The Board may itself question a witness.

If the parties cannot agree on all of the procedural aspects of the upcoming hearing or consultation **on status issues**, each party must file with the Board and deliver to the other party written submissions detailing its position on the outstanding procedural aspects by 5:00 p.m. on the Friday following the Regional Certification Meeting. The Board considers the parties' submissions and ordinarily issues a decision on the procedural aspects of status issues on the Monday or Tuesday of the following week.

c) Parties File and Deliver Submissions on the Substantive Aspects of Status Issues

Each party that asserts that an individual or individuals should not be on the list or in the bargaining unit must file with the Board and deliver to the other party written submissions providing the reasons for each of their challenges and a summary of the material facts upon which they intend to rely by 5:00 p.m. on the Friday following the Regional Certification Meeting. Each party that resists a challenge to the status of an individual must file with the Board and deliver to the other party its response to each of the challenges, summarizing the material facts upon which they intend to rely by 5:00 p.m. on the following Wednesday.

IV. THE HEARING OR CONSULTATION

The consultation or hearing into the status disputes and all other outstanding issues ordinarily begins at the Board's offices in Toronto on the Monday of the fifth week following the vote.

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may

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IMPORTANT NOTE

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Part III of the Board's Rules of Procedures

ONTARIO LABOUR RELATIONS BOARD

RULES OF PROCEDURE

December 2005

**Revised July 2006; January 1, 2008;
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January 2018; November 2018; June 2019; July 2019; August 2019;
January 2022; September 2022; December 2022; July 2023**



**RULES OF PROCEDURE OF THE
ONTARIO LABOUR RELATIONS BOARD**

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A-4	Declaration Verifying Membership Evidence
A-124	Confirmation of Posting
C-1	Notice to Employer of Application for Certification
Information Bulletin #1	Certification of Trade Unions
Information Bulletin #3	Vote Arrangements
Information Bulletin #4	Status Disputes in Certification Applications (Non-Construction)
Schedule A	Schedule A
Schedule B	Schedule B

- 9.1 An application for certification as bargaining agent must also include:
- (a) any membership evidence relating to the application;
 - (b) a list of employees, in alphabetical order, corresponding with the membership evidence filed; and
 - (c) a declaration verifying the membership evidence (Form A-4).
- 9.2 Membership evidence will not be considered by the Board unless the evidence is in writing and signed by each employee concerned. Membership evidence must also accompany the application for certification and disclose the date upon which each signature was obtained.
- 9.3 Before, or at the same time as, filing the application with the Board, the applicant must deliver to the responding party:
- (a) a completed copy of the application (but not including the material described in paragraphs (a), (b), and (c) of Rule 9.1);
 - (b) a blank copy of the form set by the Board for responding to the application (Form A-2), including Schedules A and B (List of Employees) and blank Form A-124 (Confirmation of Posting);

- (c) a completed copy of the Notice to Employer of Application for Certification (Form C-1);
- (d) a copy of Information Bulletin No. 1 -- Certification of Trade Unions;
- (e) a copy of Information Bulletin No. 3 -- Vote Arrangements;
- (f) a copy of Information Bulletin No. 4 -- Status Disputes in Certification Applications; and
- (g) a copy of Part III of the Board's Rules of Procedure.

9.4 If the applicant has identified an affected trade union in its application, the applicant must deliver the following to the affected trade union before or at the same time as filing its application with the Board:

- (a) A completed copy of the application (but not including the material described in paragraphs (a), (b), and (c) of Rule 9.1);
- (b) a blank copy of the form set by the Board for intervening in the application (Form A-3);
- (c) a copy of Information Bulletin No. 1 -- Certification of Trade Unions;
- (d) a copy of Information Bulletin No. 3 -- Vote Arrangements;
- (e) a copy of Information Bulletin No. 4 -- Status Disputes in Certification Applications; and
- (f) a copy of Part III of the Board's Rules of Procedure.

9.5 A responding party must file a response to the application, including Schedules A and B, not later than two (2) days after the application was delivered to it. Where the responding party identifies interested or affected parties, it must deliver the application and response, and the material listed in Rule 9.4(b)-(f).

RULE 10 TERMINATION OF BARGAINING RIGHTS UNDER SECTION 63 OF THE ACT

Form No.	Form Name
A-6	Application for Termination of Bargaining Rights under Section 63 of the Act
A-7	Response to Application for Termination of Bargaining Rights under Section 63 of the Act
A-8	Intervention in Application for Termination of Bargaining Rights under Section 63 of the Act
A-9	Declaration Verifying Evidence of Employee Wishes
A-124	Confirmation of Posting

Form No.	Form Name
C-3	Notice to Union of Application for Termination of Bargaining Rights under Section 63 of the Act
C-4	Notice to Employer of Application for Termination of Bargaining Rights under Section 63 of the Act
Information Bulletin #2	Termination of Bargaining Rights Under Section 63 of the Labour Relations Act
Information Bulletin #3	Vote Arrangements
Information Bulletin #5	Status Disputes in Termination Applications (Non-Construction)
Schedule C	SCHEDULE C- Termination (Industrial)

10.1 An application for termination of bargaining rights under section 63 of the Act must also include:

- (a) any evidence relating to the application that employees do not wish to be represented by the trade union;
- (b) a list of employees, in alphabetical order, corresponding with the evidence filed; and
- (c) a declaration verifying evidence of employees wishes (Form A-9).

10.2 Evidence that employees do not wish to be represented by a trade union will not be considered by the Board unless the evidence is in writing and signed by each employee concerned. The evidence must also accompany the application and disclose the date upon which each signature was obtained.

10.3 Before or at the same time as filing the application with the Board, the applicant must deliver to the responding party:

- (a) a completed copy of the application (but not including the material described in paragraphs (a), (b) and (c) of Rule 10.1);
- (b) a blank copy of the form set by the Board for responding to the application (Form A-7);
- (c) a completed copy of the Notice to Union of Application for Termination of Bargaining Rights under Section 63 of the Act (Form C-3);
- (d) a copy of Information Bulletin No. 2 -- Termination of Bargaining Rights under Section 63 of the Act;
- (e) a copy of Information Bulletin No. 3 -- Vote Arrangements;
- (f) a copy of Information Bulletin No. 5 -- Status Disputes in Termination Applications; and
- (g) a copy of Part III of the Board's Rules of Procedure;

and must also deliver to the employer:

- (h) a completed copy of the application (but not including the material described in paragraphs (a), (b) and (c) of Rule 10.1);
 - (i) a blank copy of the form set by the Board for intervening in the application (Form A-8), including Schedule C (List of Employees) and a blank Form A-124 [Confirmation of Posting];
 - (j) a completed copy of the Notice to Employer of Application for Termination of Bargaining Rights under Section 63 of the Act (Form C-4);
 - (k) a copy of Information Bulletin No. 2 -- Termination of Bargaining Rights under Section 63 of the Act;
 - (l) a copy of Information Bulletin No. 3 -- Vote Arrangements;
 - (m) a copy of Information Bulletin No. 5 -- Status Disputes in Termination Applications; and
 - (n) a copy of Part III of the Board's Rules of Procedure.
- 10.4 Delivery by the applicant to the responding party under Rule 10.3 should be made to the senior union official responsible for the bargaining unit.
- 10.5 A responding party (which includes an intervenor) must file a response to the application (which includes an intervention) not later than two (2) days after the application was delivered to it. Whether or not it otherwise responds to the application, the employer must file Schedule C (List of Employees) with the Board not later than two (2) days after the application was delivered to it.

RULE 11 REPRESENTATION VOTES

- 11.1 Where the Board directs the taking of a representation vote, the Registrar may make all necessary directions and arrangements.
- 11.2 After the vote, or after the ballots have been counted where the ballot box was sealed, the returning officer will prepare a report of the vote which will be given or sent to the parties and which must be posted in the workplace by the employer.
- 11.3 Any party or person who wishes to make representations about the vote or the report must file those representations in writing promptly, and in any event within five days of the date the report was first posted. If a party or person wants an oral hearing, this request must be set out in the representations together with the reasons for the request in the way required by these Rules.



Marisa Pollock
Direct Line: 416.979.6441
Fax: 416.591.7333
mpollock@goldblattpartners.com

March 6, 2025

Via E-Filing

Catherine Gilbert
Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, ON M5G 2P1

Dear Ms. Gilbert:

Re: Association of Management, Administrative and Professional Crown Employees of Ontario and the City of Toronto - Application for Certification

We are counsel to the Applicant, Association of Management, Administrative and Professional Crown Employees of Ontario with respect to the above-noted matter. Enclosed are the Application for Certification Form (Form A-1), the Declaration Verifying Membership Evidence (Form A-4) and the alphabetical list of employees with a copy of the membership evidence, which we request that the Board process in accordance with its usual procedures.

Yours truly,

Marisa Pollock
MP/cope 343
Encl.

cc: J. Pacheco (via Email)

1377-6214-6067, v. 2

A-136
Certificate of Delivery



ONTARIO LABOUR RELATIONS BOARD

Certificate of Delivery

Form A-136

Fields marked with an asterisk (*) are mandatory.

OLRB File Number

- To print a paper copy of this form, use **only** the “Print” buttons located within the form.

I am completing this form on behalf of (e.g. Applicant, Responding Party, Intervenor, Employer or Employee): *

[Applicant, Association of Management, Administrative and Professional Crown Employees of Ontario](#)

List the documents you have delivered:

[TO THE CITY OF TORONTO \(the Respondent\)](#)

[Form C-1 Notice to Employer of Application for Certification](#)

[Form A-1 Application for Certification](#)

[Blank Form A-2 Response to Application for Certification with Schedules A and B and Instructions](#)

[Blank Form A-124 Confirmation of Posting](#)

[Information Bulletin Nos. 1, 3 and 4](#)

[Part III of the Board's Rules of Procedure](#)

[TO CUPE, LOCAL 79 \(Affected Trade Union\)](#)

[Form A-1 Application for Certification](#)

[Blank Form A-3 Intervention in Application for Certification](#)

[Information Bulletin Nos. 1, 3 and 4](#)

[Part III of the Board's Rules of Procedure](#)

Certificate of Delivery

I, Katharine Crawford, Legal Assistant,
Name * Title

certify that the documents identified above were delivered to each of the parties as set out below:

Note: You must complete delivery information for each party separately.

Delivered To

Name of organization (if applicable) and name and title of person to whom the documents were delivered *

City of Toronto, City Manager's office c/o Paul Johnson, City Manager
Toronto City Hall, 4th Floor, East Tower, 100 Queen Street West, Toronto, ON M5H 2N2

Address or fax number to which the documents were delivered *

Fax: 416-392-1827

Method of delivery *

☐ Hand Delivered ☐ Courier ☒ Fax ☐ Regular Mail ☐ Other

Fax Details *

The documents were delivered by fax on 2025/03/06, at 2 : 46 ☐ a.m. ☒ p.m.

Delivered To

Name of organization (if applicable) and name and title of person to whom the documents were delivered *

City of Toronto, City Clerk's Office, c/o John Elvidge
Toronto City Hall, 13th Floor, 100 Queen Street West, Toronto, ON M5H 2N2

Address or fax number to which the documents were delivered *

Fax: 416-392-4900

Method of delivery *

☐ Hand Delivered ☐ Courier ☒ Fax ☐ Regular Mail ☐ Other

Fax Details *

The documents were delivered by fax on 2025/03/06, at 2 : 46 ☐ a.m. ☒ p.m.

Delivered To

Name of organization (if applicable) and name and title of person to whom the documents were delivered *

CUPE Local 79 Attn to: Cesar Serrano-Valdivia, National Representative
34 Patrick Street, Toronto, ON M5T 1V1

Address or fax number to which the documents were delivered *

By Fax: 416-977-9546

Method of delivery *

☐ Hand Delivered ☐ Courier ☒ Fax ☐ Regular Mail ☐ Other

Fax Details *

The documents were delivered by fax on 2025/03/06, at 3 : 15 ☐ a.m. ☒ p.m.

File with the Board

- Save and Print a copy of your completed form as the Board will not return it to you.
- To e-file, click the “Submit” button below. You will receive a confirmation email once the form has been successfully submitted.
- If you choose not to e-file, print this form by clicking on the “Print” button below and then file with the Board.

For E-Filing only

You must provide a valid email address in order to file this form electronically so that a confirmation email may be sent to you. If you do not have a valid email address, file a paper copy of this form using an alternative method permitted by the Board’s Rules of Procedure.

Submitted By:

First Name *	Last Name *
Email Address *	Confirm Email Address *

TAB 2

Form A-2

File No. **2929-24-R**

LABOUR RELATIONS ACT, 1995

RESPONSE TO APPLICATION FOR CERTIFICATION

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Association of Management, Administrative and Professional Crown
Employees of Ontario

Applicant,

- and -

City of Toronto

Responding Party.

The responding party states in response to the application:

1. (a) Correct name of the responding party:

CITY OF TORONTO

- (b) Address, telephone number, facsimile number and e-mail address of the responding party:

Sean Milloy
Executive Director, Employee Relations
Metro Hall
5th Floor, 55 John St.
Toronto ON M5V 3C6

Phone: 416-392-5006
Email: sean.milloy@toronto.ca

Mike Pacholok
Deputy City Clerk
Toronto City Hall
9th fl. W., 100 Queen St. W.

Form A-2

Toronto ON M5H 2N2
T: 416-338-9019
E: mike.pacholok@toronto.ca

- (c) Name, address, telephone number, facsimile number and e-mail address of a contact person for the responding party (Please Note: this individual **must** be regularly available by phone during the five days leading up to the date set for the vote. Your contact person should be an individual with the authority to enter into agreements on your behalf):

Hicks Morley Hamilton Stewart Storie LLP
77 King Street West, 39th Floor
Box 371, TD Centre
Toronto, Ontario M5K 1K8

Michael Kennedy
Tel: 416-864-7305
Fax: 416-362-9680
Mobile: 647-388-7305

E-mail: Michael-Kennedy@hicksmorley.com

And

Craig Rix
Tel: 416-864-7284
Fax: 416-362-9680
Mobile: 416-576-7284

E-mail: Craig-Rix@hicksmorley.com

Form A-2

(d) E-mail address of representative and assistant (if any):

☐ **Counsel:** Michael-Kennedy@hicksmorley.com

Assistant: Erin-Robinson@hicksmorley.com

☐ **Paralegal:** **Assistant:**

☐ **other:** **Assistant:**

[Periods of time referred to in this response, in other Board forms and notices, and in the Board's Rules of Procedure do not include weekends, statutory holidays, or any other day that the Board is closed.]

2. General nature of the responding party's business:

The Offices of the Mayor and councilors. The Mayor and council members are part of democratically elected government which is responsible and accountable for the City of Toronto.

3. [] The responding party agrees with the applicant's estimate of the number of individuals in the bargaining unit included in the application for certification.

OR

[x] The responding party disagrees with the applicant's estimate of the number of individuals in the bargaining unit included in the application for certification and says that there are _____ individuals in that bargaining unit.

4. [] The responding party agrees with the description of the bargaining unit included in the application for certification.

OR

[X] The responding party disagrees with the description of the bargaining unit included in the application for certification and proposes the following bargaining unit description (*include the municipality or other geographic area affected*):

The City disagrees that it is employer of the staff in Offices of the Mayor and Councilors. See Schedule "A".

Form A-2

In the alternative, if staff in Offices of the Mayor and councilors are employees of the City of Toronto, the bargaining unit description could be as follows:

All persons employed as staff in the Offices of Councilors and the Mayor in the City of Toronto, save and except persons exercising managerial functions or employed in a confidential capacity in matters relating to labour relations under subsection 1(3)(b) of the Labour Relations Act.

and says that there are 242 individuals in this bargaining unit.

5. If the responding party disagrees with the description of the bargaining unit included in the application, does the responding party also assert that the description of that unit could not be appropriate?

☒ **Yes**

☐ No

If the answer is yes, please provide full particulars in support of your position:

See Schedule "A". The Respondent maintains that there is no community of interest between the persons employed in the offices of councilors. Each councilor operates their office as separate administrative unit for the benefit of their own constituents, political priorities and interests. As a result, there is no common interest within the Union's proposed bargaining unit.

The same can be said for the part-time and full-time staff working in the office of the Mayor or Councilor.

6. Is the responding party giving notice under section 8.1 of the Act?

☒ **Yes**

☐ No

If the answer is yes, does the responding party agree that ballots cast in the representation vote should be counted?

☒ **Yes**

☐ No

Form A-2

7. If the bargaining unit applied for includes guards, is the responding party objecting under section 14(2) of the Act?

☐ Yes
☒ **No**

If the answer is yes, please provide full particulars of the basis of your objection:

N/A

Is the responding party objecting under section 14(3) of the Act?

☐ Yes
☒ **No**

If the answer is yes, please provide full particulars of the basis of your objection:

N/A

8. The name, address, telephone number and facsimile number of any trade union that claims to represent any employee(s) who may be affected by this application that was not identified by the applicant in paragraph 7 of the application.

N/A

9. The date on which the trade union named in paragraph 8 was certified or voluntarily recognized:

N/A

10. Is or was the responding party bound by a collective agreement covering any of the employees in the applicant's proposed bargaining unit?

☐ Yes
☒ **No**

If the answer is yes, state below the date on which it was signed, the effective date and the expiry date, and enclose a copy with this response.

N/A

Form A-2

11. Other relevant statements (attach additional pages if necessary):

See Schedule "A"

Vote Arrangements (Please read Information Bulletin No. 3 – Vote Arrangements before completing this portion of the form.)

12. Should a vote commence on the fifth day after the date on which this application for certification was filed with the Board?

☒ **Yes**

☐ No

If the answer is no, please explain fully and state the date(s) on which you believe the vote should commence and the reasons why:

13. Do you agree with the method of vote proposed in paragraph 11 of the applicant's Form A-1?

☒ **Yes**

☐ No

Please explain fully.

Please see Schedule "A".

14. Please state the name of the agent you have selected to represent you for the vote:

Poonam Moudgill
Poonam.moudgill@toronto.ca
(437)-226-5439

Complete paragraphs 15, 16 and 17 only if you or the applicant requests an in-person vote.

15. Do you agree with the hours of vote proposed in the applicant's Form A-1 at paragraph 14?

☐ Yes

☐ No

Form A-2

If the answer is no, please explain fully and state your suggested hours (specifying start and finish times and a.m. or p.m.), and the reasons for them:

N/A

16. Do you agree with the location of the poll(s) proposed in the applicant's Form A-1 at paragraph 15?

☐ Yes

☐ No

If the answer is no, please explain fully and state your suggested location of the poll(s), and the reasons for them:

N/A

17. Please state the name of the Scrutineer you have selected to represent you at each poll:

Poll #1:

Poll #2 (only if multiple locations are necessary):

Form A-2

DATED _March 10, 2025_

A handwritten signature in black ink, appearing to read "Michael K.", written above a horizontal line.

**Signature for the
Responding Party**

Form A-2

CERTIFICATE OF DELIVERY

1. I certify that a completed copy of the Response to the Application for Certification was delivered to [x] the applicant and [x] any affected trade union named in paragraph 7 of the application as follows. In addition, I certify that a copy of the completed Application, Response and related materials was delivered to [] any affected trade union named in paragraph 8 of the Response.

Marisa LLP Pollock, Counsel
Goldblatt Partners LLP

20 Dundas Street, Suite 1039
Toronto ON – via email

mpollack@goldblattpartners.com

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were delivered

Association of Management, Administrative
And Professional Crown Employees of Ontario

Jennifer Pacheco
Jennifer Sherwood
Dave Bulmer

pacheco@amapceo.on.ca
sherwood@amapceo.on.ca
bulmer@amapceo.on.ca

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were delivered

Canadian Union of Public Employees,
Local 79
Attention: Cesar Serrano-Valdivia
National Representative

34 St. Patrick Street
Toronto ON M5T 1V1
Cserrano-valdivia@cupe.ca

Name of Organization and name
and title of person to whom
documents were delivered

Address or facsimile number to
which documents were delivered

[Complete either section 2 or section 3 below.]

Form A-2

2. The documents were delivered by [X] Email

on March 10, 2025 at 4:51pm a.m./p.m.
(Date)

3. The documents were given to _____ on
(Name of Courier)

_____, and I was advised that they would be delivered
(Date)

not later than _____, at _____ a.m. /p.m.
(Date)

NAME: Emily Park

TITLE: Legal Assistant

SIGNATURE: Emily Park

Form A-2

IMPORTANT NOTES

The Board's forms, Notices, Information Bulletins, Rules of Procedure and Filing Guide may be obtained from its website www.olrb.gov.on.ca or by calling 416-326-7500 or toll-free at 1-877-339-3335.

FRENCH OR ENGLISH

Vous avez le droit de communiquer et recevoir des services en français et en anglais. La Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate and receive services in either English or French. The Board does not provide translation services in languages other than English or French.

CHANGE OF CONTACT INFORMATION

Notify the Board immediately of any change in your contact information. If you fail to do so, correspondence sent to your last known address (including email) may be deemed to be reasonable notice to you and the case may proceed in your absence.

ACCESSIBILITY AND ACCOMMODATION

The Board is committed to providing an inclusive and accessible environment in which all members of the public have equitable access to our services. We will aim to meet our obligations under the *Accessibility for Ontarians with Disabilities Act* in a timely manner. Please advise the Board if you require any accommodation to meet your individual needs. The Board's Accessibility Policy can be found on its website.

COLLECTION AND DISCLOSURE OF INFORMATION AND DOCUMENTS

Any relevant information that you provide to the Board must in the normal course be provided to the other parties to the proceeding. Personal information collected on this form and in written or oral submissions may be used and disclosed for the proper administration of the Board's governing legislation and case processing. In addition, the *Tribunal Adjudicative Records Act, 2019* requires that the Board make adjudicative records (which include applications filed and a listing of such applications) available to the public. The Board has the power to make part or all of an adjudicative record confidential. The *Freedom of Information and Protection of Privacy Act* may also address the treatment of personal information. More information is available on the Board's website www.olrb.gov.on.ca. If you have any questions concerning the collection of information or disclosure of adjudicative records, contact the Solicitors' Office at the number listed above or in writing to the OLRB, 505 University Ave., 2nd floor, Toronto, ON M5G 2P1.

Form A-2

E-FILING AND E-MAIL

The Rules of Procedure and Filing Guide set out the permitted methods of filing. **In the event of emergencies or other circumstances, the Board may post a Notice to Community on its website, which will prevail over the Rules of Procedure and Filing Guide. You should check the Board's website prior to filing.** Note that the e-filing system is not encrypted. Contact the Client Services Coordinator at the numbers listed above if you have questions regarding e-filing or other filing methods. If you provide an e-mail address with your contact information, the Board will in most cases communicate with you by e-mail from an out-going only generic account. Incoming emails are not permitted.

HEARINGS AND DECISIONS

Hearings are open to the public unless the Board decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library and www.canlii.org. Some summaries and decisions may be found on the Board's website.

SCHEDULE “A”

Introduction

1. The City of Toronto (the “City”) disputes and denies the allegations raised by the Association of Management, Administrative and Professional Crown Employees of Ontario (the “Union”) in its Application for Certification the “Application”). Specifically, it is the City’s position that the Application should be dismissed in its entirety for the following reasons:
 - (a) The individuals in the proposed bargaining unit are not employed by the City;
 - (b) The bargaining unit applied for by the Union is not an appropriate bargaining unit because there is not a sufficient community of interest among the employees; and,
 - (c) The individuals in the proposed bargaining unit exercise managerial functions and/or are employed in a confidential capacity in matters relating to labour relations, and are excluded pursuant to section 1(3) of the *Labour Relations Act, 1995*.

Individuals in the Proposed Bargaining Unit are not Employed by the City

2. The individuals that the Union seeks to certify are hired by and are subject to the direction and control of the City Councillors or Mayor (collectively “Councillors”), for whom they work. It is a well established principle of municipal law that City Councillors are not employees of a municipal corporation. This longstanding principle was noted by the Superior Court in *St. Elizabeth Home Society v. Hamilton (City)*, 2005 CanLII 46411 (ONSC) at para 264, where the Court stated:

It is an equally long-standing principle of municipal law that an elected member of a municipal council is not an agent or employee of the municipal corporation in any legal sense. Elected members of council are not employed by or in any way under the control of the local authority while in office (see Ian MacFee Rogers, *The Law of Canadian Municipal Corporations*, loose-leaf, 2nd ed. (Toronto: Thomson Carswell, 2003) vol. 1 at §32.3). Individual council members have no authority to act for the corporation except in conjunction with other members of council constituting a quorum at a legally constituted meeting; with the exception of the mayor or other chief executive officer of the corporation, they are mere legislative officers without executive or ministerial duties (*Davies v. Sovereign Bank* (1906), 12 O.L.R. 557 (H.C.J.)).

[Emphasis added]

3. This principle has recently been affirmed in *Ras v. Corporation of the City of Mississauga and Ron Starr*, 2023 ONSC 7102 in which the Court struck out a claim for wrongful dismissal on the basis that municipal councillors are not employees, and *Di Muccio v. Newmarket* 2016 HRTO 406 where the Human

Rights Tribunal concluded that councillors could not access protections under the Human Rights Code because they are not employees.

4. The Councillors work for municipal council and not the municipality, which are distinct entities under the *City of Toronto Act, 2006*. Accordingly, the Councillors operate and are separate and distinct from the municipal corporation. The individuals that the Union seeks to represent in the instant case are hired by and operate under the direction and control of the Councillors themselves, and not the City. As the Councillors are, and cannot be, employed by the City, as a matter of law nor can those they employ in their constituency offices and direct the activities of be employees of the City.
5. A review of the factors or indicia of employment demonstrate that any employment relationship that may exist is between those who work in Councillors' offices and the Councillors and not the City. For example, the Councillors are responsible for the following:
 - Councillors have full responsibility for the staffing and recruitment process in their offices;
 - Councillors have final decision-making responsibility for all aspects of hiring including interviews, reference checks, selection of candidates to hire and making job offers;
 - Recruitment for positions in councillors' offices is not supported by the City's recruitment team and such positions are not posted on the City's website;
 - Councillors determine the position(s) to be hired and determine the level of compensation for staff in their office (within the salary range) and have the authority to give salary increases at their discretion;
 - Councillors fund their staff from a Staffing Budget envelope;
 - Councillors are responsible for reviewing and signing off on the annual salary expenditures for their staff;
 - Councillors determine the nature of the employment arrangement with those who work in their offices (i.e., fixed term or indefinite term, part-time or full-time);
 - Councillors are responsible for approving hours of work, attendance, vacation, lieu time, sick days, all absences from work, unpaid leave of absence, and expense claims for their staff and ensuring proper reporting;

- Councillors determine the location where their staff will work. Staff typically work at the constituency offices of their councillor on private property or at a civic centre, and not City Hall;
 - Councillors are responsible for termination decisions with respect to individuals working in their offices subject to common law and statutory limitations and requirements.
6. All of the foregoing demonstrate that the staff of City Councillors are employed by the Councillors themselves and not the City. The traditional indicia of an employment relationship do not demonstrate that staff of City Councillors work for the City as the City does not hire, direct the working conditions of, discipline or terminate members of Councillors' staff. Therefore, the City submits that it is not the true employer of those who work for Councillors, and that there are no employees of the City in the proposed bargaining unit. Accordingly, it would be contrary to the provisions of the *Labor Relations Act, 1995* ("LRA") to certify the bargaining unit requested in this case.

The Proposed Bargaining Unit is not Appropriate

7. In the alternative, it is the City's position that the unit applied for by the Union is not an appropriate bargaining unit pursuant to section 9(1) of the LRA because there is not a sufficient community of interest among the employees.
8. The City of Toronto has 25 councillors in addition to the Mayor. As set out above, each of the Councillors is autonomous within their constituency office, including having the authority to hire, terminate and direct the work and hours of those who work in those offices. As a result, each councillor and constituency office operates as a separate employer that may have different expectations and responsibilities and terms and conditions of employment.
9. Put simply, the Union is effectively requesting to certify one bargaining unit with 26 separate and distinct employers – each of the 25 councillors and the Mayor. In these circumstances the proposed bargaining unit would create serious labour relations problems for the employers and would make collective bargaining unwieldy, cumbersome, if not an impossibility.
10. In addition, a significant number of the individuals that the Union is seeking to represent (51 employees) are part-time staff, and as a result they would be subject to different terms and conditions than full-time staff. The City has separate collective agreements for its full-time and part-time staff that are represented by another union, and it is submitted that the proposed unit that departs from the way in which other bargaining units at the City are organized further demonstrates that the proposed unit is not appropriate.
11. Further, given the political nature of the role of Councillors and, in turn, their staff, it is the City's position that there is insufficient continuity to permit effective

collective bargaining. For example, any employment relationship that may exist between Councillors and their staff cannot extend beyond the term for which Councillors is elected. Therefore, if Councillors are not re-elected all of their staff would cease to be members of the proposed bargaining unit. As a result, there could be significant turnover in the membership of the proposed bargaining unit with every four year cycle.

12. The continual changing and turnover of the Councillors/employers and their staff would not achieve the purposes of certification or permit effective collective bargaining. Accordingly, there is not a sufficient community of interest among the employees or employers in these circumstances to justify certification, and therefore, the City submits that the Union's Application should be dismissed.

Individuals in the Proposed Bargaining Unit are excluded pursuant to section 1(3) of the *Labour Relations Act, 1995*

13. In the further alternative, even if the Board determines that the City is the employer of these individuals and that the proposed bargaining unit is appropriate, the City submits that a large number of the individuals that the Union seeks to represent exercise managerial functions and/or are employed in a confidential capacity in matters relating to labour relations. As a result, these individuals are excluded from representation by the Union by virtue of section 1(3) of the LRA.
14. Several of the employees exercise managerial functions within the councillors offices, and have responsibility for managing and directing the duties and activities of other staff in the Councillors' offices.
15. Similarly, a number of those working in Councillors offices have access and are privy to highly confidential information relating to labour relations matters, including collective agreement negotiations and proposals, budgetary and funding documents that address employee compensation matters.
16. The City submits that these individuals fall squarely with the exemption set out in section 1(3) of the LRA, and therefore, cannot be represented by the Union, nor are they permitted to vote in any vote authorized by the Board. Accordingly, the City submits that all of the ballots cast in any representation vote must be individually segregated until a determination has been made as to whether each of these individuals is encompassed within the exemption under section 1(3) of the LRA.

Conclusion

17. For all of the foregoing reasons the City respectfully requests that the Board dismiss the Application in its entirety.
18. In the alternative, if the Board decline to dismiss the Application, the City submits that all of the ballots cast in any representation vote must be individually

segregated until a determination has been made as to whether each of these individuals is encompassed within the exemption under section 1(3) of the LRA.

TAB 3



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 2929-24-R
Certification (Industrial)

Association of Management, Administrative and Professional Crown Employees
of Ontario, Applicant v City of Toronto, Responding Party

COVER LETTER

TO THE PARTIES LISTED ON APPENDIX A:

The Board is attaching the following documents:

Decision - March 11, 2025
Confirmation of Posting/Notice of Electronic Vote
Notice of Electronic RCM-RTM Meeting
Notice of Hearing
Declaration

DATED: March 11, 2025

Catherine Gilbert
Registrar

Website: www.olrb.gov.on.ca

Address all communication to:

The Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, Ontario M5G 2P1
Tel: 416-326-7500
Toll-free: 1-877-339-3335



ONTARIO LABOUR RELATIONS BOARD

OLRB Case No: **2929-24-R**

Association of Management, Administrative and Professional Crown Employees of Ontario, Applicant v **City of Toronto**, Responding Party

BEFORE: Danna Morrison, Vice-Chair

DECISION OF THE BOARD: March 11, 2025

1. This is an application for certification filed under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act").
2. Based on my review of the records maintained by the Board, I am satisfied that in an earlier proceeding under the Act the applicant has been found to be a trade union. Therefore, having regard to section 113 of the Act and the Board's records, the Board finds that the applicant is a trade union within the meaning of section 1(1) of the Act.
3. In accordance with the Board's current directives, the applicant delivered to the Board photocopies of the membership evidence that it relies upon in support of this application. The photocopies are clear, legible and have been reviewed by the Board. The Board is satisfied that they can be relied upon in support of this application. The Board directs the applicant to retain the original membership evidence as it may be required to produce it at a later date.
4. It appears to the Board on an examination of only the information provided in the application and the information and membership evidence filed by the applicant (see section 8(3) of the Act), that not less than 40% of the individuals in the bargaining unit proposed in the application for certification were members of the union at the time the application was made. One of the pieces of membership evidence filed by the applicant was dated more than one year prior to the application filing date. The Board has not included that piece of membership evidence when conducting its review.

5. The City of Toronto (the "City") has filed a response in which it asserts that the individuals in the proposed bargaining unit are not employed by the City. It also objects to the application on the basis that the bargaining unit applied for by the applicant is not an appropriate bargaining unit because there is not a sufficient community of interest among the employees and on the basis that the individuals in the proposed bargaining unit exercise managerial functions and/or are employed in a confidential capacity in matters relating to labour relations and are excluded pursuant to section 1(3)(b) of the Act.

6. In its response, the City disagrees with the bargaining unit proposed by the applicant, submitting that it cannot be appropriate. In the alternative to its primary position that it is not the employer of these individuals, the City proposes the following alternative bargaining unit description:

all persons employed as staff in the Offices of Councilors and the Mayor in the City of Toronto, save and except persons exercising managerial functions or employed in a confidential capacity in matters relating to labour relations under subsection 1(3)(b) of the Labour Relations Act.

7. The City asserts that there are 242 individuals in its proposed bargaining unit. The City gives notice under section 8.1 of the Act. The City has not filed a Schedule A or B list of employees in the usual course by filing it with the Board with its response, but it has emailed a copy of a completed Schedule A List of Employees to the Vote Coordinator. The Board has compared the membership evidence filed by the applicant to the list of employees provided by the City and cannot be certain that 40 percent of the individuals in the bargaining unit proposed in the application for certification were members of the applicant at the time the application was filed. While the City has not asked that the ballot box be sealed, given the dispute about the identity of the employer, the Board has made the determination that the ballot box ought to be sealed pending resolution of that issue.

8. Given the dispute about the identity of the employer, the Board is unable to determine whether the bargaining unit described in the application could be appropriate. That is not a reason for not holding the vote, however. This issue, as well as the appropriate bargaining unit description and any other issues in dispute will be addressed through post vote submissions in the ordinary course.

9. In light of the dispute as to the identity of the employer, the ballot box shall be sealed.

10. Without prejudice to the position of the responding party that the City of Toronto is not the employer for the purposes of this application, the Board directs that a representation vote be taken of the individuals in the following voting constituency:

all employees of the City of Toronto retained in Toronto City Council's Councillors' Offices and the Mayor's Office in the City of Toronto, save and except persons exercising managerial functions or employed in a confidential capacity in matters relating to labour relations under subsection 1(3)(b) of the Labour Relations Act.

11. The vote will be conducted electronically. The responding party is directed to provide only to the Board the email addresses for each of the individuals in the voting constituency so that the Board can provide electronic email notice of the vote. Within this same timeframe, it must also email only the Board the mailing addresses, telephone numbers and employee numbers, to the extent that it is in possession of such information, for each of the individuals in the voting constituency. It is directed to email all of this information in Excel format to the Board **by 9:30 a.m. on March 12, 2025 at: OLRBVotes@ontario.ca.**

12. The vote will commence on **Thursday, March 13, 2025** and will continue for a period of **24 hours**. This period may be extended at the discretion of the Manager of Field Services. Other vote arrangements will be as determined by the Registrar and set out on the attached "Notice of Vote".

13. All individuals who had an employment relationship with the responding party in the voting constituency on March 6, 2025, the certification application filing date, are eligible to vote. Employees having an employment relationship on March 6, 2025, the certification application filing date, include employees who were not at work on that date, so long as there is a reasonable expectation of their return to employment.

14. All persons who fall within the voting constituency set out at paragraph 10, above, are entitled to cast a ballot. Given the dispute

about the employment status of the individuals at issue in this application, any and all votes cast shall be segregated and not counted until the Board so orders or the parties agree.

15. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the responding party.

16. To the extent that it has not yet done so, the responding party is directed to immediately post the required materials and file a completed Confirmation of Posting.

17. The responding party is directed to post copies of this decision and of the "Notice of Vote" adjacent to each of the posted copies of the "Notice to Employees of Application for Certification". These copies must remain posted for 45 business days.

18. Any party or person who wishes to make representations to the Board about any issue remaining in dispute which relates to the application for certification, other than status disputes, including any matters relating to the representation vote, must file a detailed statement of representations with the Board and deliver it to the other parties, so that it is received by the Board within five days (excluding Saturdays, Sundays and holidays on which the Board is closed) of the date on which the vote is taken. Representations with respect to any status disputes must be made in accordance with the directions provided in Information Bulletin No. 4: Status Disputes in Certification Applications (Non-Construction).

19. The matter is referred to the Registrar.

"Danna Morrison"
for the Board



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 2929-24-R
Certification (Industrial)

Association of Management, Administrative and Professional Crown Employees
of Ontario, Applicant v City of Toronto, Responding Party

CONFIRMATION OF POSTING

Instructions: Each Employer or Employer's Representative must fill out this form after posting of applicable documents and send it to the Registrar of the Board. Although the Application and Notice to Employees must be posted immediately, the Employer may wait to complete ONE form to indicate posting of Application, Notice to Employees and Response, and then file this form along with its Response.

Forms indicating immediate posting of OTHER documents should be filed with the Registrar in accordance with the Board's Rules of Procedure as and when the documents are posted.

Name of Employer completing the Posting:
Name and Title of Person completing this Form:

I declare that the above-named Employer has posted, according to the above instructions, copies of the following documents (if and as applicable) at the workplace(s) or at worksite(s) where the documents are most likely to come to the attention of the employees or other individuals affected by the Application.

DOCUMENT	NUMBER POSTED	DATE POSTED	TIME POSTED
Application and Notice to Employees of Application			
Response			
Decision and Notice of Vote, Vote Poll(s), Vote Count, Meeting, Hearing			
Vote Office's Report			

DATE:

SIGNATURE:



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 2929-24-R
Certification (Industrial)

Association of Management, Administrative and Professional Crown Employees
of Ontario, Applicant v City of Toronto, Responding Party

Application Date: March 06, 2025

THIS IS AN OFFICIAL NOTICE OF THE BOARD AND
MUST NOT BE REMOVED, DEFACED OR DESTROYED

THE EMPLOYER MUST IMMEDIATELY POST THIS NOTICE (IN LOCATIONS
WHERE IT IS MOST LIKELY TO COME TO THE ATTENTION OF EMPLOYEES
OR OTHER INDIVIDUALS AFFECTED BY THE APPLICATION) NEXT TO
THE BOARD'S NOTICE TO EMPLOYEES OF APPLICATION AND/OR THE
BOARD'S DECISION ORDERING A VOTE

THE EMPLOYER OR ITS REPRESENTATIVE MUST RETURN A
CONFIRMATION OF POSTING TO THE REGISTRAR

THIS NOTICE MUST REMAIN POSTED FOR 45 BUSINESS DAYS

NOTICE OF ELECTRONIC VOTE

TO THE PARTIES LISTED ON APPENDIX A:

The Board has ordered a Representation Vote. A copy of the Board's Decision ordering the Vote is posted with this Notice.

VOTING CONSTITUENCY

The Board has ordered that the following group of voters (the voting constituency) is eligible to vote:

all employees of the City of Toronto retained in Toronto City Council's Councillors' Offices and the Mayor's Office in the City of Toronto, save and except persons exercising managerial functions or employed in a confidential capacity in matters relating to labour relations under subsection 1(3)(b) of the Labour Relations Act.

This voting constituency includes all employees (including dependent contractors) who were in the bargaining unit who had an employment relationship with the Employer on the Application Date at the top of this Notice. Employees having an employment relationship include employees on maternity leave, sick leave, vacation, workers' compensation, lay-off, etc. so long as there is a reasonable expectation of their return to employment.

METHOD OF VOTE

The vote will be conducted ONLINE and by TELEPHONE.

VOTE DATE(S)

The vote starts on March 13, 2025 at 2:00 PM and ends on March 14, 2025 at 2:00 PM (Eastern Time).

VOTE INSTRUCTIONS

A personal identification number ("PIN") is needed to vote. Eligible voters will receive an email containing their confidential PIN and detailed instructions before the vote commences. PINs are strictly for personal use by voters and must not be shared with anyone.

If an employee believes they are eligible to vote and does not receive a PIN, or requires any assistance to vote, they may contact the Ontario

Labour Relations Board ("OLRB") Help Desk (see hours and contact information below). If no one answers, employees should leave a detailed message with their full name, contact information, and OLRB case number, and a Vote Officer will respond to the message as soon as possible.

OLRB Help Desk Telephone:

416-953-0926

OLRB Help Desk Hours of Operation:

March 13, 2025 - 3:30 PM to 5:00 PM

March 14, 2025 - 11:30 AM to 12:30 PM

All times listed are Eastern Time.

TELECONFERENCE

Representatives for each of the parties are required to participate in a conference call with the Vote Officer after the Vote to discuss any outstanding issues. The Board has scheduled the following:

Date and Time: March 14, 2025 at 2:30 PM

Method: Teleconference (Call coordinates to be provided later)

VOTE COUNT

If the parties agree at the vote about the eligibility of employees to vote, the ballots will normally be counted and a report that sets out the results of the vote will be posted next to this Notice. If any issues are not resolved, the results of the vote may not be announced, and a meeting and/or hearing may be held. However, many applications are settled by discussions with a Board Mediator without the need for a meeting or hearing.

The date, time and location of a Vote Count (if one is held) and of meetings and hearings (if meetings or hearings are scheduled) are attached.

SECRET BALLOT

The vote will be by secret ballot. Voters are entitled to vote without interference, restraint or coercion.

QUESTION ON THE BALLOT

The ballot that will be provided to voters contains the question which appears on the attached Schedule A.

If you wish to say something to the Board about this Application and to participate in any meetings and/or hearings held, you must send a written statement to the Board (as described on the Notice to Employees of Application) not later than March 21, 2025, the Vote Objection Date. Your written statement must be served on all other parties before you file it with the Board.

You should not write to the Board if the only thing you want to say is that you support or do not support the Union. You will have an opportunity to express your wishes by voting.

DATED: March 11, 2025

Catherine Gilbert
Registrar

Website: www.olrb.gov.on.ca

Address all communication to:

The Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, Ontario M5G 2P1
Tel: 416-326-7500
Toll-free: 1-877-339-3335

SCHEDULE A

QUESTION ON THE BALLOT

The ballot that will be provided to voters contains the following question:

In your employment relations with your Employer, do you wish to be represented by the Union?

ONTARIO LABOUR RELATIONS BOARD IMPORTANT NOTES

The Board's forms, Notices, Information Bulletins, Rules of Procedure and Filing Guide may be obtained from its website <http://www.olrb.gov.on.ca> or by calling 416-326-7500 or toll-free at 1-877-339-3335.

FRENCH OR ENGLISH

Vous avez le droit de communiquer et recevoir des services en français et en anglais. La Commission n'offre pas de services d'interprétation dans les langues autres que le français et l'anglais.

You have the right to communicate and receive services in either English or French. The Board does not provide translation services in languages other than English or French.

CHANGE OF CONTACT INFORMATION

Notify the Board immediately of any change in your contact information. If you fail to do so, correspondence sent to your last known address (including email) may be deemed to be reasonable notice to you and the case may proceed in your absence.

ACCESSIBILITY AND ACCOMMODATION

The Board is committed to providing an inclusive and accessible environment in which all members of the public have equitable access to our services. We will aim to meet our obligations under the Accessibility for Ontarians with Disabilities Act in a timely manner. Please advise the Board if you require any accommodation to meet your individual needs. The Board's Accessibility Policy can be found on its website.

COLLECTION AND DISCLOSURE OF INFORMATION AND DOCUMENTS

Any relevant information that you provide to the Board must in the normal course be provided to the other parties to the proceeding. Personal information collected on this form and in written or oral submissions may be used and disclosed for the proper administration of the Board's governing legislation and case processing. In addition, the Tribunal Adjudicative Records Act, 2019 requires that the Board make adjudicative records (which include applications filed and a listing of such applications) available to the public. The Board has the power to make part or all of an adjudicative record confidential. The Freedom of Information and Protection of Privacy Act may also address the treatment of personal information. More information is available on the Board's website www.olrb.gov.on.ca. If you have any questions concerning the collection of information or disclosure of adjudicative records, contact the Solicitors' Office at the number listed above or in writing to the OLRB, 505 University Ave., 2nd floor, Toronto, ON M5G 2P1.

E-FILING AND E-MAIL

The Rules of Procedure and Filing Guide set out the permitted methods of filing. Forms and submissions may be filed with the Board by a variety of methods including the Board's e-filing system, but not by e-mail. In the event of emergencies or other circumstances, the Board may post a Notice to Community on its website, which will prevail over the Rules of Procedure and Filing Guide. You should check the Board's website prior to filing. Note that the e-filing system is not encrypted and e-filing is optional. Contact the Client Services Coordinator at the numbers listed above if you have questions regarding e-filing or other filing methods. If you provide an e-mail address with your contact information, the Board will in most cases communicate with you by e-mail from an out-going only generic account. Incoming emails are not permitted.

HEARINGS AND DECISIONS

Hearings are open to the public unless the Board decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

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ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 2929-24-R
Certification (Industrial)

Association of Management, Administrative and Professional Crown Employees
of Ontario, Applicant v City of Toronto, Responding Party

THIS IS AN OFFICIAL NOTICE OF THE BOARD

OFFICIAL NOTICES OF THE BOARD MUST NOT BE REMOVED, DEFACED
OR DESTROYED

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LOCATIONS WHERE THEY ARE MOST LIKELY TO COME TO THE
ATTENTION OF EMPLOYEES OR OTHER INDIVIDUALS AFFECTED BY THE
APPLICATION) NEXT TO THE APPLICATION, THE BOARD'S NOTICE TO
EMPLOYEES OF APPLICATION, AND/OR THE BOARD'S DECISION

NOTICES MUST REMAIN POSTED FOR 45 BUSINESS DAYS

NOTICE - REGIONAL CERTIFICATION MEETING OR
REGIONAL TERMINATION MEETING

TO THE PARTIES LISTED ON APPENDIX A:

The Board has scheduled the following:

Date(s) and Time: April 02, 2025 at 10:00AM
Method: Video Conference / Teleconference
(coordinates to be provided at a later date)

The purpose of a Regional Certification Meeting or Regional Termination Meeting is to mediate the issues in dispute, and to record the parties' positions on the outstanding issues.

Please have with you any records that may be relevant to these issues, including documents that relate to the inclusion or exclusion of employees from the bargaining unit.

The Board's processes are explained in its Information Bulletins, available on the Board's website (see below). If you have any additional questions, please raise them at the meeting.

DATED: 11-Mar-2025

Travis Kearns
Manager, Mediation Services
Tel: 647-236-7574
Toll-free: 1-877-339-3335
travis.kearns@ontario.ca

NOTE:
Address all communication to:

The Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, Ontario M5G 2P1
Tel: 416-326-7500
Toll-free: 1-877-339-3335
www.olrb.gov.on.ca



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

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EMPLOYEES OF APPLICATION, AND/OR THE BOARD'S DECISION

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NOTICE OF HEARING

TO THE PARTIES LISTED ON APPENDIX A:

The Board has scheduled the following:

Hearing Type:	Hearing
Date(s) and Time:	April 07, 2025 at 09:30AM
Location:	505 University Avenue, Floor 2, "Board Room", Toronto ON M5G 2P1

The purpose of the hearing is to hear the evidence and representations of the parties with respect to all matters relating to this application that have not been settled by the time the hearing occurs. The parties are entitled to be represented by counsel or an agent, and may be expected to call and examine witnesses, to conduct cross-examination, and to present argument.

If disputes about whether certain individuals should or should not be on the voters' list or in the bargaining unit form any part of the outstanding issues, the hearing will likely be postponed by one week. If this happens, a notice providing the new hearing date will be sent to the parties, and the Board will order the Employer to post the notice beside this Notice.

IF YOU DO NOT ATTEND, THE BOARD MAY DECIDE THE APPLICATION WITHOUT FURTHER NOTICE TO YOU AND WITHOUT CONSIDERING ANY DOCUMENT YOU MAY HAVE FILED.

DATED: March 11, 2025

Catherine Gilbert
Registrar

Website: www.olrb.gov.on.ca

Address all communication to:	The Registrar Ontario Labour Relations Board 505 University Avenue, 2nd Floor Toronto, Ontario M5G 2P1 Tel: 416-326-7500 Toll-free: 1-877-339-3335
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APPENDIX A

Goldblatt Partners LLP
Attention: Marisa Pollock
Counsel
Tel: 416-979-6441
Email: mpollock@goldblattpartners.com; kcrawford@goldblattpartners.com

Association of Management, Administrative and Professional Crown Employees
of Ontario
Attention: Dave Bulmer
Tel: 416-595-9000
Fax: 416-340-6461
Email: bulmer@amapceo.on.ca

Association of Management, Administrative and Professional Crown Employees
of Ontario
Attention: Jennifer Pacheco
Tel: 416-899-8713; 416-595-9000
Fax: 416-340-6461
Email: pacheco@amapceo.on.ca

Association of Management, Administrative and Professional Crown Employees
of Ontario
Attention: Jennifer Sherwood
Tel: 416-595-9000
Fax: 416-340-6461
Email: sherwood@amapceo.on.ca

Hicks Morley Hamilton Stewart Storie LLP
Attention: Michael Kennedy
Tel: 647-388-7305; 416-864-7305
Fax: 416-362-9680
Email: michael-kennedy@hicksmorley.com; erin-robinson@hicksmorley.com

Hicks Morley Hamilton Stewart Storie LLP
Attention: Craig Rix
Tel: 416-576-7284; 416-864-7284
Fax: 416-362-9680
Email: craig-rix@hicksmorley.com

City of Toronto
Attention: Sean Milloy
Executive Director, Employee Relations
Tel: 416-392-5006
Email: sean.milloy@toronto.ca

City of Toronto
Attention: Mike Pacholok
Deputy City Clerk
Tel: 416-338-9019
Email: mike.pacholok@toronto.ca

Canadian Union of Public Employees, Local 79
34 St. Patrick Street
Toronto ON M5T 1V1
Attention: Cesar Serrano-Valdivia
National Representative
Tel: 365-442-3841
Fax: 416-977-9546
Email: cserrano-valdivia@cupe.ca

TAB 4



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 2929-24-R
Certification (Industrial)

Association of Management, Administrative and Professional Crown Employees
of Ontario, Applicant v City of Toronto, Responding Party

COVER LETTER
CERTIFICATION WORKSHEET
(WITH OTHER DOCUMENTS, AS APPLICABLE)

TO THE PARTIES LISTED ON APPENDIX A:

The Board is transmitting the attached document(s) via email, facsimile, regular mail or courier.

[X] Vote Certification Worksheet and Vote Officer's Report dated
March 14, 2025

DATED: March 14, 2025

Ryan Gilhooly

Vote Officer
Tel: (416) 953-0926
ryan.gilhooly@ontario.ca

NOTE:
Address all communication to:

The Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, Ontario M5G 2P1
Tel: 416-326-7500
Toll-free: 1-877-339-3335
www.olrb.gov.on.ca



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 2929-24-R
Certification (Industrial)

Association of Management, Administrative and Professional Crown Employees
of Ontario, Applicant v City of Toronto, Responding Party

VOTE OFFICER'S REPORT

Vote Information:

Number of Persons on Voters List	243
Number of Persons who Voted	199
Number of Ballots in Ballot Box	0
Number of Segregated Ballots on Voters List	199
Number of Segregated Ballots Not on Voters List	0

BALLOT BOX SEALED (Y/N): YES

Cumulative Total:

In favour of the Union	0
Against the Union	0
Agreed/Ruled Out	0
Spoiled	0
Remaining in Dispute	199
Total Ballots Cast	199

THIS IS AN OFFICIAL NOTICE OF THE BOARD AND
MUST NOT BE REMOVED, DEFACED OR DESTROYED

THE EMPLOYER MUST RETURN A CONFIRMATION OF POSTING
TO THE REGISTRAR

DATE(S) OF VOTE: March 13, 2025 -
March 14, 2025
DATE OF REPORT: March 14, 2025

OFFICER:

Gilhooly, Ryan

NOTE:

Address all communication to:

The Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, Ontario M5G 2P1
Tel: 416-326-7500
Toll-free: 1-877-339-3335
www.olrb.gov.on.ca



ONTARIO LABOUR RELATIONS BOARD

Labour Relations Act, 1995

OLRB Case No: 2929-24-R
Certification (Industrial)

Association of Management, Administrative and Professional Crown Employees
of Ontario, Applicant v City of Toronto, Responding Party

CONFIRMATION OF POSTING

Instructions: Each Employer or Employer's Representative must fill out this form after posting of applicable documents and send it to the Registrar of the Board. Although the Application and Notice to Employees themselves must be posted immediately, the Employer may wait to complete ONE form to indicate posting of Application, Notice to Employees of Application, and Response, and then file this form along with its Response.

Name of Employer completing the Posting:

Name and Title of Person completing this Form:

I declare that the above-named Employer has posted, according to the above instructions, copies of the following documents (if and as applicable) at the workplace(s) or at worksite(s) where the documents are most likely to come to the attention of the employees or other individuals affected by the Application.

TYPE OF DOCUMENT	NUMBER POSTED	DATE POSTED	TIME POSTED
Application and Notice to Employees of Application			
Response			
Board Decision and Notice to Employees			
Notices of Vote, Vote Poll(s), Vote Count, Meeting, Hearing AND Board Decision Ordering Vote			
Vote Officer's Report			

DATE:

SIGNATURE:

APPENDIX A

Goldblatt Partners LLP
Attention: June Mills
Counsel
Tel: 416-979-4380
Email: kcrawford@goldblattpartners.com; jmills@goldblattpartners.com

Goldblatt Partners LLP
Attention: Marisa Pollock
Counsel
Tel: 416-979-6441
Email: mpollock@goldblattpartners.com; kcrawford@goldblattpartners.com

Association of Management, Administrative and Professional Crown Employees
of Ontario
Attention: Dave Bulmer
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Fax: 416-340-6461
Email: bulmer@amapceo.on.ca

Association of Management, Administrative and Professional Crown Employees
of Ontario
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Hicks Morley Hamilton Stewart Storie LLP
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Tel: 647-388-7305; 416-864-7305
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Email: michael-kennedy@hicksmorley.com; erin-robinson@hicksmorley.com

Hicks Morley Hamilton Stewart Storie LLP
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Tel: 416-576-7284; 416-864-7284
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City of Toronto
Attention: Sean Milloy

Executive Director, Employee Relations
Tel: 416-392-5006
Email: sean.milloy@toronto.ca

City of Toronto
Attention: Mike Pacholok
Deputy City Clerk
Tel: 416-338-9019
Email: mike.pacholok@toronto.ca

Canadian Union of Public Employees, Local 79
34 St. Patrick Street
Toronto ON M5T 1V1
Attention: Cesar Serrano-Valdivia
National Representative
Tel: 365-442-3841
Fax: 416-977-9546
Email: cserrano-valdivia@cupe.ca

TAB 5



Hicks Morley Hamilton Stewart Storie LLP
77 King St. W., 39th Floor, Box 371, TD Centre
Toronto, ON M5K 1K8
Tel: 416.362.1011 Fax: 416.362.9680

MICHAEL J. KENNEDY
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Direct: 416.864.7305
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Toronto
Waterloo
London
Kingston
Ottawa

File No. 395-170

March 12, 2025

Via Electronic Submissions

Catherine Gilbert
Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, ON M5G 2P1

Dear Ms. Gilbert:

**Re: AMAPCEO v. City of Toronto – Application For Certification
OLRB Board File No. 2929-24-R**

We represent the Respondent, City of Toronto, with respect to the above-noted matter. I am writing in response to the letter from the Applicant's counsel dated March 11, 2025.

The Union has brought an application for certification for staff employed in the Offices of the Mayor and Councillors in the City of Toronto. The City's response has been to assert that the individuals that the Union is seeking to certify are not the employed by the City of Toronto. In practical terms, if the Councillors as a matter of law cannot be employees of the City, how can their staff be employees of the City. As a result, the City of Toronto raised challenges for all the employees listed in its Schedule A.

The Union is now seeking to have the Board direct the City to provide its alternative position if it is unsuccessful with its position the individuals in question are not it's employees. The Union's rationale for this request is that it will allow the parties to better understand what is in dispute and to allow the ballots to be counted as soon as reasonably possible.

With the greatest of respect the Union is missing the point. It is very difficult for the City to get instructions to determine what positions should be challenged on the basis of a managerial and confidential capacity if it is not the employer.

Nor, does the Union's request make sense when its premised on its desire to count ballots. It should be noted that the Board in paragraph 7 of its March 11, 2025, decision notes that it is not certain that 40 percent of the individuals in the proposed bargaining unit were members of the Union at the time of the application and ordered that the ballot box should remain sealed until the parties litigate the City's initial position.

As a result, the City maintains that its upfront position of “who is the Employer” needs to be addressed before alternative positions are considered. The City is of the view that the structure and timing of submissions and hearing dates can be addressed by the parties prior to the Regional certification meeting on April 2, 2025.

Please do not hesitate to contact me if you have any questions or concerns..

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael J. Kennedy", with a long, sweeping flourish extending from the end.

Michael J. Kennedy

MJK/jh

c: Marisa Pollack – Counsel for Union

TAB 6



HUMAN RESOURCES MANAGEMENT AND ETHICAL FRAMEWORK FOR MEMBERS' STAFF

As approved by City Council at its meeting on August 25, 26, 27 and 28, 2014 and amended by City Council at its meeting June 15 and 16, 2022.

1. BACKGROUND

1.1. Preamble

The *Human Resources Management and Ethical Framework for Members' Staff* is a consolidated Framework that sets out the roles and responsibilities of Members of Council for managing the City employees under their authority, and affirms applicable City Human Resources policy requirements for Members' staff.

This Framework also sets out the ethical framework for Members' staff and clarifies their responsibility under the existing *Code of Conduct for Members of Council*. As Members' staff are not members of the public service, the policy provides clarity to the distinct roles that Members' and their staff play in the effective functioning of Toronto's government.

1.2. Definitions

MEMBER

A Member of Toronto City Council, including the Mayor and Councillors.

MEMBERS' STAFF

Individuals retained in Councillors' Offices and the Mayor's Office, including:

- All Full-time and Part-time staff employed on either indefinite-term or fixed-term contracts, regardless of base position held (even if base position is with the Toronto Public Service).
- Staff who are managed by the Deputy City Clerk, Members Services & Program Support during the period where the seat of the Member of Council is vacant.

CITY CLERK'S OFFICE

The City Clerk, the Deputy City Clerk, Members Services & Program Support or other designated staff in the City Clerk's Office.

CODE OF CONDUCT

The Code of Conduct for Members of Council, administered by the Integrity Commissioner.

COUNCIL MEMBER KNOWLEDGE BASE

The knowledge base for Members of Council, as updated from time to time, related to the carriage and control of their offices, service protocols, processes, as well as day-to-day operational supports provided to Members of Council.

HUMAN RESOURCE POLICY REQUIREMENTS

The minimum, necessary policies, as amended from time to time, applicable to Members' staff in order that Members can effectively manage their staff and to ensure that the City is meeting its legislative obligations as the employer.

TORONTO PUBLIC SERVICE

Those City and agency employees working in the non-political component of Toronto's government and subject to the Toronto Public Service By-law.

REFERENCE

Both written and verbal references and any other form of intervention on behalf of the person in question.

RELATIVES

For the purposes of this policy, relatives shall be defined as:

- (i) spouse, including common-law;
- (ii) parent, including step-parent and legal guardian;
- (iii) child, including step-child;
- (iv) sibling; and
- (v) any person who lives with the employee on a permanent basis.

1.3. Application

While Members' staff are City of Toronto employees, they are not members of the public service and therefore are not subject to the Toronto Public Service By-law, except for Article V, section 192-26. However, being government employees, they have similar ethical and employment requirements albeit with necessary modifications to reflect their unique status as Members' staff. Consequently, Members have responsibilities for managing these staff and are required to enforce human resource and ethical policies to ensure both they and the City are meeting their legislative obligations and responsibilities.

The Human Resources Management and Ethical Framework applies to all individuals employed in Councillors' Offices and the Mayor's Office.

- The Framework does not apply to non-employment relationships such as unpaid students, volunteers or independent contractors, consultants or vendors:
 - Unpaid students and volunteers are subject to the City's Volunteer and Student Placement Guidelines and protocols or others as applicable, as

amended from time to time Both students and volunteers working in Members' Offices are retained in accordance with applicable City guidelines and protocols and their placements arise only through prior City agreements with schools and/or the individuals themselves (involving a myriad of issues such as academic standards, curriculum responsibility, indemnities, confidentiality, copyright and a waiver of liability).

- Independent contractors, consultants or vendors are retained by Members for specific service delivery, including but not limited to consulting, event management, website design and maintenance. Independent contractors, consultants or vendors are governed by agreements signed between them and the Member in accordance with the Members of Council Operations Policy. These agreements should clarify and reflect that the independent contractors, consultants, and vendors are not City employees.

*It is imperative that an individual's status and nature of relationship be accurately identified, structured and documented by Members prior to their start in Members' Offices. An individual cannot be in more than one category at the same time. Mistaken or wrongful categorization can result in significant liability and financial penalties for the City (and Member).

1.4. Purpose

This *Human Resources Management and Ethical Framework for Member' Staff* aims to:

- Provide clear guidelines for Members' with respect to the human resources management of their staff.
- Set out the key ethical framework for Members' staff working in their offices to guide their day to day activities in support of the Member.
- Delineate the roles and responsibilities amongst Members, Members' staff, the City Clerk's Office and the City as the employer of record.

1.5. Context and Principles

The Human Resources Management and Ethical Framework for Members' Staff is developed under the following context:

- Members' staff are not members of the public service. Rather, they are political staff and a unique subgroup of City of Toronto non-union employees. The City, as the employer, has certain statutory requirements and corporate responsibilities as do the Members as the immediate managers of staff working in their offices.
- While they are City employees, Members' staff are distinct from members of the Toronto Public Service and are governed by this *Human Resources*

Management and Ethical Framework for Members' Staff and not the Toronto Public Service By-law , except for Article V, section 192-26.

- The *Human Resources Management and Ethical Framework for Members' Staff* covers roles, responsibilities and authorities amongst Members, Members' Staff, City staff and strengthens the separation between the administrative and political components of Toronto's government.

The key principles of the *Human Resources Management and Ethical Framework for Members' Staff* are:

- *Integrity*
Members' staff, in working for the Member of Council, will uphold high standards of ethical behaviour consistent with those applicable to elected officials.
- *Accountability*
Members are accountable for the management of their staff in compliance with applicable legislation and City policies. Members' staff are accountable to their Member of Council for the performance of their duties and responsibilities.
- *Respect*
Members' staff will act with decorum and respect the Office the Member holds. Members' staff will treat the public, the Toronto Public Service and each other with respect at all times.

1.6. Roles and Responsibilities

1.6.1. Members

Members have the responsibility to manage their office and staff in accordance with the *Human Resources Management and Ethical Framework for Members' Staff*, the Code of Conduct, the Council Member Knowledge Base and in compliance with applicable City employment related policies and guidelines, and the City's statutory obligations, including but not limited to *the Employment Standards Act*, the *Occupational Health and Safety Act*, *Workplace Safety and Insurance Act*, *Ontario Fire Code*, *Ontario Human Rights Code*, *Accessibility for Ontarians with Disabilities Act*, *Ontario Labour Relations Act* and *Income Tax Act*, as amended from time to time.

Members have the responsibility to ensure that their staff are aware of and comply with the *Human Resources Management and Ethical Framework for Members' Staff* as detailed in this document.

Members are responsible for ensuring Members' staff abide by the applicable City Human Resources Policies, which are listed in Appendix A of this

Framework and which are also attached to the Members' staff employment contracts, both of which may be amended from time to time.

1.6.2. Members' Staff

Each Member's staff has the responsibility to become familiar with and abide by the Human Resources Management and Ethical Framework for Members' Staff as detailed in this document.

Each Member's staff is responsible for abiding by the Human Resources Policies listed in Appendix A of this Framework and appended to their employment contracts. These policies may be amended from time to time.

Members' staff will act responsibly, disclosing all actual or potential conflict of interest situations to the Member and behave in a manner that would not create the perception that the Member deliberately or inadvertently breached the Code of Conduct.

1.6.3. City Clerk's Office

City Clerk's Office provides day-to-day operational support and advice to Members in relation to the management of staff in their offices and assists the Members in meeting the City's legislative obligations as the employer of record.

1.6.4. City

The City is the employer of Members' staff and in this role is legally responsible for fulfilling its statutory requirements and other corporate responsibilities and obligations to protect City interests.

2. MEMBERS' ROLE IN HUMAN RESOURCES MANAGEMENT OF MEMBERS' STAFF

Individuals employed in the offices of Members of Council are City of Toronto employees. However, Members' staff are a special sub-group of City of Toronto non-union employees falling under one of the following employment arrangements:

- a. Indefinite term full-time employees
- b. indefinite term part-time employees
- c. fixed-term full-time employees; and
- d. fixed-term part-time employees.

2.1. Members' Responsibilities

Members, as supervisors/managers of City employees working in their offices, have control and direction over their staff and are responsible for the following:

- Managing their staff and office in compliance with applicable City employment related policies and guidelines, and the City's statutory obligations, including but not limited to the *Employment Standards Act*, *Workplace Safety and Insurance Act*, *Ontario Fire Code*, *Ontario Human Rights Code*, *Accessibility for Ontarians with Disabilities Act*, *Ontario Labour Relations Act* and *Income Tax Act*, as amended from time to time.

Details on compliance requirements with respect to applicable legislation and policies can be found in the Council Member Knowledge Base, which is provided to all Members at the beginning of the term and which may be updated from time to time by the City Clerk's Office.

- In particular, a Member is responsible for:
 - Providing a safe work environment;
 - Ensuring staff receive training on health and safety requirements as needed;
 - Reporting staff injury or misconduct to appropriate City staff on timely basis; and
 - Scheduling of staff vacation and lieu time to promote wellness.
- Ensuring that individuals working in their offices comply with applicable City policies and guidelines. To that end, Members are encouraged to involve the City Clerk's Office where there is a staffing issue involving a corporate responsibility or liability (e.g. accommodation, human rights, excessive absenteeism, misconduct, etc.)

2.2. Staff Recruitment and Hiring

- Members are responsible for staffing their offices. Members have full carriage of their offices' recruitment process and final decision-making responsibility for all aspects of hiring including resume review, screening, testing, interviews, reference checks, selection and job offer.
- Members are responsible for providing all hiring information to the City Clerk's Office prior to allowing staff to start work in their offices so that the employment contract and other documentation can be completed prior to the staff member beginning their employment.
- Members may not hire their relatives or relatives of other Members into their offices.
 - A sole exception allows a staff member to continue working for a Member if they become a relative as a result of election, appointment or marriage.¹
- Two Members can share an individual staff member, if the staff member is in the same job classification and is paid the same rate by both Members. Employment contracts are co-signed by both Members, the employee and the City Clerk's designate.

2.3. Compensation and Salary Expenditures

- Members decide on the position and determine the level of compensation for staff in their office, as long as the salary for the staff is within the salary range for the job classification of the employee as adopted by City Council, including giving salary increases at any time at their discretion.
- City Council authorized Members of Council to approve Council staff salaries above the top of the staff salary ranges as long as total staff salaries remain within the approved Councillor Salary Envelope.²
- As per the Members of Council Operations Policy, Members' fund their staff from a Staffing Budget envelope, supplemented by the Constituency Services and Office Budget, if required. Mayor's Office staff are funded from the Mayor's Office's annual operating budget.
- Members are responsible for reviewing and signing off on the annual salary expenditures for their staff, which will be reported in the *Annual*

¹ As adopted by City Council at its meeting on June 7, 8 and 9, 2000 (see Administrative Committee Report 13, Clause 4) and amended at its meeting on September 25, 26, 27 and 28, 2006 (See Attachment 12 [Notice of Motion J34]).

² As adopted by Council at its meeting on City Council on December 4, 5 and 13, 2018, CC1.1 Recalibrating City Council's Governance System for 26 Members.

2.4. Terms and Conditions of Employment

- Members' staff are employed under one of the following employment arrangements: Indefinite term full-time employees, indefinite term part-time employees, fixed-term, full-time employees or fixed-term part-time employees with the City and the terms and conditions of their employment are standardized and stipulated therein.
 - Indefinite term full-time employees - An employee hired by a Member of Council to work full-time hours in the Member's office on an indefinite contract of employment. There is no fixed termination date in the employment contract, nor is there any guaranteed length of employment.
 - Indefinite term part-time employees - An employee hired by a Member of Council to work part-time hours in the Member's office on an indefinite contract of employment. There is no fixed termination date in the employment contract, nor is there any guaranteed length of employment.
 - Fixed-term full-time employees – A temporary employee hired by a Member of Council to work full-time hours in the Member's office for a specified time for special projects or where specified services are required. The contract duration is for a short period of time of a year or less, specifies the termination date, and does not extend beyond the Council term. For any contract extensions resulting in employment beyond one year, the employee is transitioned to an indefinite term full-time employment contract.
 - Fixed-term part-time employees – A temporary employee hired by a Member of Council to work part-time hours in the Member's office for a specified time for special projects or where specified services are required. The contract duration is for a short period of time of a year or less, specifies the termination date, and does not extend beyond the Council term.
- Members are responsible for approving hours of work, attendance, vacation, lieu time, sick days, all absences from work, unpaid leave of absence, and expense claims for their staff and ensuring proper reporting.
- Members may delegate to one or more of their direct reports the approval of staff attendance using the City's eTime Self-Time Reporting via the Employee Self Service portal.³

³ As adopted by Council at its meeting on City Council on April 7, 2021, GL21.16 - Implementing Online Timesheets for Council Members' Staff

2.5. Termination

- Members are responsible for termination decisions with respect to individuals working in their offices and can terminate staff without cause subject to the provisions of the applicable Employment Contract, City employment and severance policies, and statutory requirements.
- Prior to a termination decision being made a Member must consult with the City Clerk's Office to ensure compliance with the statutory requirements and other obligations in order to limit the City's liability as the employer.
- The employment relationship between Members of Council and Members' staff does not extend beyond the end of the Council term if the Member does not return to Council following the municipal election.
- Following the resignation or death of a Member of Council, Member's staff employed in the vacant office will continue to be employed through the duration of the vacancy. During the vacancy, City Clerk's Office will provide administrative management of the Member's staff. During a Mayoral vacancy, the Deputy Mayor will provide administrative management of the Member's staff.⁴ When the vacant Member's seat is filled through by-election or appointment, the new Member will have the option to retain or replace the staff in their office.
- Member's staff may be terminated for cause at any time without notice of termination or severance pay, unless otherwise minimally required under the *Employment Standards Act* ("ESA").

2.6. Severance

- Indefinite-term staff who are terminated without cause during the term of Council are eligible to receive termination and severance pay of 3 weeks per completed years of service, subject to a maximum cap of 52 weeks' pay. This amount is inclusive of termination and severance amounts payable under the ESA and of any working notice which is given. Members' staff who are terminated before completing one year of service with the City will receive termination pay in accordance with the ESA.
- Fixed-term employees are not entitled to severance or termination pay at the end of their contract.

⁴ As adopted by Council at its meeting on City Council on June 26, 2018, EX35.20 - Council Member Administrative Matters, Policies and Procedures

2.7. References

- Members can provide references for their current and former staff if there is a relevant employment relationship subject to Member of Council Letter of Reference Policy in Appendix B.

3. ETHICAL FRAMEWORK FOR MEMBERS' STAFF

Members have carriage and control of, and are fully responsible for, the conduct and management of staff working in their offices. Members are responsible for ensuring that individuals working in their offices understand the following Ethical Framework and the expectations it sets out for Members' staff and individuals working in their offices.

This Framework applies to all individuals employed in Councillors' Offices and the Mayor's Office.

Members' staff are expected to conduct themselves with personal integrity, ethics, honesty and diligence in performing their duties. The Integrity Commissioner has been assigned the duty of Ethics Executive for Members staff. Members staff can consult with their Member and with the Integrity Commissioner on advice related to their ethical obligations as set out in this Framework.⁵

3.1. Duties and Responsibilities of Members' Staff in relation to the Code of Conduct

- a. Members' staff often act on behalf of or in the name of the Member of Council, including by representing the Member at events or communicating with constituents. Members' staff must be familiar with the *Code of Conduct for Members of Council* so that they ensure that their actions on behalf of their Member of Council are in compliance with the principles and requirements within the *Code of Conduct*. Actions taken by staff on behalf of a Member may result in that Member of Council being found to have contravened the Code of Conduct and lead to sanction of the Member.
- b. As part of the *Code of Conduct*, Members' staff must be familiar with City policies that apply to Members of Council, including but not limited to:
 - i. the Members of Council Operations Policy
 - ii. the Member of Council Reference Letter Policy set out in Appendix B.
- c. Each Member of Council is responsible for ensuring that their staff do not put the Member in contravention of the *Code of Conduct*.
- d. In situations where the Member of Council is uncertain about the application of the *Code of Conduct* to staff, they should consult with the Integrity Commissioner.

⁵ As adopted by Council at its meeting on City Council on November 13 and 14, CC23.3 – Updates on Addressing Workplace Harassment and Discrimination

3.2. Lobbying

- Members' staff are considered public office holders under *City of Toronto Act, Part V, Accountability and Transparency, Section 156*, and under *Toronto Municipal Code Chapter 140, Lobbying* and must be familiar with their requirements and restrictions under the By-law.
- Members' staff should consult with the Lobbyist Registrar if they have any questions regarding lobbying.

3.3. Conflict of Interest

Members' staff must not place themselves or their Member of Council in a direct or perceived conflict of interest.

Members' staff should consult with the Integrity Commissioner for advice to determine if they personally have a conflict of interest in a specific situation. They may also consult the Member, if they wish. If the Integrity Commissioner advises Members' staff they have a conflict of interest, they must disclose the advice to their Member.⁶

A conflict of interest refers, but is not limited to a situation in which a Member's staff has private interests that could compete with or that may be perceived to compete with their duties and responsibilities as a Member's staff.

A conflict of interest can be a situation where the Member's staff use their position for private gain or expectation of private gain, non-monetary or otherwise. A conflict may also occur when the private interest benefits the staff's family, friends or organizations in which the staff or their family or friends have a financial interest.

Private (or personal) interest means a relationship, obligation, duty, responsibility or benefit unique to the Members' staff or a person related to the Members' staff.

Conflict of interest may include, but is not limited to the following situations:

a. **Preferential treatment**

Members' staff must not use their positions to give any one preferential treatment that would advance their own interest or that of any party where such advance is contrary to the interest of the City.

b. **Gifts**

Members' staff must not accept, arrange to accept or request to be given a reward, gift, advantage or benefit of any kind from any person or entity that influences or could be perceived to influence the performance of their duties.

Members' staff may accept a gift of nominal value given as an expression of courtesy or hospitality, provided this does not influence, or be perceived to

⁶ As adopted by Council at its meeting on City Council on November 13 and 14, CC23.3 – Updates on Addressing Workplace Harassment and Discrimination

influence, the performance of their duties.

A Member may decide that no gifts may be accepted under any circumstances.

A Member's staff, who receives a gift in the performance of their duties, will immediately notify the Member.

c. **Employment of relatives**

Members' staff will abide by the City's *Employment of Relatives* Policy as set out in Appendix A and section 2.2 Staff Hiring and Recruiting (above).

In cases where relatives of a Member staff are employed in the same office of the Member of Council, there must not be any work direction provided or any supervisory responsibility of one relative over another.

d. **Use of City property**

Members' staff must not use, or permit the use of any City property, including facilities, equipment, supplies, technology or other resources, for activities not associated with the performance of their duties. Any exception must be approved by the Member in advance.

e. **Use or disclosure of confidential information**

Members' staff may not, during the term of their employment or any time thereafter, directly or indirectly use or disclose any confidential information obtained during their employment with the Member, unless they are required by law or authorized by the Member in writing and in advance. The obligation to maintain confidentiality continues after the ceasing of employment.

Confidential information includes, but is not limited to, privileged information, draft by-laws or staff reports, third party information, personal information, technical, financial or scientific information and any other information collected, obtained or derived for or from any records that a Members' staff may come into contact with while employed in the office of the Member.

f. **Disclosure of financial interests**

Members' staff who have a financial interest or are involved in a decision-making process related to a City contract, sale or business transaction, or has family members, friends or business associates with such interest, must disclose their interest to the Member and remove themselves from any decision-making process. The Members' staff must sign a declaration that the staff will not engage in any activity related to the City contract, sale or business transaction.

g. **Appearing before City committees**

Members' staff may not appear before a City committee on behalf of a private citizen or third party, other than for themselves or a family member.

Members' staff must identify themselves as such if they are making a

deputation to a City or Agency committee, unless they appear as a private citizen on matters that do not relate to their employment.

h. **Engaging in outside work or business activities**

Members' staff may not engage in any outside work or business activity that conflicts with their duties in the Members' Office; or could benefit from confidential information obtained during the course of their employment.

Members' staff who engage in any other work or business activities must disclose these activities to the Member in advance.

3.4. Political Activity

a. Political Activity is defined as:

- supporting or opposing a political party and/or candidate before or during an election;
- seeking nomination or being a candidate in an election;
- seeking appointment to a municipal council or school board; or
- canvassing or campaigning on a Toronto municipal referendum question.

Political activity is applicable to municipal, school board, provincial and federal elections and Toronto municipal referendum questions.

b. Members' staff must comply with the requirements of the *Municipal Elections Act, 1996*, when seeking election or appointment to Toronto City Council:

- Members' staff who seek election to Toronto City Council must take an unpaid leave of absence before the date they file the nomination papers to voting day.
- Members' staff who seek appointment to Toronto City Council must take an unpaid leave of absence from the date they file the appointment application to the date City Council makes the appointment decision.

c. Members' staff must not use any City resources for any election-related or campaign purposes. City resources include any facility, equipment, supplies or other resources as defined in the City's [*Use of City Resources During an Election*](#) Policy.

d. Members' staff who are planning to engage in political activity as defined in this Framework should disclose this information to the Member of Council and seek guidance and advice from their Member as required.

e. Members' staff do not need to disclose information related to their voting preference, membership in a political party, financial contribution to a

candidate or putting up lawn signs in support of a candidate.

3.5. Disclosure of Wrongdoing and Reprisal Protection

This section is intended to facilitate the disclosure of wrongdoing that is contrary to the public interest and to protect from reprisal, those Members' staff who in good faith report wrongdoing.

Wrongdoing refers to serious actions that are contrary to public interest, including but not limited to:

- Fraud;
- Theft of City assets;
- Waste: mismanagement of City resources or assets in a willful, intentional or negligent manner that contravenes a City policy or direction by Council;
- Violation of the Conflict of Interest provisions as outlined in this Framework; and
- Breach of public trust.

Reprisal against a Member's staff is any measure taken or threatened as a direct result of disclosing or being suspected of disclosing an allegation of wrongdoing, initiating or co-operating in an investigation into an alleged wrongdoing. Reprisal includes but is not limited to:

- Disciplinary measures;
 - Demotion of a Members' staff;
 - Suspension of a Member's staff;
 - Termination of a Members' staff;
 - Intimidation or harassment of a Members' staff;
 - Any punitive measure that adversely affects the employment or working conditions of a Members' staff; and
 - Directing or counselling someone to commit a reprisal.
- a. Members' staff who are aware that a wrongdoing has occurred will immediately:
- notify the Integrity Commissioner if it is related to wrongdoing by a Member or a Members' staff; and
 - notify the Member or the Auditor General if it is related to wrongdoing by a member of the public service.
- b. Any Members' staff who knowingly makes a false complaint in bad faith or who knowingly makes a false or misleading statement that is intended to mislead an investigation of a complaint may be subject to disciplinary action as determined by the Member.
- c. Members' staff who disclose wrongdoing will fully co-operate with the

Integrity Commissioner's Office, the Auditor General's Office, involved Divisions and law enforcement agencies during the course of an investigation and will make all reasonable efforts to be available to assist the above noted persons in the investigation.

- d. The identity of individuals involved in an investigation, including the identity of an individual alleging wrongdoing and the identity of an individual alleged to have committed wrongdoing, will be protected to the fullest extent possible.

All Members' staff aware of or participating in an investigation of wrongdoing shall treat all information received confidentially. All reasonable efforts will be made to maintain confidentiality. Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know and such disclosures shall be restricted to what must be disclosed to ensure a thorough, effective and complete investigation or as otherwise required by law.

Members' staff who improperly breach confidentiality will be subject to disciplinary action up to and including termination as determined by the Member.

- e. A Member's staff who believes they are the subject of a reprisal following a disclosure of wrongdoing shall notify the Member or the Integrity Commissioner immediately. Allegations of reprisal will be the subject of investigations.
- f. Where the investigation substantiates the allegation of reprisal, the Integrity Commissioner shall report to Council on the results of their investigation including proposed remedial measures to address the reprisal.

3.6. Information Management

- a. Members' staff should be aware of the following types of records that are created or managed in a Member's Office, and must take care to manage this information accordingly:

Constituency Records

- Records that document a Member's relationship with their constituents as an elected representative are considered personal records (e.g. constituent complaints about City service or other property matters). These records belong to the Member, regardless of whether it's the Member or their staff that collected or created the information. Often these records contain personal or sensitive information about constituents.

Political Records

- Records containing political information are likewise the personal records of the Member and generally not subject to the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Political information is found in communications with persons and organizations, including other Members of Council, about matters not specifically related to ward issues.

City Records

- City business records are records considered under MFIPPA as being in the custody or control of the City. If a Member's staff emails City staff about an issue or forwards a constituent's email to City staff for follow-up, then that email becomes a City record. Items on a Committee agenda are also City records.
- b. Members' staff should keep constituency, political and City records separate from each other.
 - c. Members' staff should ensure that contact information obtained from constituents is not stored and reused to communicate further with the constituent without their express written consent.
 - d. Members' staff should restrict access to confidential and sensitive personal information received in the Member of Council's Office to only those who need to see it in order to protect personal information.

3.7. Information Technology

- a. Members' staff are not bound by the City's *Acceptable Use* Policy for City staff. However, Members' staff must abide by requirements to protect and safeguard the integrity and security of the City's computer network and infrastructure.
- b. Members' staff must not download or upload any applications or software on City equipment without seeking the prior approval of the City Clerk's Office so that the City's computer infrastructure is not compromised.
- c. Members' staff must not connect any personal equipment to the City's network.
- d. Occasional personal use of the City's equipment is permitted during business hours provided these are not for personal gain or campaign purposes.
- e. Members' staff access to social media sites are subject to the Member of Council's direction and approval.

3.8. Post Employment Restrictions

3.8.1. Employment Restrictions within the Severance Period⁷

- Upon receipt of a severance, a Member's Staff will be restricted from being rehired by another Member of Council or being hired into the Toronto Public Service for a period equivalent to the length of time the severance was based on;
- A severed Member's staff will be able to work for another Member of Council or to be hired into the Toronto Public Service during the restriction period if they pay back the severance received; and
- A severed Member's staff may defer receipt of their severance for up to three months from the day of termination in order to secure employment with another Member of Council or to continue participation in a Toronto Public Service hiring process.

⁷ As adopted by Council at its meeting on City Council on October 5, 2016, EX17.4 Reviewing Re-Hire Provisions in Members' Staff Contracts.

Appendix A - List of Human Resources Policies applicable to Members' Staff

(list included as part of Members' Staff Employment Contracts and may be updated from time to time)

Absence from Work

- Bereavement Leave
- Care for Ill Dependents
- Child Related Crime Leave
- Childcare and Eldercare Leave
- Citizenship Court
- Critically Ill Child Care Leave
- Designated Holidays and Floating Holidays
- Family Caregiver Leave
- Family Medical Leave
- Jury Duty/Witness Service
- Leave without Pay
- Military Service
- Parental Leave
- Pregnancy Leave
- Seeking Election or Appointment to Political Office (see attached excerpt Chapter 192-26, of the Toronto Municipal Code)
- Vacation
 - Vacation - Vacation Implementation Guidelines
 - Vacation Carry-over
- Voluntary Leave of Absence

Employee Development

- Tuition Assistance Reimbursement

Employment Equity, Human Rights and Accommodation

- Accommodation
 - Accommodation – Accommodation Procedures
 - Accommodation – Guidelines for Accommodating Creed
 - Accommodation – Guidelines for Accommodating Disabilities
 - Accommodation – Guidelines for Accommodating Family Status
 - Accommodation – Guidelines for Accommodating Gender Identity and Gender Expression

- Accommodation – Guidelines for Accommodating Pregnancy and Breastfeeding
- Employment Accommodation Policy – Guidelines for Human Resources Staff and Managers
- Employment Equity Policy
- Ceremonial Burning of Indigenous Medicines (Smudging)
- Corporate Accessibility Policy
- Hate Activity
 - Hate Activity – Hate Activity Procedures
- Human Rights and Anti-Harassment/Discrimination

Health and Safety

- Air Quality – Industrial-Type Environments
- Asbestos Management
- Bed Bugs
- Bicycle Safety
- Cold Stress
 - Cold Stress – Guidelines
- Confined Space
 - Confined Space – Guidelines
- Corporate Occupational Health and Safety Policy
- COVID-19: Vaccination Policy
- Critical Injury Investigation and Reporting
- Designated Substances
- Dispute Resolution Process
- Domestic/Intimate Partner Violence Policy
 - Domestic/Intimate Partner Violence Policy – Domestic/Intimate Partner Violence Guidelines
- Emergency Eyewash and Shower Equipment Policy
- Fire and Evacuation
- First Aid/Cardiopulmonary Resuscitation (CPR)
- Guidelines for Use of Employees' Personal Appliances in City Workplaces
- Hazard Reporting Guidelines
- Hazard Reporting Procedure
- Heat Stress
 - Heat Stress – Guidelines
- Indoor Air Quality (IAQ) Policy for Office Environments
 - Renovation Projects Guidelines
- Infectious Disease/Infectious Agent Policy
 - Infectious Disease/Agent Program Guidelines
- Investigation and Reporting of Work-Related Injuries and Incidents

- JHSC Recommendation Guidelines
- JHSC Workplace Inspections
- JHSC/H&S Rep Engagement during Moves, Staff Relocations and Major Renovations
- Lockdown Procedures
- Lockout/Tagout
 - Lockout/Tagout – Program Guidelines
- Managing Health and Safety Aspects of Contracts for Services
- Mould Management
- Musculoskeletal Disorder (MSD) Prevention
- Orientation Training
 - Orientation Training – Program Standards
- Policy Development & Implementation
- Psychological Health & Safety Policy
- Purchasing Policy
- Renovation Projects Guidelines
- Respiratory Protection
- Scented Products Guidelines
- Slips, Trips and Falls Prevention Policy
- Substance Abuse Policy
- Sun Protection
 - Sun Protection – Guidelines
- Supervisory Competency
- Traffic Control
- West Nile Virus
- Work Refusal
- Working Alone Safely
- Workplace Hazardous Materials Information Systems (WHMIS)
- Workplace Violence See also
 - Workplace Violence – Guidelines

Pay and Benefits

- Lieu Time Policy for Non-Union Employees
- Mileage (Reimbursement for use of personal vehicles)
- Short Term Disability Plan for Management and Non-Union Employees

Staffing

- Electronic Monitoring
- Employment of Relatives
 - Employment of Relatives – Appendix 1 – Sample Questions and Answers

- Employment of Relatives – Guidelines for Hiring Temporary Employees
- Disconnecting from Work Policy
- Remote Work Policy – Hybrid Work, as applicable

Note: Details of the above specific policies are available on the City's Internet, under People & Equity policies. Above policies are subject to change from time to time.

Appendix B - Member of Council Letter of Reference Policy⁸

1. For Members of Council providing letters of reference in any context in their capacity as Members of Council, unless the circumstances clearly indicate otherwise:
 - 1.1. A Member of Council shall not provide references where the only basis for doing so is to use the influence of your office or to help someone you know merely as a constituent, friend or relative.
 - 1.2. A Member of Council should confine the provision of references to situations where you have relevant personal experience with the candidate.
2. For Members of Council providing references for those applying for employment with the City of Toronto or appointment to a City agency, board or commission, or any other position or office with the City:
 - 2.1. A Member of Council shall not provide a reference in support of an applicant for employment with the City of Toronto or appointment to a City agency, board or commission, or any other position or office with the City of Toronto, unless that Member of Council has had an employment or other relevant relationship (such as that of teacher or volunteer group supervisor) with the person requesting the reference.
 - 2.2. Even where there is such a relevant relationship, a Member of Council shall not provide a reference for any person who is a relative of the Member of Council or whose only relevant relationship with the Member of Council has been as a member of the public service of the City of Toronto or a City of Toronto agency, board or commission (with the exception of a Member's own staff).
 - 2.3. In the case of City of Toronto agencies, boards and commissions (and any other situations in which Members of Council participate as decision-makers in a City of Toronto hiring or appointment process), no participating Member of Council shall act as a reference for a candidate for appointment or hiring, and, where a participating Member of Council would otherwise be eligible to act as a reference, the Member of Council shall declare that fact to the appointing authority.
 - 2.4. A Member of Council can send (without comment) letters of inquiry about possible positions with the City of Toronto to the relevant hiring authority.

⁸ As adopted by Council at its meeting on July 25, 26 and 27, 2006, Policy and Finance Report 5, Clause 17a "Recommendations on Members of Council providing Letters of Reference"

SEEKING ELECTION OR APPOINTMENT TO POLITICAL OFFICE EXCERPT FROM THE TORONTO PUBLIC SERVICE BY-LAW

[Municipal Code Chapter 192, Article V, Clause 192-26, December 31, 2015]

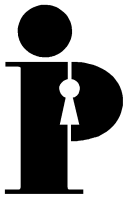
City or Agency employees may seek election or appointment to political office, subject to the requirements set out below:

- A. A City or Agency employee is eligible to be a candidate for and to be elected as a member of Toronto City Council, subject to the following rules:
 - 1. As required by the *Municipal Elections Act, 1996*, the employee must take an unpaid leave of absence to become a candidate for Toronto City Council.
 - 2. The leave will begin on the day the employee files his or her nomination papers and will end on voting day.
 - 3. The employee must provide written notice, in advance, of his or her intentions to take unpaid leave pursuant to City or Agency procedures.
 - 4. The employee is entitled to be paid out any vacation pay or overtime pay owing during the period of the unpaid leave of absence.
 - 5. If the City or Agency employee who takes a leave of absence is not elected, the leave will not be counted in determining the length of his or her service for any purpose and the service before and after the leave shall be deemed to be continuous for all purposes.
- B. A City or Agency employee is eligible to seek appointment to and be appointed as a member of Toronto City Council subject to the following rules:
 - 1. The employee must take an unpaid leave of absence.
 - 2. The leave will begin on the day the employee files his or her declaration of qualification and consent papers with the City Clerk and will end when City Council determines who will be appointed.
 - 3. The employee must provide written notice, as soon as reasonably possible, of his or her intentions to take unpaid leave to seek appointment pursuant to City or Agency procedures.
 - 4. If the City or Agency employee is elected or appointed to Toronto City Council, he or she will be deemed to have resigned from employment with the City or Agency immediately before making the declaration of office referred to in section 186 of the *City of Toronto Act, 2006*.
- C. A City or Agency employee is eligible to be a candidate for and to be elected as a member of any municipal council or school board or seek appointment to and to

be appointed as a member of any municipal council or school board subject to the following rules:

1. To become a candidate or seek appointment, a City or Agency employee may take an unpaid leave of absence.
 2. If the employee intends to take unpaid leave, he or she must provide written notice to request an unpaid leave pursuant to City or Agency procedures.
 3. If a City or Agency employee is elected or appointed to another municipal council or school board, the employee is not required to resign, but is subject to the Conflict of Interest policy, other applicable employment policies and performance expectations.
- D. A City or Agency employee is eligible to be a candidate for and to be elected as a member of Provincial legislature or Federal parliament subject to the following rules:
1. To become a candidate, a City or Agency employee must take an unpaid leave of absence and provide written notice to request an unpaid leave pursuant to City or Agency procedures.
 2. If a City or Agency employee is elected to provincial or federal office, they shall be deemed to have resigned from employment with the City or Agency.

TAB 7



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1307

Appeal MA-990240-1

City of Toronto



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of all records, including handwritten notes, formal reports and notes of any conversations or discussions, in hard copy, electronic or any other form, of any staff or consultants respecting the job descriptions for Council Staff Members - Executive Assistant, Constituency Assistant and Councillor's Assistant.

The City identified 295 pages of responsive records, consisting of e-mails, job descriptions, correspondence, memoranda, handwritten notes, briefing notes, agreements and various other related documents, and denied access to them in their entirety claiming that they fell outside the scope of the Act pursuant to sections 52(3)2 and 3 of the Act.

The requester (now the appellant) appealed the City's decision.

During mediation, the City disclosed 110 pages of the records to the appellant that, according to the City, were either public records or records to which the appellant already had access. Consequently, 185 pages of records remain at issue in this appeal, consisting of e-mails, job descriptions, draft job descriptions, internal correspondence, memoranda, handwritten notes, briefing notes and agreements.

I sent a Notice of Inquiry initially to the City. After reviewing the representations provided by the City, I sent the Notice of Inquiry to the appellant, together with the non-confidential portions of the City's representations. The appellant submitted representations. I decided to provide the City with an opportunity to reply to some issues raised by the appellant in her representations, and sent the City a Supplementary Notice of Inquiry, together with the appellant's representations in their entirety. After reviewing the City's reply representations, I sent a Supplementary Notice and the City's non-confidential representations to the appellant, who provided further representations in response. Finally, I provided the City with an opportunity to reply.

DISCUSSION:

JURISDICTION

The City claims that the records fall within the scope of sections 52(3)2 and 3, and therefore are outside the jurisdiction of the Act.

Sections 52(3)2 and 3 and 52(4) read as follows:

- (3) Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
 2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining

agent or party to a proceeding or an anticipated proceeding.

3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

(4) This Act applies to the following records:

1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

Section 52(3) is record-specific and fact-specific. If this section applies to a specific record in the circumstances of a particular appeal, and none of the exceptions listed in section 52(4) is present, then the section 4(1) right of access does not apply to the records.

In order for the records to fall within the scope of paragraph 2 of section 52(3) of the Act, the City must establish that:

1. the records were collected, prepared, maintained or used by the City or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the City; **and**
3. these negotiations or anticipated negotiations took place or will take place between the City and a person, bargaining agent or party to a proceeding or anticipated proceeding.

[See Orders M-861 and PO-1648]

To qualify under section 52(3)3, the City must establish that:

1. the records were collected, prepared, maintained or used by the City or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; **and**
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the City has an interest.

[Order P-1242]

Requirement one - sections 52(3)2 and 3

The City submits that the records were collected, prepared, maintained and used by Human Resources staff, the Executive Director and/or committees in relation to the review and evaluation of job descriptions, salary levels, pensions, severance pay and other conditions of employment for Council staff. The appellant agrees with the City on this point.

I concur, and find that the first requirement of sections 52(3)2 and 3 has been established.

Requirement two - section 52(3)2

As far as the second requirement of section 52(3)2 is concerned, the City submits:

... that this collection, preparation, maintenance and usage of the records is in relation to negotiations and anticipated negotiations between the City and Council staff members and their representatives.

...

In the circumstances of this appeal, as part of the overall labour relations process, the Executive Director and/or Human Resources staff met with Council staff to obtain their views and input with respect to the City's review of their job descriptions, salaries and other conditions of employment. The records at issue reflect these 'negotiations' between the City and Council staff.

The City also submits that until City Council adopts recommended job descriptions and other conditions of employment, current and future meetings and discussions about these matters constitute ongoing negotiations.

As stated above, the implementation of revised job descriptions and salary scales will collectively affect all Council staff. There is a reasonable expectation that this may impact

on the City's obligations under collective agreements that apply to the Council staff and further negotiations may therefore take place.

In response, the appellant submits:

The process of reviewing existing job descriptions, and drafting revised job descriptions was one of meetings and communications between human resources staff and Council staff (Executive Assistants) in order to collect information to assist with the revision.

It did not involve 'negotiations' between the City and Council staff. The City met with Council staff to obtain their input relating to the revised job descriptions; no negotiations - that is, 'confer with others in order to reach a compromise or agreement' - occurred. No compromise or agreement was sought by the City, nor offered by the Council staff ...

The process of forwarding the recommendations pertaining to the job descriptions to Committee is for deputations and consideration, and on to Council for approval or the Committee's recommendations; no negotiations occur at any level.

The Management Association is not recognised by Council as an official negotiating body on behalf of bargaining unit excluded, i.e. management employees. It does not have the mandate to negotiate with the City, as Council has officially refused to recognise it as a legitimate representative of management staff (ie. Executive Assistants). Therefore, the second criterion has not been met.

In reply to the appellant's representations on this issue, the City submits:

Some Council staff are members of the Canadian Union of Public Employees (CUPE) Local 79. The implementation of revised job descriptions and salary scales will collectively affect all Council staff and there is a reasonable expectation that this will impact on the City's obligations under the collective agreement. As further discussions take place, and if no agreement on the terms and conditions of employment is reached with Council staff, it is very likely that the union will get involved on behalf of the unionized employees and further negotiations will take place.

...

Notwithstanding that the appellant herself is not part of a union, as stated above, there are Council staff who belong to CUPE Local 79. Whatever terms and conditions are negotiated with the union with respect to the job descriptions etc. will affect the terms and conditions of employment for all Council staff not just union members. Similarly, a grievance filed by a union member will affect the status of all Council staff regardless of their specific positions.

In such circumstances, whether or not the City recognizes the Management Association as a bargaining agent for its membership has no bearing on the City's position that it is engaged in 'negotiations' or 'anticipated negotiations' as outlined above.

In response to these reply representations the appellant submits:

The Executive and Constituency Assistants in Councillors' offices are not part of any organisation which has status with the City. In November 1998 Toronto City Council decided not to recognise the City of Toronto Administrative, Professional, Supervisory Association Inc. (COTAPSAI) as representative of management, supervisory, professional or excluded staff of the City. The Councillors' Executive and Constituency Assistants are included in this category. A copy of a report to City Council from the City Solicitor, dated November 18, 1998, which was on a public agenda, is attached.

Respecting the City's reference to some Council staff being members of CUPE Local 79, yes a few of the Councillors' offices Administrative Assistants (AAs), are members of CUPE Local 79. However, my request does not include anything to do with AAs ...

With no organisation such as COTAPSAI to represent Executive Assistants, there are no 'negotiations', anticipated or otherwise, therefore the City's reliance on 52(3)2 is invalid.

Also, the status of the Administrative Assistants' and their job descriptions, when this work happens, will have nothing to do with the Executive Assistants' position descriptions, therefore, there is no impact of the status of the few CUPE Local 79 members on my request.

In its final submissions, the City states:

... the job evaluation of each Council staff position is not being conducted totally independent of the other positions. What is finally agreed upon with respect to one position, unionized or not, will have some bearing on what is agreed upon with respect to the other position(s).

The Director of Council and Support Services, Clerk's Department has advised that any settlements reached with relevant unions will have some impact on the final terms and conditions of employment related to non-union, excluded positions.

I do not accept the City's position on this issue. As the appellant states, and the City does not dispute, there is no collective relationship between the City and the Executive Assistants. In fact, the association to which the appellant belongs is not recognized by the City as a bargaining agent. In my view, the fact that the job evaluation process involving all Councillors' staff positions includes some positions that are unionized (i.e. some Administrative Assistants) has no bearing on issues involving the Executive Assistants who have no collective relationship with the City. The appellant's request deals exclusively with records involving the Executive Assistant position, which appear to be separate and distinct from records involving the

Administrative Assistant position. I accept the appellant's submission that Council asked for consultation on the job descriptions relating to the Executive Assistants, but that this process did not and could not involve 'negotiations' as that term is used in section 52(3)2.

Therefore, I find that the collection, preparation, maintenance or usage of the records by the City was not in relation to negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the City, and the second requirement of section 52(3)2 has not been established.

Requirement two - section 52(3)3

The City submits:

As part of the evaluation and review process, Human Resources staff and/or the Executive Director met with or communicated with Council staff to solicit their views and to apprise them of developments. Human Resources staff also met to discuss and/or communicated with each other on this matter. They also provided updates directly to the Executive Director who in turn reported to the Personnel Sub-committee and the Policy and Finance Committee.

...

The City submits, therefore, that the City has collected, prepared, maintained and used the records at issue in relation to meetings, consultations, discussions or communications.

The appellant's representations do not specifically address this particular issue. However, as noted above, in her representations respecting section 52(3)2, the appellant acknowledges that the 'process of reviewing existing job descriptions, and drafting revised job descriptions was one of meetings and communications between human resources staff and Council staff'.

Therefore, based on the evidence provided to me by both parties and the contents of the records themselves, I find that the collection, preparation, maintenance or usage of the records by the City were clearly in relation to meetings, consultations, discussions and communications and the second requirement of section 52(3)3 has been established.

Requirement three - section 52(3)3

Section 52(3)3, requires that the activities listed in this section must be 'about labour relations or employment-related matters'.

The City submits that 'information relating to employees' conditions of employment such as salaries, pay-equity plans, pensions benefits, job descriptions and evaluations is clearly employment-related information.'

The appellant does not dispute this claim in any of her representations.

I accept the City's position on this issue, and find that the meetings, consultations, discussions and communications held by the City relating to the review of existing job descriptions pertain to an employment-related matter and the first part of the third requirement has been met.

The only remaining issue is whether this is an employment-related matter in which the City 'has an interest'.

In this regard, the City submits:

It is the City's position that a failure to adequately evaluate the job positions, salaries etc. of Council staff in accordance with its legal obligations under the various collective agreements could reasonably lead to Council staff filing a grievance or taking legal action.

...

The City will be collecting, maintaining and using the records at issue in any grievance proceedings or other proceedings that may be initiated against it as a result of the final recommendations on the conditions of employment for Council staff.

On the other hand, the appellant submits:

... The Executive Assistants are not in any way permitted to grieve; there is no process or body that can provide this opportunity. The Executive Assistants (and Constituency Assistants) are management and can belong to the Management Association, however, as Council has decided not to recognise the Association, we are not, accordingly, subject to any collective agreements and grievance processes.

When I sent the appellant's representations to the City for reply, I specifically asked the City to address the issues of whether the appellant has a right to grieve a decision made by the City with respect to the job description, and if not, whether this has any bearing on the City's position that it "has an interest" as the term is used in section 52(3)3 and applied in previous orders of this Office.

The City responded to these issues and the appellant's representations as follows:

As part of the Management Association, the appellant does not have the right to grieve a decision made by the City with respect to Council staff job positions. However, if the appellant is dissatisfied with the terms and conditions of employment that are eventually agreed upon, there are other legal remedies available to her.

...

As previously stated, there are Council staff who belong to CUPE Local 79. A grievance filed by a union member with respect to their job descriptions, salary etc. would collectively affect all other Council staff members since they must all be employed under the same terms and conditions.

...

In summary, the fact the appellant does not have the right to grieve does not affect the City's position that it has an interest in an employment-related matter ...

According to the appellant:

The only other legal remedies that I might have available to me would be the same as any other employee in Ontario subject to its labour and employment laws. I would have to hire a lawyer and use those laws to seek remedy. There appears to be no relevance of my general employment right to this FOI request.

Should a member of the Union (presumably working in a Councillor's office) file a grievance in respect of his/her job descriptions, the City would, of course, have 'an interest' and deal with it in the normal way. To say that my request for information on my job description and its process, would have any impact on an employee's grievance about their job description and the City's 'interest', has the same relevance as it would if an employee working in another office of the City - none.

The Executive Assistants have made many attempts to have our new position description implemented, however the City has insisted that doing so could have an impact on, first the negotiations last fall with Local 416 and presently with Local 79. Both of these Unions have stated to us and the City representatives that whatever the City does with us, at whatever time, has no bearing on their discussions or negotiations with the City.

...

Throwing anything to do with Administrative Assistants and the few CUPE 79 members, into this equation is a red herring; these are separate jobs, the same as in many offices where union, excluded and management work side-by-side.

In Order P-1242, I stated the following regarding the meaning of the term "has an interest":

Taken together, these [previously discussed] authorities support the position that an "interest" is more than mere curiosity or concern. An "interest" must be a legal interest in the sense that the matter in which the Ministry has an interest must have the capacity to affect the Ministry's legal rights or obligations.

A number of orders have considered the application of section 52(3)3 (and its provincial equivalent in section 65(6)3) in circumstances where there is no reasonable prospect of the institution 's "legal interest" being engaged (see, for example, Orders P-1575, P-1586, M-1128 and M-1161). Specifically, this line of orders has held that an institution must establish an interest, in the sense that the matter has the capacity to affect its legal rights or obligations, and that there must be a reasonable prospect that this interest will be engaged. The passage of time, inactivity by the parties, loss of forum or conclusion of a matter have all been considered in arriving at a determination of whether an institution has the requisite interest. Orders P-1618, P-1627 and PO-1658, all of which applied this reasoning, were the subject of judicial review by the Divisional Court and were upheld in Ontario (Solicitor General and Minister of Correctional Services) v.

Ontario (Information and Privacy Commissioner) (March 21, 2000), Toronto Docs. 681/98, 698/98, 209/99.

In my discussion under section 52(3)2, I found that there is no collective relationship between the City and the Executive Assistants, and that linking the job evaluation process involving the unionized Administrative Assistants to that of the non-unionized Executive Assistants was not supportable. Accordingly, I find that any grievance that may be filed by the union has no bearing on records relating to the Executive Assistants for the purpose of section 52(3)3.

The City acknowledges that the Executive Assistants have no right to file a grievance. Although, as the appellant states, other legal remedies may be available to employees regardless of whether they are members of a bargaining unit, the appellant has not initiated any legal action and the City has not provided evidence sufficient to establish that one is pending or reasonably foreseeable. Accordingly, in my view, there is no reasonable prospect that any legal interest with the capacity to affect the City's legal rights or obligations is present in the circumstances of this appeal, and I find that the City has not demonstrated that it has sufficient legal interest in the records to bring them within the ambit of section 52(3)3 of the Act.

Therefore, I find that requirement three of section 52(3)3 also does not apply, and the records are subject to the provisions of the Act.

ORDER:

1. I order the City to issue an access decision to the requester concerning the records, in accordance with the provisions of sections 19, 21 and 22 of the Act, treating the date of this order as the date of the request.
2. I order the City to provide me with a copy of the decision letter referred to in Provision 1 by sending it to my attention c/o Information and Privacy Commissioner/ Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original signed by: _____

Tom Mitchinson
Assistant Commissioner

June 7, 2000