



**Canadian Union of
Public Employees**

34 St. Patrick Street
Toronto, Ontario
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Executive Committee:

President:
Tim Maguire

First Vice-President:
Nancy Murphy

*Vice-President - Chief
Steward:*
David Kidd

Vice-President Equity:
Ainsworth Hamilton

Recording Secretary:
Sofia Reno

Membership Secretary:
Linda Rose

Treasurer:
Lily Chang

**Assigned CUPE
Representatives:**

Derek Lue
Janet McIvor
Sharon Rodgers
Don Styles
Charles VanVliet

Bargaining Units:

Bridgepoint Hospital
- Nurses & Paramedical
Units
- Service Units

City of Toronto
- Full-Time
- Long-Term Care Homes
& Services Part-Time
- Recreation Workers
Part-Time
- Unit B Part-Time

*Toronto Community
Housing Corporation*

**SERVING OUR
MEMBERS
SINCE
1942**

DELIVERED BY E-MAIL AND REGULAR MAIL

May 27, 2014

Deputy Mayor Norm Kelly, Chair
And Members of the Executive Committee
Clerk's Office
10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Deputy Mayor and Members of the Executive Committee:

**RE: EX42.3 – Strengthening Public Service Governance –
A Public Service By-Law for Toronto (Ward All)**

On behalf of the approximately 20,000 CUPE Local 79 members who work at the City of Toronto, Bridgepoint Hospital and Toronto Community Housing Corporation, I'm here today to discuss the City of Toronto Staff Report 'Strengthening Public Service Governance – Public Service By-law for Toronto'.

I wish to start by first thanking the City Manager for providing Local 79 the opportunity to review the proposed by-law and the committee for this opportunity to provide our input and express our concerns around elements of the proposed by-law.

Residents need to have faith in their local governments. People deserve to know that decision-making by City staff and the politicians who direct those staff is conducted in a manner that is beyond reproach. Clear guidelines of these roles and responsibilities are indispensable to City staff.

For these reasons, CUPE Local 79 supports the goals that the proposed by-law seeks to achieve.

In particular, we welcome the proposed by-law's provisions that would strengthen protections for staff from reprisals for the reporting of wrongdoing.

Many of the concerns that Local 79 has identified are of a minor and technical nature, and we look forward to working with the City Manager and his staff to determine the best method to address these within the proposed by-law.

In one particular matter, however, CUPE Local 79 wishes to raise our concerns with the City Manager and you, the Executive Committee.

As it is currently written, the proposed by-law's provisions with respect to political activity are unnecessarily broad to the point of severely constraining our members' constitutionally-protected rights to political speech and political activity.

Before I continue, we do not dispute the principle of neutrality within the civil service. Having said this, the principle of neutrality is a blunt instrument and should not impinge upon the constitutionally-protected rights of City workers to be engaged and involved in politics.

CUPE Local 79 has sought and received a legal opinion regarding the proposed bylaw's impact on our members. This opinion reinforces our concerns regarding this component of the proposed bylaw, which I will outline below.

As it is currently structured, the political speech and political activity of any employee would be prohibited if the employee:

- enforces and/or prosecutes City by-laws or Provincial statutes;
- provides governance and procedural advice to City Council, Agencies, Boards and their Committees; and/or
- works in the operation of the Office of the Mayor and Councillors' Offices.

Employees falling within these categories would be prohibited from contributing financially to a candidate for Toronto Municipal office, or supporting or opposing a candidate in a Toronto municipal election.

A substantial number of CUPE Local 79 members are charged with enforcement or prosecution of City by-laws and Provincial statutes. A smaller percentage of CUPE Local 79 members provide governance and procedural advice.

Should the proposed by-law be adopted, 'as is,' the Charter-protected rights of a significant number of CUPE Local 79 members would be severely impaired out of all proportion to their roles within the City government.

Unless changed, many City employees, including CUPE Local 79 members will see their Charter rights infringed upon simply because they have an employment relationship with the City.

For more information and clarification of CUPE Local 79's objection to the proposed by-law's provisions with respect to political activity, I have attached a copy of our letter to the City Manager for your review.

On behalf of the members of CUPE Local 79, I urge this Committee to make the necessary changes to ensure the Charter-protected rights of staff are not infringed upon. CUPE Local 79 would be happy to provide further assistance to the City Manager and his staff to ensure confidence in governance structures, while respecting the basic rights of staff to be engaged and involved in the political process.

Yours truly,



Tim Maguire
President

Encl



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May 22, 2014

Joseph Pennachetti
City Manager
Toronto City Hall
11th fl. E., 100 Queen St. W.
Toronto, ON M5H 2N2

Dear Mr. Pennachetti:

On behalf of the members of CUPE Local 79, I have now had an opportunity to review the Staff Report titled "Strengthening Public Service Governance - Public Service By-law for Toronto".

CUPE Local 79 has a number of concerns with the Report. Most are of a minor and technical nature and will be identified in specific detail as the process unfolds. However, aspects of the Report touching upon political activity are philosophically objectionable and in Local 79's opinion constitute unlawful infringements on the constitutionally protected right to political speech and political activity of the Local's members.

The right to engage in political speech and political activity, of course, does not obviate the principle of civil service neutrality. However, limitations on political speech and political activity to secure neutrality are subject to a principle of proportionality. It is this absence of proportionality which Local 79 finds unacceptable.

As currently structured, the Report severely restricts the political speech and political activity of employees who enforce and/or prosecute City by-laws or Provincial statutes and employees who routinely provide governance and procedural advice to City Council, Agency Boards and their Committees and in the operation of the Office of the Mayor and Councillors' Offices. Employees falling within these two (2) categories would be prohibited from contributing financially to a candidate for Toronto municipal office or supporting or opposing a candidate in a Toronto municipal election.

As the Report's author is well aware, a very sizable percentage of Local 79's membership is charged with the enforcement or prosecution of City by-laws and Provincial statutes. A smaller percentage of the Local's membership provides governance and procedural advice. Adoption by Council of the Report on political activity would severely impair and abridge the Charter-protected rights of a substantial number of Local 79 members.

The foregoing should not be construed as suggesting that in individual particularized circumstances it might not be appropriate to limit an employee's speech and activity. There may be instances where the nexus between employment duties and a candidate's position on a particular subject might compromise the principle of neutrality. But these instances are likely to be few in number and do not justify the imposition of general rules utterly devoid of proportionality.

The rules, as configured by the Report's author would effectively preclude, for example, an Inspector of Combustible Gas from contributing financially to the campaign of a single issue fringe candidate whose candidacy is focused exclusively on off-leash areas in City parks. There is clearly no relationship between the Inspector's job functions and the candidate's politics and no discernible reason derivative of the principle of neutrality for prohibiting the contribution. The only possible rationale for prohibiting the contribution is the mere existence of an employment relationship.

In the absence of proportionality, many employees will see their Charter entitlements infringed upon and impaired simply because of the existence of an employment relationship with the City.

Local 79 will not countenance an unnecessary attack on the rights of our members to engage in political speech and political activity in municipal elections.

The Report should be revised.

Yours truly,

A handwritten signature in black ink, appearing to read 'Tim Maguire', with a large, stylized flourish at the end.

Tim Maguire
President