

Form A-2

File No.1998-22-R

LABOUR RELATIONS ACT, 1995

RESPONSE TO APPLICATION FOR CERTIFICATION

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

CANADIAN UNION OF PUBLIC EMPLOYEES

Applicant,

- and -

UNIVERSITY OF WATERLOO

Responding Party.

The responding party states in response to the application:

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

University of Waterloo

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

**Michelle Hollis
Acting Chief Human Resource Officer
200 University Avenue West
Waterloo, ON N2L 3G1
Phone: 519.888.4567 ext. 41127
Fax: 519.746.3242
Email: mhollis@uwaterloo.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 (5) days leading up to the date set for the vote. Your contact

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person should be an individual with the authority to enter into agreements on your behalf.):

Same as 1(b) above.

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

- **Counsel: Kathryn Bird**
Ogletree Deakins International LLP
220 Bay Street
Toronto, ON M5J 2W4
Phone: 416.637.9062
Email: Kathryn.bird@ogletree.com
Fax: 1-844-427-7301

Jordan Simon
Ogletree Deakins International LLP
220 Bay Street
Toronto, ON M5J 2W4
Phone: 416.637.9071
Email: jordon.simon@ogletree.com
Fax: 1-844-427-7301

Assistant: Rachel Drumm

Ogletree Deakins International LLP
220 Bay Street
Toronto, ON M5J 2W4
Phone: 416.637.9082
Email: rachel.drumm@ogletree.com
Fax: 1-844-427-7301

- **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

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weekends, statutory holidays, or any other day that the Board is closed.]

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

Post-secondary education institution

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 322 individuals in that bargaining unit.

Please refer to question 5 below.

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*):

"All employees appointed as special lecturers by the University of Waterloo in the Province of Ontario engaged in instructing, teaching, and lecturing pursuant to appointments of less than one year in duration, save and except Chairs, including Associate Chairs, persons above the rank of Chair, and persons primarily employed with the University of Waterloo in a position other than as a special lecturer but who may be appointed as a special lecturer from time to time in addition to their primary position."

and says that there are 267 individuals in this bargaining unit.

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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:

The Applicant has proposed a bargaining unit which includes all "University of Waterloo Sessional Faculty". The University of Waterloo does not employ any individuals with a title of "Sessional Faculty". Accordingly, it is unclear which group of employees the Union seeks to represent.

Given the inaccurate framing of the bargaining unit by the Applicant, it is difficult for the University to properly complete its Schedule "A" or properly identify which employees would be properly entitled to vote in this application. Accordingly, it is the University's position that no vote should take place without first understanding the bargaining unit that the Union seeks to certify. For the purposes of this response, and the attached Schedule "A", the University has made best efforts to identify who the Union believes are "Sessional Faculty" and who it intends to represent as part of the bargaining unit.

It should also be noted that given the responsibilities of the employees included in the University's Schedule "A", it would be very difficult to identify who was "not at work" on the day the application was filed. The employees identified are course instructors at the University. Their responsibilities include, but are not limited to, preparing and administering lectures, grading, and meeting with students. With the exception of lectures, the employees have the flexibility to complete these tasks at times that suit their own schedules. As such, without connecting with each individual included in the Schedule "A", it would be impossible to determine if they were engaged in work activities and therefore "at work" on the day of filing.

Without prejudice to the position of the University articulated above that it is unclear which group of employees the Union seeks to represent, the University would also seek to exclude any persons from the bargaining unit who are primarily employed in other capacities at the University. Including employees primarily employed in other capacities within any

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bargaining unit represented by the Applicant would cause significant labour relations mischief, including confusion amongst employees as to who represents them (i.e. FAUW, UWSA, or CUPE) and as to the terms and conditions of their employment.

Moreover, and for additional clarity, the University has indicated a "challenge" in its Schedule "A" list of employees for each of the employees who would be excluded from the bargaining unit proposed by the University, due to such employees being primarily employed in a position as other than special lecturer.

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

~~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

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affected by this application that was not identified by the applicant in paragraph 7 of the application.

Faculty Association of the University of Waterloo ("FAUW")
Mary Hardy, President
Phone: 519.888.4567 ext. 45510
Email: mary.hardy@uwaterloo.ca

University of Waterloo Staff Association ("UWSA")
Agata Jagielska, President
Phone: 519.888.4567 ext. 43618
Email: agata.jagielska@uwaterloo.ca

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

FAUW is not a trade union under the *Labour Relations Act*, nor has it been certified or voluntarily recognized by the University. FAUW was founded in 1957. FAUW represents certain professors and lecturers at the University in a manner similar to the representation provided to employees by trade unions. As the University does not utilize a formal job category titled "Sessional Faculty", and employs different job classifications to instruct, teach, and/or lecture, the Applicant's proposed bargaining potentially overlaps with the group of employees represented by FAUW. Moreover, employees who are primarily engaged in other roles represented by FAUW may also, from time to time, engage in "sessional" lecturing.

UWSA is not a trade union under the *Labour Relations Act*, nor has it been certified or voluntarily recognized by the University. The UWSA became a not-for-profit corporation in the province of Ontario on July 30, 1973. UWSA represents many University employee categories in their relations with the University in a manner similar to the representation provided to employees by trade unions. It is unclear if the Applicant's proposed bargaining unit (which as noted above, relies on a job category that is not formally recognized at the University) would include persons represented by UWSA. Moreover, employees who are primarily engaged in roles represented by UWSA may, from time to time, engage in "sessional" lecturing.

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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 forward a copy of the agreement to the Board.

As noted above, FAUW and UWSA are not unions under the Act and, accordingly, have not entered into "collective agreements" with the University which are subject to the Act. However, both FAUW and UWSA negotiate "Memorandum of Agreement" with the University, and in both cases these Memorandum purport to govern terms and conditions of certain University employees who may fall within the Applicant's proposed unit.

The FAUW Memorandum was adopted on May 1, 1998. The FAUW Memorandum automatically renews itself for successive one-year periods. A copy is attached as Addendum "A".

The UWSA Memorandum was signed on October 28, 2021. It came into effect upon approval by the University's Board of Governors on or about October 25, 2022. The Memorandum automatically renews itself for successive one-year periods. A copy is attached as Addendum "B".

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

The University reserves the right to make further representations to the Board as necessary, based on the issues raised herein.

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

12. Should a vote take place 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 take place and the reasons why:

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As described more fully above, a vote should not take place because the job title "Sessional Faculty" is not formally recognized by the University, and it is unclear exactly which group of employees the Applicant seeks to represent. This issue ought to be resolved before a vote takes place to ensure, among other reasons, that the proper University employee constituency is made aware of their right to vote.

If a vote is ordered, the University agrees it ought to take place electronically as proposed by the Applicant. The University also would not object to a 48-hour voting period.

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

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:

14. Do you agree with the location of the poll(s) proposed in the applicant's Form A-1 at paragraph 12?

Yes
 No

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

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

Poll #1: Michelle Hollis or her designate

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

16. Please state the name of the agent you have selected to represent you at the counting of the ballots:

Michelle Hollis or her designate

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DATED December 8, 2022

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

**Signature for the
Responding Party**

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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.

Kristy Davidson, National Representative, Canadian Union of Public Employees kdavidson@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

Mary Hardy, President, Faculty Association of the University of Waterloo mary.hardy@uwaterloo.ca
Name of Organization and name and title of person to whom documents were delivered Address or facsimile number to which documents were delivered

Agata Jagielska, President, University of Waterloo Staff Association agata.jagielsky@uwaterloo.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.]

2. The documents were delivered by email delivery or [x]

hand delivery on December 8, 2022 at 4:51 p.m.
(Date)

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

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

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

NAME: Shirley Gladwell

TITLE: Practice Assistant



SIGNATURE: _____

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.

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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.