



CITY OF KINGSTON  
**INFORMATION REPORT TO COUNCIL**

Report No.: 10-113

---

**TO:** Mayor and Council

**FROM:** Hal Linscott, City Solicitor and Director of Legal Services  
Cynthia Beach, Commissioner of Sustainability and Growth

**DATE OF MEETING:** March 23, 2010

**SUBJECT:** Proposal to Request the Province to Declare All Parallel Transit an Essential Service

---

**EXECUTIVE SUMMARY:**

Council at its meeting of August 4, 2009 deferred and referred the following Municipal Accessibility Advisory Committee resolution to City staff for an appropriate interpretation of the terms used in the Motion i.e. "essential services", and for staff to report back as soon as possible on any other implications to the Corporation that would be the outcome of this resolution.

*WHEREAS the Municipal Accessibility Advisory Committee (MAAC) recommends solutions to deal with the provision of goods and services as defined within the City's Municipal Accessibility Advisory Committee mandate, and*

*WHEREAS the City of Kingston has publicly committed to accessibility for all its citizens; and*

*WHEREAS the City of Kingston operates Kingston Transit buses for its residents; and*

*WHEREAS Kingston Access Services operates buses as a parallel transit to Kingston Transit for disabled residents; and*

*WHEREAS the Access Bus is the only option for transportation for most people with disabilities, and*

*WHEREAS accessibility to parallel transit was denied to citizens during the recent access bus strike;*

*THEREFORE BE IT RESOLVED THAT the Municipal Accessibility Advisory Committee (MAAC) request that City Council approve the following motion, and that a copy of the following motion be forwarded to the Premier Dalton McGuinty, Hon. John Gerretsen, M.P.P. for Kingston and the Islands, Association of Municipalities of Ontario (AMO) and all municipalities with a population of over 50,000, requesting that they also request the Provincial Government to declare all parallel transit an essential service:*

*WHEREAS the Access Bus is the only option for transportation for most people with disabilities, and*

*WHEREAS accessibility to parallel transit was denied to citizens during a recent access bus strike;*

*THEREFORE BE IT RESOLVED THAT City Council request the Provincial Government to declare all parallel transit an essential service.*

City staff has concluded the review requested by Council and provides further information in the body of this report. Staff notes that due to workload issues it has taken longer than originally anticipated to report back to Council; however the current collective agreement between KAS and its employees is in place until March 31, 2012, during which time a strike or lockout is not legally permitted.

**RECOMMENDATION:**

Receive for information

**AUTHORIZING SIGNATURES:**

<b>ORIGINAL SIGNED BY DIRECTOR OF LEGAL SERVICES</b> _____ Hal Linscott, City Solicitor and Director of Legal Services
<b>ORIGINAL SIGNED BY COMMISSIONER</b> _____ Cynthia Beach, Commissioner, Sustainability & Growth
<b>ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER</b> _____ Gerard Hunt, Chief Administrative Officer

**CONSULTATION WITH THE FOLLOWING COMMISSIONERS:**

Cynthia Beach, <i>Sustainability &amp; Growth</i>	√
Terry Willing, <i>Community Development Services</i>	N/R
Denis Leger, <i>Corporate Services</i>	N/R
Jim Keech, President, <i>Utilities Kingston</i>	N/R

*(N/R indicates consultation not required)*

## OPTIONS/DISCUSSION:

Workers in the public sector Ontario fall into three broad categories with respect to collective bargaining:

1. **Those who have the right to strike.** This category includes most municipal workers who perform a vast array of tasks including collecting garbage, clearing snow, maintaining parks and recreational facilities, driving buses, issuing permits, inspecting restaurants and other service providers, testing water quality and operating libraries, daycares and homes for the aged. As in other provinces, Ontario municipal workers are covered by the same law as private sector workers, the Labour Relations Act, 2005, which does not fetter the right of municipal workers to strike and does not make any mention of “essential services”. Teachers also work under a right to strike regime.
2. **Those who do not have the right to strike because the services they provide are considered essential.** Bargaining disputes for these workers that cannot be resolved through negotiation must be referred to binding third party arbitration. Employees who are prohibited from striking include municipal and provincial police and firefighters. Ontario also prohibits strikes in the hospital sector.
3. **Those that have the right to strike as long as certain designated workers who perform essential services continue to work.** Ambulance workers in Ontario fall into this category and can strike as long as an “essential ambulance services agreement” is in place. This agreement sets out the number of ambulance workers required to provide essential services in the event of a work stoppage and those ambulance workers required to provide that service. Issues that cannot be resolved can be referred to the Ontario Labour Relations Board. The essential services regime applies to some provincial workers who under the Crown Employees Collective Bargaining Act are deemed to carry on essential services necessary to enable the employer to prevent any of the following:
  - Danger to life, health and safety;
  - The destruction or serious deterioration of machinery, equipment, or premises;
  - Serious environmental damage; or
  - Disruption to the administration of the courts or of legislative drafting.

The designation model aims to balance the right of public-service unions to strike with need to ensure the provision of essential services. In practice, the negotiation and adjudication of essential services designations and agreements can be extremely time consuming and complex. Overdesignation may have the perverse result of creating longer strikes, as strikes are considered as so benign in the short term that they are allowed to drag on, causing greater problems in the long run for the union, management and the public. Underdesignation may place those who rely on essential services at risk, particularly if there is wide spread non-compliance with the essential services agreement.

### Who Should be Considered Essential

The definition of essential services in Canada is flexible and varies with political, historical and cultural factors. The concept can be defined along a spectrum as follows:

- Narrow definition: the services required to safeguard the public's life, health and safety in the event of a strike;
- Broader definition: services required for the economic well being of individuals;
- Very broad definition: certain services which, if suspended, would create inconveniences perceived as undesirable by the public.

Generally, Ontario relies on interest arbitration to a greater degree than most other Canadian jurisdictions with about 30% of Ontario public sector workers falling under the compulsory arbitration model. Commentaries on essential services in the

academic literature and popular press have argued the scope of essential services coverage in Ontario is both too broad and too narrow.

This debate was illustrated during last summer's City of Toronto 39 day civic workers strike by 30,000 employees, including 850 paramedics – some of the latter who were working under an essential services ambulance agreement. Resolutions before Toronto Council to request the Province to declare ambulance workers an essential service that could not strike as opposed to designated workers, some of whom must work under an essential services agreement, were heavily debated. The Mayor and the majority of Council as well as the Union executive opposed a strike ban for ambulance workers, while some councillors supported a strike ban as did an association of ambulance workers, broke ranks with the union in support of a strike ban. Councillors opposed to a strike ban argued that prohibiting a strike and replacing it with binding arbitration comes with hefty cost implications that would ripple across all cities, towns and regions in Ontario, adding hundreds of millions of dollars to labour contracts and bottom lines. The union executive opposed a strike ban stating that the free collective bargaining process is a very important right and freedom. Proponents of a strike ban for ambulance workers pointed to the risk to human health and argued that the public would be willing to pay more for the guarantees that ambulance workers would always be available to them, even if there are more added costs.

As recently as late February of this year the debate over essential services arose again in Toronto when a Private Member's Bill was introduced into the Provincial Legislature that, if passed, would prohibit a strike or lockout at the Toronto Transit Commission. The proposed legislation would also allow for the prohibition of strikes and lockouts at any other public transit system in the Province, if prescribed by regulation by the Province. The definition of public transit system contained in the Bill appears to be such that if the Bill was passed, the Province by regulation could prohibit a strike or lockout of a parallel transit system. Although the Bill received first reading it would appear that the Bill will not be passed as the Premier has indicated that the Government would not support it unless asked to do so by Toronto and Toronto is opposed. CUPE Ontario President Fred Hahn also opposed prohibiting work stoppages for public transit, noting that in over 98% of cases, collective bargaining leads to a peaceful resolution and a legally binding contract without a strike and that in the majority of cases, employers and employees alike prefer to negotiate their agreements rather than have a settlement imposed upon them by a third party through arbitration.

The International Labour Organization (ILO), a tripartite (government, labour and employer) agency of the United Nations elaborates international labour standards through Conventions and Recommendations. The ILO has developed extensive jurisprudence on what "essentiality" means on how it should and shouldn't be used to restrict the right to strike. Under the ILO's interpretation of freedom of association, the right to strike may be restricted or prohibited in essential services in the strict sense of the term. In particular, the state must establish a clear and imminent threat to the life, personal safety or health of the whole or part of the population. A non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering life, personal safety or health.

Canadian policy makers are faced with frequent calls to expand the scope of essential services legislation and further limit the right to strike for various groups of employees. For example, municipal water supply services are seen as involving a high degree of essentiality, but there are no legislative provisions covering this service. Snow clearing and road maintenance services may have a direct impact on residents' ability to obtain necessities of life or access emergency services, particularly in more remote regions. Services for vulnerable individuals are also increasingly viewed by many as essential. For example, the editors of the Guelph Mercury commenting in 2006 on a possible strike at a non-profit centre providing shelter for abused women, support for victims of sexual assault and other services, argued that the Province should force the Centre to continue operations as an essential service.

Many of those who defend the right to strike do so not because they like strikes but because they do not like the alternatives. Strike substitutes are criticized on the grounds that they weaken the collective bargaining process, lead to excess third party intervention and generally produce inferior collective agreements. There is a widespread perception amongst management in the broader public sector that arbitrated awards are excessive and bear no relation to market realities and that arbitrators are not accountable to the public. For example, a September 2008 C. D. Howe Institute Study argues that designating public

services as “essential” increases the cost of negotiated wage settlements, fuels wage growth across sectors and is not a definitive way of reducing strikes. The Study suggests that policymakers should weigh the cost of essential services legislation against the benefit to public safety of service continuation. Other studies suggest that the overall impact of compulsory arbitration on wage outcomes is uncertain.

Unions often complain that arbitration is inherently conservative and produces excessive delays in achieving collective agreements.

Outlawing strikes does not necessarily prevent strikes from taking place. For example, in a Canadian study of the period between 1964 and 1987 about 3% of negotiations that were carried out under compulsory arbitration ended in a strike, even though strikes in compulsory arbitration are illegal.

The drafters of this Report acknowledge having relied heavily, in some instances verbatim, on a Paper entitled ‘*Essential Services in the new world of work: The Challenge for Public Policy*’, written by Jonathan Eaton, as well as on other publicly available sources of information.

**EXISTING POLICY/BY LAW:**

Not applicable

**NOTICE PROVISIONS:**

Not applicable

**ACCESSIBILITY CONSIDERATIONS:**

As discussed in the Report

**FINANCIAL CONSIDERATIONS:**

As discussed in the Report

**CONTACTS:**

Hal Linscott, Director of Legal Services and City Solicitor	(613) 546-4291 Ext. 1296
Cynthia Beach, Commissioner of Growth and Sustainability	(613) 546-4291 Ext. 1296

**OTHER CITY OF KINGSTON STAFF CONSULTED:**

N/A

**EXHIBITS ATTACHED:**

None