



NOTICE

The Ontario Labour Relations Board began conducting electronic voting in late 2017. At this time, the Board wishes to provide the following Background Paper on Electronic Voting to its community for its information and seeks the community's input on the following:

1. Whether the information ordered to be provided to the Board by the employer should also be given to the union and other parties; and
2. How the Board's forms related to the certification and termination of bargaining rights under the *Labour Relations Act, 1995* could be amended to allow parties to provide brief reasons as to whether the vote should be electronic while, at the same time, ensuring the Board is able to adjudicate the issue without delaying the vote as is contemplated by the *Act*.

The Board will also consider any other questions or submissions which may arise on review of the Background Paper. Written submissions will be accepted until April 12, 2019. Submissions should be directed to the Registrar, Ontario Labour Relations Board, 505 University Ave. 2nd Floor, Toronto, ON M5G 2P1, by fax at 416-326-7531 or in a Word or PDF document attached to an email to WebOLRB@ontario.ca (subject: E-Voting Submissions). Submissions received will be posted on the Board's website for public review.

March 15, 2019.

BACKGROUND PAPER ON ELECTRONIC VOTING

This background paper is intended to provide information to the Ontario Labour Relations Board's community regarding electronic voting: how it works and the Board's processes.

Votes Generally

The Ontario Labour Relations Board is required to conduct votes under the *Labour Relations Act, 1995*, the *Colleges Collective Bargaining Act*, and the *Public Sector Labour Relations Transition Act*. Votes are held in applications for certification and termination of bargaining rights, final offer votes and in some sale of a business and public sector amalgamation cases.

The Board has the authority to hold votes and to determine how, where and when they will be conducted. Historically, in-person votes have been conducted by the Board in workplaces around the Province. Votes take place in a wide variety of circumstances which can require significant travel, multiple vote polls, numerous vote officers and long hours over several days. As part of its Mediation Services, the Board currently employs two full-time vote officers and mediators ("Vote Officers") also conduct votes as required. On rare occasions only, the Board has held mail-in votes but with the development of electronic voting, it is less likely to do so in the future.

E-Votes Specifically

The Board began holding electronic votes in November 2017. From November 2017 to February 2019, the Board held ten electronic votes:

six in certification applications and four final offer votes. In these cases, the votes were either requested by the unions or employers, agreed to by the parties or directed by the Board on its own motion (see last page for case citations).

To date, the Board has used two different providers for electronic voting services: Intelivote (<https://www.intelivote.com/>) and Simply Voting (<https://www.simplyvoting.com/>). The companies have been engaged to conduct electronic-voting for a variety of clients such as the Canada Industrial Relations Board, municipalities, unions and political parties. Initially, the Board used the Help Desks provided by the companies to assist voters, but in recent votes, the Board's Mediation Services has provided the Help Desk.

The Board has successfully held ten electronic votes. Based on its experience to date, it is the Board's view that there has been no negative impact on the vote process but rather, electronic voting may have increased voter turnout.

How E-Voting Works

Voters cast secret ballots either via phone or online in either official language. The Notice of Vote is provided to the voter together with voting instructions by email and is also posted in the workplace. Another email is then sent with a phone number and a URL, either of which may be used for voting. The email also provides a unique personal identification number (PIN). The PIN may only be used once.

The voter chooses whether to call the toll-free phone number set up by the provider for that vote or visit the provider's website. A ballot is provided either on a recorded message on the phone or on the computer/mobile device 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. 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. In some cases, parties may need only online voting and, in others, both phone and online may be made available.

Voters are directed to call the Help Desk if they encounter any issues with the e-voting process (eg. if a voter didn't receive an email or misplaced their PIN). The Help Desk is typically staffed by a Vote Officer for two to three hours at the commencement of the vote and for additional two to three-hour time periods each day of the vote. On the final day of the vote, the desk closes one hour before the conclusion of the vote to facilitate an orderly closure of the voting period. The Help Desk hours are included in the Notice of Vote.

The electronic voting system allows for the poll to be open continuously for as long as the Board directs. In practice to date, the Board has kept the polls open continuously for 24 or more hours. As a result, voters have greater access both through availability and the elimination of geographic barriers. The systems used by the voting companies have significant security measures in place, to ensure the secrecy of the ballot is maintained throughout.

The Board's Processes

In certification, termination, sale of business and PLSRTA applications, the Chair or a Vice-Chair of the Board will order the electronic vote and may specify that email addresses and phone numbers are to be provided by the employer. The Board may also recommend to the Minister that a

final offer vote be held electronically. The Notice of Vote issued by the Board contains information about the vote and voter instructions and must be posted by the employer. In large votes, the Board has directed that the employer put the Notice of Vote on its website and the Board has also posted the Notice. The voting instructions and a PIN are sent to the voter by the provider at least one day prior to the commencement of the vote. This allows a Vote Officer to alert the parties if any issues arise before the start of voting eg. undeliverable emails or missing email addresses.

The Board arranges for the provider to create and maintain a website and phone line specific to each vote. Vote Officers have been trained in the use of the vote system and have full access to it. They monitor the conduct of the vote throughout. A Help Desk provides support to voters before and during the vote, to assist with any problems and ensure voters have an opportunity to vote. Individuals who call the Help Desk will be asked to verify their status as eligible voters and the Vote Officer will determine whether a new PIN is required. Once verified, the Help Desk may assist voters with a variety of issues eg. confirming the correct email address has been used, updating an email address, re-sending the instruction email or issuing a new PIN. If a new PIN is issued, the old PIN is cancelled. 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 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. Similarly, 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. No record is kept or recovered which would allow identification of how votes were cast by a specific PIN ie. A specific individual.

In response to requests from the parties, the Board can now also periodically provide updates to the parties during the course of the vote in accordance with a schedule established by the Vote Officer, so the parties are aware of who has voted. The Board's practice is to email an update at 4:30 p.m. each day of the vote as well as one hour before the Help Desk opens on the last day of voting. This allows the parties to contact eligible voters should they wish to do so and address any issues in the voting process. One final update is sent at the close of voting.

The lead-up to the vote remains the same as the Board's usual pre-vote process as both parties have the opportunity to review the voters list, add voters and challenge the eligibility of voters, all in advance of the poll starting. Ballots cast by challenged voters during e-votes are segregated, as they are during in-person votes. Challenges to voters may be made during the vote, as is the usual process, 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.

At the end of the voting period, the Vote Officer still works with the parties to attempt to reach agreements on voter challenges, segregated ballots and any other issues. The Vote Officer will also inform the parties of any issues which have arisen 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. At the end of the vote, there is no need to physically count 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 which will be 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.

OLRB Decisions-Electronic Voting

Canadian Union of Public Employees v Canadian Deafblind Association Ontario Chapter, 2018 CanLII 67744 (ON LRB)

Labourers' International Union of North America, Ontario Provincial District Council v Holland, 2018 CanLII 110046 (ON LRB)

Ontario Public Service Employees Union v Dynacare, 2018 CanLII 117026 (ON LRB)

United Food and Commercial Workers International Union, Local 175 v Olameter, 2018 CanLII 105351 (ON LRB)

Association des professeur.e.s à temps partiel de l'Université d'Ottawa (APTPUO) v Université d'Ottawa, 2018 CanLII 119627 (ON LRB)

Association of Part-Time Professors of the University of Ottawa (APTPUO) v University of Ottawa, 2018 CanLII 39886 (ON LRB)

Service Employees International Union Local 1 Canada v Trillium Gift of Life Network, 2018 CanLII 57717 (ON LRB)

York University v Canadian Union of Public Employees, 2018 CanLII 28131 (ON LRB)

College Employer Council v Ontario Public Service Employees Union, 2017 CanLII 76099 (ON LRB)

March 15, 2019