

Appendix G

Section 92 (The Municipal Act)

PART 3 COUNCILS DIVISION 2 ELECTIONS

RIGHTS OF EMPLOYEES IN ELECTIONS

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Definition of “employee”

92(1) In this section, “employee” means a person employed by

- (a) a municipality; or
- (b) an affiliated body – including a committee, commission, board, association or other entity – of a municipality;

but does not include a person who volunteers services to the municipality, whether or not the person receives reasonable compensation or expense money from the municipality for his or her voluntary service.

Interpretation: “affiliated body”

92(1.1) For the purpose of this section, a body is affiliated with a municipality if a majority of the members of the body, or a majority of the members of the board of management or board of directors of the body, are appointed by

- (a) the council of the municipality; or
- (b) the council of the municipality and the council of one or more other municipalities.

Rights of employees in elections

- 92(2) An employee may
 - (a) subject to subsection (3), seek nomination as, and be, a candidate in a municipal,

provincial or federal election and, if elected, serve; and

- (b) support, speak or write on behalf of a candidate or a political party in an election, if in doing so the employee does not reveal any information or matter concerning the municipality or affiliated body by which the employee is employed, or any information that the employee procures or that comes to the employee's knowledge solely because of the employment.

Exception of chief administrative officer

92(3) Clause (2)(a) does not apply to a chief administrative officer in respect of the municipality by which the officer is employed.

Leave of absence for municipal election

92(4) An employee who proposes to become a candidate for election as a member of the council of the municipality by which he or she is employed, or the municipality for which his or her employer is an affiliated body, may request a leave of absence and, subject to subsection (4.1), the application must be granted.

Request for leave

92(4.1) A municipality or affiliated body must grant an employee's request if the request

- (a) is made to the chief administrative officer of the municipality or the administrative head of the affiliated body, as applicable; and
- (b) is, as specified by the employee, for all or part of the period
 - (i) starting on the last day on which nomination papers may be filed in the election, and
 - (ii) ending not later than 30 days after the day on which the results of the election are officially declared.

Candidacy in other elections

92(5) An employee who proposes to become a candidate for election as a member of the Legislative Assembly or the House of Commons may apply to the chief administrative officer or

the administrative head of the affiliated body, as applicable, for leave of absence for a period starting on the day on which the writ for the election is issued and ending

- (a) where the employee is nominated as a candidate, not later than 30 days after the day on which the results of the election are officially declared; and
- (b) where the employee is not nominated as a candidate, not earlier than the day fixed by law for the nomination of candidates in the election;

or a part of the applicable period of time, as requested by the employee; and every such application must be granted.

Nature of leave of absence

92(6) A leave of absence granted under subsections (4) and (5) must be granted

- (a) where the employee is entitled to vacation leave with pay, and the employee so requests, as vacation leave with pay until the vacation leave with pay expires and after that time as leave without pay; or
- (b) as leave without pay.

Election as member of council or committee of L.U.D.

92(7) In the following circumstances, an employee who is elected as a member of the council or the committee of a local urban district must be placed on a leave of absence without pay for a period starting on the day of the election and ending on the earlier of the day that is eight years and one month after the day of the election, or the day that is one month after the day the employee ceases to hold the elected office:

- (a) if the employee is elected as a member of the council of the municipality that employs the employee
- (b) if the employee is elected as a member of the committee of a local urban district in the municipality that employs the employee;
- (c) if the employee is employed by an affiliated body of the municipality, and he or she is elected as a member of the council of the municipality or the

committee of a local urban district in the municipality.

Election as M.L.A. or M.P.

92(8) An employee who is elected to the Legislative Assembly or the House of Commons may apply to the municipality or affiliated body for a leave of absence without pay for a period starting on the day of the election and ending on the earlier of

- (a) the expiry of five years and four months after the day of the election; and
- (b) three months after the employee ceases for any reason to be a member of the Legislative Assembly or House of Commons;

and every such application must be granted.

Reinstatement of defeated candidate

92(9) An employee who is granted a leave of absence under subsection (4) or (5) and who is not elected must, on application before the expiry of the leave of absence, be reinstated to the position held immediately before the date of the leave of absence.

Reinstatement of elected candidate

92(10) An employee who is placed on or granted a leave of absence under subsection (7) or (8) may, before the expiry of the leave of absence, apply to the municipality or affiliated body to be reinstated and, as long as the employee is not a member of the council or the committee of a local urban district in the municipality, the employee must, within 60 days, be reinstated to the position held immediately before the date the leave of absence is granted or to a reasonably equivalent position.

Rights during leave of absence

92(11) Where a person is placed on or granted a leave of absence under this section,

- (a) the period of service before the leave of absence begins, and the period of service after the leave of absence ends, is deemed for all purposes to be unbroken; and
- (b) the period of the leave of absence, for the purpose of determining the seniority of the employee in relation to

other persons in that employment, is deemed to be a period of service in the employment of the municipality or affiliated body.

Other benefits

92(12)The rights of an employee to benefits to which employees are entitled during the period of a leave of absence must be determined in accordance with the terms of the collective agreement or other agreement or a policy of the municipality or affiliated body under which the benefits are provided, and the period of the leave of absence must be treated, for the purpose of qualification for a benefit, in accordance with the agreement or policy