

In a matter of an arbitration pursuant to the collective agreement

BETWEEN

York University

(“the University”)

And

York University Faculty Association

(“the Association”)

Re: September 8, 2023 Failure to Provide Information and Attend Meetings (FISC) Policy Grievance #404972 and November 10, 2023 Failure to Provide Information Policy Grievance #418498 (collectively, the “Policy Grievances”)

Before: Matthew R. Wilson, Sole Arbitrator

For the University:

Amanda E. Lawrence-Patel, Counsel

Barry Miller

Adam Bereza

Dan Bradshaw

Amy Rudnicki

For the Association:

Aleisha Stevens, Counsel

Manuel Marqués

Philippe Theophanidis

For the Office of the Auditor General:

Richard Dearden, Counsel

AWARD

1. I was appointed to hear a policy grievance filed by the York University Faculty Association (“the Association”) challenging York University’s (“the University”) refusal to provide specific information to the Association. In September 2024, after three days of evidence, the parties agreed to place a second grievance before me. That grievance dealt with the Association’s request for specific documents related to the Auditor General of Ontario’s (“the Auditor General”) recent audit of the University.
2. On September 20, 2024, the University wrote to the Auditor General to advise that the Auditor General’s rights may be affected by the outcome of the arbitration proceeding. Counsel for the Auditor General and the Office of the Auditor General (referred to as “the Auditor General”) wrote to my office to advise that it was seeking standing in the arbitration proceeding.
3. The information sought by the Association in the second grievance that formed the basis for the Auditor General’s request for third-party standing was as follows:
 - a copy of the finalized terms of engagement provided by the Office of the Auditor General of Ontario for York University;
 - the information requested by the Office of the Auditor General of Ontario;
 - an indication of what fieldwork has been carried out by the Office of the Auditor General to date; and
 - if applicable, a copy of the Office of the Auditor General of Ontario’s briefing document to York University summarizing key audit findings for auditee senior management.
4. On November 22, 2024, counsel for the Auditor General attended the hearing to make submissions on the issue of standing. The parties had filed the relevant authorities and the documents they were relying on prior to the hearing. This was helpful as I was able to review the material in advance.
5. After hearing submissions from the parties, I denied the Auditor General’s request for standing. I provided brief reasons at the time and offered to provide full reasons at the conclusion of the hearing. The remainder of the day was consumed with mediation discussions.
6. The grievances were eventually resolved by way of Minutes of Settlement dated June 6, 2025. Following the settlement, the Association wrote to my office requesting the reasons for my decision on the Auditor General’s request for standing.
7. This is obviously a brief synopsis of the procedural history of the arbitration proceeding.

The Parties' Positions

8. The Auditor General argued that it had a direct and significant interest in the arbitration proceeding because the documents sought by the Association related to confidential documents prepared for the audit. It referred me to section 27.1 of the *Auditor General Act*, R.S.O. 1990, c. A.35 ("the Act"):

27.1 (1) The Auditor General, the Deputy Auditor General, the Advertising Commissioner, the Commissioner of the Environment appointed under section 50 of the *Environmental Bill of Rights, 1993*, each employee of the Office of the Auditor General and any person appointed to assist the Auditor General for a limited period of time or in respect of a particular matter shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her employment or duties under this Act.

9. The Auditor General argued that the audit is confidential under the Act and that the duty of confidentiality applies to the Auditor General and the employees who work for the Office of the Auditor General. As the Association was seeking the work product of the Auditor General, its interests were sufficiently engaged to grant it standing in the arbitration proceeding. I confirmed with counsel for the Auditor General during his submissions that if the University agreed to produce the documents, or was ordered to produce the document, it would not offend section 27.1 of the Act.
10. The Auditor General argued that it was necessary to participate in the arbitration proceeding to protect the confidentiality of the audit. It reasoned that there could be a chilling effect to the community and future audits if there was an adverse ruling.
11. The University agreed with the position of the Auditor General. It accepted that the Auditor General had a direct and legal interest in the outcome, particularly on the issue of the confidentiality of the audit process and working documents. The University referred me to the following authorities: *International Brotherhood of Electrical Workers, Local Union 1788 v. International Brotherhood of Electrical Workers*, 1996 CanLII 11184 (ON LRB) (Surdykowski); *Participating Nursing Homes v Service Employees' International Union Local 1, Canada*, 2022 CanLII 63787 (ON LA) (Stout); *Hoogendoorn v. Greening Metal Products and Screening Equipment Co. et al.*, 1967 CanLII 20 (SCC), [1968] SCR 30; *Laurentian University v Laurentian University Faculty Association*, 2017 CanLII 73319 (ON LA) (Burkett); *Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers v. International Union of Bricklayers and Allied Craftworkers*, 2000 CanLII 2090 (ON LRB); *The Carpenters' District Council of Ontario v. The Regional Municipality of Waterloo*, 2013 CanLII 29735 (ON LRB); *Fleischmann v Universal Workers Union (LIUNA, Local 183)*, 2013 CanLII 42999 (ON LRB); *Canada Post Corp. and C.U.P.W., Re*, 1993 CanLII 16737 (CA LA) (Christie).

12. The Association opposed the Auditor General's request for standing. It argued that the grievances were a private dispute under the parties' collective agreement that did not impact any third party. The Association confirmed that it did challenge section 27 of the Act and that the remedies it was seeking were directed only towards the University. According to the Association, it would be inappropriate to allow a government agency to intervene in a matter to only make submissions on the interpretation of the statute. It referred me to the following authorities: *Humber Memorial Hospital v. ONA* (1993), 37 L.A.C. (4th) 417 (Kaufman); *Children's Aid Society of Kingston v. CUPE Local 2175* (2010), 190 L.A.C. (4th) 262 (Simmons); *CUPE v. Canadian Broadcasting Corp.*, [1992] 2 S.C.R. 7; *OPSEU v. Ontario (Ministry of Health & Long Term Care)* (2001), 110 L.A.C. (4th) 80 (Brown); *Avenor Inc. I.W.A. Canada, Local 2693* (1995), 52 L.A.C. (4th) 72 (Bendel); *CUPE, Local 101 v. London (City)*, (2004) 131 L.A.C. (4th) 56 (Lynk); *Beacon Hill Lodge Inc. v. ONA* (1990), 15 L.A.C. (4th) 307 (Craven); *Toronto (Metropolitan) v. CUPE, Local 43* (1989), 5 L.A.C. (4th) 404 (Stanley); *Toronto (City) v. Toronto Civic Employees Union, Local 416* (2001), 100 L.A.C. (4th) 200 (Johnston); *Ontario Educational Communications Authority v. C.E.P.* (2010), 199 L.A.C. (4th) 211 (Nairn); *Lambton Kent District v. O.S.S.T.F.*, 2011 CarswellOnt 5954 (Herman).

Decision

13. After hearing the submissions of the parties, I rendered an oral ruling with brief reasons. I felt it was important to issue my ruling expeditiously so that the parties could make the most of the hearing date. At the time the issue was raised, the Association's first witness was still in examination-in-chief after three days of testimony. It appeared that the witness' testimony would continue and that the parties would be calling a significant volume of evidence in support of their positions. In my view, it is preferable for an arbitrator to make an immediate decision so that the parties can best utilize scarce hearing time. I found myself able to decide this issue shortly after it was argued. Thus, I ruled as follows:

As the arbitrator appointed by these parties to determine the outcome of their dispute, I have an obligation to conduct the proceeding efficiently and fairly, and also to make decisions during that process as clearly and promptly as I am able to.

Upon becoming aware of the request for standing, I reviewed the material that was filed with my office -- the documents, the correspondence, the legislation, and the caselaw, including one decision I authored. So, I have had time to consider the issues even before hearing the submissions today. And after hearing and considering those submissions today, I find that I am able to make the decision on the issue of standing, promptly.

This is a private arbitration between the employer and the certified bargaining agent. The dispute is about requests for information and those requests are directed only to the employer and made pursuant to these

parties' collective bargaining relationship. Submissions about confidentiality under the Auditor General Act, as a reason for denying the Association's request can be addressed by the employer as it is the party to the collective agreement that is refusing to share the information.

I am not persuaded that the Auditor General has a direct interest in this proceeding based on the principles set out in the relevant caselaw.

Its request for standing is denied.

My intention is to provide more thorough reasons for this decision in the final decision. However, if any party seeks to have these reasons before the final decision, I am prepared to provide you with a written decision should such a request be made. If any party seeks the written decision, that party should write to my office within seven days to make that request. If no request is made, the reasons will be provided in the final decision.

14. The Association has requested that I provide reasons for my decision. After reviewing my oral award, there is very little to add to these reasons.
15. The caselaw is clear that arbitrations are private disputes between the parties to a collective agreement (See *Laurentian University*). A third party may only be granted standing in exceptional circumstances (See *Bloorview School Authority and CUPE, Local 4400 (C-10050)*, Re 2015 CarswellOnt 77, 252 LAC (4th) 87 (Knopf)). One such circumstance is where the third party's interests are directly affected by the outcome. This is a discretionary decision. Thus, if the Auditor General's interests were directly affected by the outcome of the arbitration, I may exercise my discretion to grant it standing in the proceeding.
16. In this matter, the Association alleges that the University breached the collective agreement when it refused to provide certain information and documents. One aspect of the requested documents pertains to the audit conducted by the Auditor General. But the request for documents is made only to the University for the documents that it has in its possession and not to the Auditor General. It was undisputed that the University could produce the documents it had in its possession without offending the Act. It exercised its right to refuse to produce the documents to the Association and this was partly the subject of the hearing. Nothing in this narrow dispute between the parties to the collective agreement engaged the interests of the Auditor General.
17. Even if the Act had some relevance to this proceeding, the University was more than capable of making legal arguments on whether it was required to produce the documents and it could rely on the Act if it decided to do so. I reiterate that it was agreed that the Act did not preclude the University from producing the documents that it had in its possession.
18. It was for these reasons that I ruled against the Auditor General's request for third-party standing in the arbitration proceeding.

19. I am grateful to Ms. Lawrence-Patel, Ms. Stevens, and Mr. Dearden for their thoughtful submissions in this matter.

Dated in Whitby, Ontario this 4th day of July, 2025.

A handwritten signature in black ink, appearing to read 'Matthew R. Wilson', written over a horizontal line.

Matthew R. Wilson
Sole Arbitrator