



City Clerk & Solicitor Department
Service du greffier municipal et du chef du contentieux
File/N° de fichier: L03-08-ALI et al.

August 15, 2019

VIA EMAIL

Mr. Georgios Fthenos
Human Rights Tribunal of Ontario
655 Bay Street, 14th Floor
Toronto ON M7A 2A3

Dear Mr. Ftenos:

RE : Bile Ali et al. v. Timbercreek Asset Management Inc., TC Core, GP, TC Core LP,
City of Ottawa
HRTO File: 2019-36509-I – 2019-36519-I; and 2019-36521-I to 36523-I

Please find attached our Response to an Application under Section 34 of the Human Rights Code (Form 2) filed on behalf of the Respondent, The City of Ottawa.

Yours truly,

for David Patacairk
Legal Counsel
Encl.

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Solicitor
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Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

(Disponible en français)

www.hrto.ca

How to Respond to an Application Where You Are Named as a Respondent

Use this form if you have been named as a respondent in a human rights application under section 34 of the *Human Rights Code*.

If you fail to respond to the Application, you may be deemed to have accepted all of the allegations in the Application, and the Tribunal may proceed without further notice to you.

Before you start:

1. Read the questions and answers below.
2. Download and read the Respondent's Guide from the Tribunal's website www.hrto.ca.
If you need a paper copy or accessible format contact us at:

Human Rights Tribunal of Ontario
655 Bay Street, 14th floor
Toronto, Ontario M7A 2A3

Phone: 416-326-1312
Fax: 416-326-2199
TTY: 416-326-2027
Email: hrto.registrar@ontario.ca
Website: www.hrto.ca

Toll-free: 1-866-598-0322
Toll-free: 1-866-355-6099
Toll-free: 1-866-607-1240

The Tribunal has other guides and practice directions to help all parties to an Application understand the process. Download copies from the Tribunal's website or contact us.

3. Complete each section of the Response form that applies to you. As you fill out each section, refer to the instructions in the Respondent's Guide.

Questions about Responding to an Application

The following questions and answers are provided for general information. They should not be taken as legal advice or a determination of how the Tribunal will decide any particular application.

What happens if I fail to complete a Response Form?

You may be deemed to have accepted all the allegations. The Tribunal may deal with the Application without any further notice to you.

What is the time limit for responding?

Respondents must file a completed Response form no later than **thirty-five (35) days** after the Tribunal sends them a copy of the Application. The cover letter from the Tribunal gives you the exact date.

Are there defences to discrimination under the *Human Rights Code*?

Yes, there are some defences and exemptions in the *Code*. Please see the Respondent's Guide. If you believe one of these applies, please explain how when you fill out the Response form.



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Can the Tribunal deal with an application where the facts and issues have been dealt with or are being dealt with in another proceeding?

The *Code* has special rules depending on what the other proceeding is and at what stage the other proceeding is at. Read the [Respondent's Guide](#) and get legal advice if:

1. You are currently involved in, or were previously involved in a civil action based on the same facts and the applicant asked for a human rights remedy; **or**
2. A complaint was ever filed with the Ontario Human Rights Commission based on the same subject matter; **or**
3. You are currently involved in, or were previously involved in another proceeding (for example, a union grievance based on the same facts.

You must file a Response even if you believe that the Tribunal should defer the the Application or that the Application is outside the jurisdiction of the Tribunal, except where you allege the issues in dispute fall within exclusive federal jurisdiction.

Learn more

To find out more about human rights in Ontario, visit www.ohrc.on.ca or phone 1-800-387-9080.



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Note: Complete all parts of this form, using the Respondent's Guide for help. If your form is not complete, the Tribunal may return it to you. At the end of this form, you will be required to read and agree to a declaration that the information in your Response is complete and accurate (if you are a lawyer or legal representative assisting a respondent with this Form 2, please see the **Practice Direction On Electronic Filing of Applications and Responses By Licensed Representatives**).

Respondents must file a completed Response form no later than **thirty-five (35) days** after the Tribunal sends them a copy of the Application. The cover letter from the Tribunal gives you the exact date.

Tribunal File Number	2019-36509-1
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Contact Information for the Respondent

Respondent Contact Information

Please choose the type of Respondent: ☐ Organization Respondent ☐ Individual Respondent

1. Respondent Contact Information - Organization

Contact information for a responding organization, such as a corporation, association, or group. Please complete both this section and Question 3.

Full Name of Organization
City of Ottawa

Organization Type:

- ☐ Corporation
☐ Partnership
☐ Sole proprietorship
☐ Unincorporated business/organization
☒ Other (specify):

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Name of the person within this organization who is authorized to negotiate and bind the organization with respect to this Application.

First (or Given) Name Roger		Last (or Family) Name Chapman		Title Director, By-Law & Regulatory Services etc.	
Street # 735	Street Name Industrial Avenue			Apt/Suite	
City/Town Ottawa		Province ON	Postal Code	Email Roger.Chapman@ottawa.ca	
Daytime Phone 613 580 2424 x	Cell Phone 41362		Fax		TTY

What is the best way to send information to you?

(If you check email, you are consenting to delivery of documents by email) ☐ Mail ☒ Email ☐ Fax

Is this Response being filed on behalf of any other respondent? ☐ Yes ☒ No

3. Representative Contact Information

Complete this Section only if you are authorizing a lawyer or other Representative to act for you.

☒ I authorize the organization and/or person named below to represent me.

My representative is:

<input checked="" type="checkbox"/> Lawyer	LSUC #	49097W
<input type="checkbox"/> Paralegal	LSUC #	

☐ Other- please specify the Nature of Exemption from licensing requirements in the text box below:
(e.g. Unpaid family member or friend)

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For further information, see the Tribunal's Policy on Representation before the HRTO at www.hrto.ca.



Human Rights Tribunal of Ontario

Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

First (or Given) Name

David

Last (or Family) Name

Patacairk

Organization (if applicable)

City of Ottawa, Legal Services

Street #

110

Street Name

Laurier Avenue West

Apt/Suite

3rd Floor

City/Town

Ottawa

Province

ON

Postal Code

K1P 1J1

Email

David.Patacairk@ottawa.ca

Daytime Phone

613 580 2424 x 12863

Cell Phone

Fax

613 560 1383

TTY

What is the best way to send information to your representative?

(If you check email, you are consenting to delivery of documents by email)

☐ Mail

☒ Email

☐ Fax

Contact Information - Additional Respondent(s) and Affected Person(s)

Please complete this selection if you believe another person or organization should be named as a respondent or given notice as an affected person(s).

4. Contact Information - Additional Respondent

If there is another organization or person who is not already named as a respondent on the Application form and who you believe should be named as a respondent, provide their contact information here. See the Tribunal's **Practice Direction on Naming Respondents** for more information on how to correctly name a potential respondent.

Please choose the type of respondent: ☐ Organization Respondent ☐ Individual Respondent

Additional Respondent Contact Information - Organization

Full Name of Organization



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Name of Contact Person from the Organization

First (or Given) Name		Last (or Family) Name		Title	
Street #	Street Name			Apt/Suite	
City/Town		Province	Postal Code	Email	
Daytime Phone	Cell Phone		Fax	TTY	

Add Another Respondent

5. Contact Information - Affected Person

If there is any other organization (such as a union or occupational association responsible for collective bargaining) or person who is not already named as an affected person on the Application form and who might be affected by this Application to the Tribunal, provide their contact information here.

Please choose the type of affected person: ☐ Organization ☐ Contact

Affected Person Contact Information - Organization

Full Name of Organization		
Name of Contact Person from the Organization		
First (or Given) Name	Last (or Family) Name	Title



Human Rights Tribunal of Ontario

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Street #	Street Name	Apt/Suite		
City/Town	Province	Postal Code	Email	
Daytime Phone	Cell Phone	Fax	TTY	

Add Another Affected Party

Request for Early Dismissal of the Application

6. Request for Dismissal - without Full Response

Complete this section only if you are requesting that the Tribunal dismiss the Application because one of the four situations below applies. Put an "X" in the box that applies. Please see the [Respondent's Guide](#).

I request that the Tribunal dismiss this Application because:

- ☐ A claim based on the same facts has been filed in civil court, requesting a remedy based on the alleged human rights violation. (Attach a copy of the statement of claim and the court decision, if any. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)
- ☐ A complaint was filed with the Ontario Human Rights Commission based on the same, or substantially the same, facts as this Application. (Attach a copy of the complaint and the decision, if any. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)
- ☐ The applicant signed a full and final release with respect to the same matter. (Attach a copy of the release. Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)
- ☐ The issues in the Application are within exclusive federal jurisdiction. (Include all your submissions in support of your request to dismiss the Application on this basis. The Tribunal may decide your request based only on your submissions.)

Note: If you put an "X" in any of the boxes above, go to Question 20. Except in these four situations, or as otherwise directed by the Tribunal, requests to dismiss an Application will not be considered without a complete response.



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7. Request for Dismissal under s. 45.1 of the Code - with Full Response

Complete this section only if you are requesting that the Tribunal dismiss the Application because another proceeding has in whole or in part appropriately dealt with the substance of the Application. Put an "X" below if you are making this request. Please see the [Respondent's Guide](#).

- a) ☐ I request that the Tribunal dismiss the Application because another proceeding has in whole or in part appropriately dealt with the substance of the Application. (Attach a copy of the decision)

- b) Please name the other proceeding:

--

- c) Explain why you believe the other proceeding has in whole or in part appropriately dealt with the substance of the Application.

--

Note: You must complete the entire Response form and attach a copy of the document that started the proceeding and a copy of the decision.

Request to Defer the Application

8. Request to Defer

Complete this section only if the facts of the Application are part of another proceeding that is still in progress.

- a) Describe the other proceeding:

<input type="checkbox"/> A union grievance	Name of Union:	
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☐ A claim before another board, tribunal or agency

Name a board, tribunal, or agency:

☐ Other

Explain what the other proceeding is:

b) Are you asking the Tribunal to defer (postpone) the Application until the other proceeding is completed?
(Attach a copy of the document that started the other proceeding)

☐ Yes

☐ No

Responding to the Allegations in the Application

9. Responding to the Allegations

Please summarize the facts and defences that support your Response to this Application. See the [Respondent's Guide](#).

Please include as part of your response:

- any submissions you make that the Application is outside the Tribunal's jurisdiction;
- what allegations in the Application you agree with;
- what allegations in the Application you disagree with;
- any additional facts that you intend to rely on; and
- any defences that you intend to rely on.

Please see Appendix "A" attached.

10. Exemptions

Complete this section only if you are relying on one of the exemptions found in the *Code*. See the [Respondent's Guide](#).

a) What exemption in the *Code* do you believe applies to this Application?



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b) Please explain why you believe the exemption applies:

11. Knowledge of the Events

a) When and how did you first become aware of the events described in the Application?

Please see Appendix "A" attached.

b) How did you respond and what was the outcome?

12. Disability and Employment

Complete this section only if the applicant alleges that they experienced discrimination in employment on the ground of disability. See [Respondent's Guide](#).

a) Did you know about the applicant's particular needs before seeing the Application?

☐ Yes

☐ No

b) What are the requirements (essential job duties) of the position in question?



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- | | | |
|---|---------------------------|-------------------------------------|
| c) Do you have a written policy, job description or other documentation that describes the requirements of the job? | <input type="radio"/> Yes | <input type="radio"/> No |
| d) Was the applicant unable to perform the requirements of the job because of their disability? | <input type="radio"/> Yes | <input type="radio"/> No (Go to 13) |

Note: If you said "Yes" to Question 12c, you must attach a copy of the policy, job description or other document that describes the requirements of the job.

Questions About Internal Human Rights Policies

13. Internal Human Rights Policies

Complete this section only if the respondent is an organization. Please see the [Respondent's Guide](#).

- | | | |
|---|--------------------------------------|--|
| a) Do you have a policy related to the type of discrimination alleged in the Application? | <input checked="" type="radio"/> Yes | <input type="radio"/> No |
| b) Do you have a complaint process to deal with discrimination and harassment? | <input checked="" type="radio"/> Yes | <input type="radio"/> No (Go to 14) |
| c) Did the applicant make a complaint under the internal complaint process about the facts in this Application? | <input type="radio"/> Yes | <input checked="" type="radio"/> No (Go to 14) |

Note: You must attach a copy of the policy, complaint process, or the document that started the complaint, and the decision, if any.

Mediation

14. Choosing Mediation to Resolve the Application

Mediation is one of the ways the Tribunal tries to resolve disputes. It is a less formal process than a hearing. Mediation can only happen if both parties agree to it. A Tribunal Member will be assigned to mediate the Application. The Member will meet with you to talk about your Response. The Member will also meet with the applicant and will try to work out a solution that both sides can accept. If Mediation does not settle all the issues, a hearing will still take place and a different Member will be assigned to hear the case. Mediation is confidential.

Do you agree to try mediation? ☒ Yes



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Documents that Support Your Response

15. Important Documents You Have

If you have documents that are important to your Response, list them here. List only the most important. Indicate whether the document is privileged. Please see the [Respondent's Guide](#).

Note: You are not required to send copies of your documents at this time. However, if you decide to attach copies of the documents you list below to your Response, they will be sent to the other parties to the Application along with your Response.

Document Name	Why It Is Important To My Response
TBD	

Add more Documents

16. Important Documents the Applicant Has

If you believe the applicant has documents that are important to your Response, that you do not have, list them here. List only the most important.

Document Name	Why It Is Important To My Response
TBD	

Add more Documents

17. Important Documents Another Person or Organization Has

If you believe another person or organization has documents that are important to your Response, that you do not have, list them here. List only the most important.

Document Name	Why It Is Important To My Response	Name of Person or Organization Who Has It
TBD		



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Add more Documents

Confidential List of Witnesses

18. Witnesses

Please list the witnesses that you intend to rely on in the hearing. **Note:** The Tribunal will not send this list to the applicant. See the [Respondent's Guide](#).

Name of Witness	Why This Witness Is Important To My Response
TBD	

Add more Witnesses

Other Important Information

19. Other Important Information the Tribunal Should Know

Is there any other important information you would like to share with the Tribunal?



Response to an Application under Section 34 of the *Human Rights Code* (Form 2)

Checklist of Required Documents

20. Documents from Questions 6 to 13

Put an "X" in the box beside the documents that you are required to send with your Response. Put the Tribunal File Number on each document.

- ☐ Copy of a statement of claim and the Court decision, if any (from Question 6)
- ☐ Copy of a complaint filed with the Ontario Human Rights Commission and decision, if any (from Question 6)
- ☐ Copy of a full and final release that the applicant signed dealing with same matter (from Question 6)
- ☐ Submissions in support of a Request for Dismissal without Full Response (under Question 6)
- ☐ Copy of a decision from another type of proceeding that appropriately dealt with the substance of the Application (from Question 7)
- ☐ Copy of a document that started another type of proceeding based on the same facts (from Question 7 & 8)
- ☐ Copy of the policy, job description or other document that describes the requirements of the job (from Question 12)
- ☐ Copy of your organization's policy on discrimination or harassment relevant to this Application (from Question 13)
- ☐ Copy of your organization's complaints process relevant to this Application (from Question 13)
- ☐ Copy of the applicant's internal complaint (from Question 13)
- ☐ Copy of the decision from the internal complaint process (from Question 13)



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Declaration and Signature

21. Declaration and Signature

Declaration:

To the best of my knowledge, the information in my Response is complete and accurate.

Signature Date (dd/mm/yyyy)

09/08/2019

☒ Please check this box if you are filing your response electronically. This represents your signature.
You must fill out the date, above.

Accommodation Required

If you require accommodation of *Code* related needs please contact the Registrar at HRTO.Registrar@ontario.ca or

Phone: 416-326-1312 Toll-free: 1-866-598-0322

Fax: 416-326-2199 Toll-free: 1-866-355-6099

TTY: 416-326-2027 Toll-free: 1-866-607-1240

Collection of Information:

Under the Ontario *Human Rights Code*, the Human Rights Tribunal of Ontario (HRTO) has the right to collect the personal information requested on this form. We use the information to resolve your application. After you file the form, your information may also be available to the public. If you have questions about how the HRTO uses your personal information, contact the HRTO at 416-326-1312 or 1-866-598-0322 (toll-free.)

Submit to HRTO

Print Form

Note: Only submit your Response once. If the Tribunal receives this Response more than once, it will only accept the first Response Form received.

Appendix “A” to Form 2

**Bile Ali et al. v. Timbercreek Asset Management Inc., TC Core, GP, TC Core LP,
City of Ottawa**

HRTO File.: 2019-36509-I – 2019-36519-I; and 2019-36521-I to 2019-36523-I

This Response is being filed on behalf of the Respondent City of Ottawa (“the Respondent City” or “the City”)) in response to the fourteen Applications which the Tribunal has consolidated into this one matter (“the Applications”). The City denies all allegations of discrimination, and, unless specifically admitted to herein, also denies all factual assertions made on behalf of the Applicants in their Applications.

For additionally clarity, the City takes no position at this time with respect to any allegations or factual assertions made with respect to any of the other Respondents (“the Timbercreek Respondents”) except as specifically noted in this Response. The City reserves the right to make future submissions or to provide this Tribunal with evidence on those matters should it become relevant to the proceeding as against the City of Ottawa.

The City of Ottawa Role as a Social Benefits Provider

The City submits that the Applications fail to accurately describe the City’s actual role in the events described, and as such it is important to the determination of these Applications for the Tribunal to be made aware of the true nature of the City’s role in this matter.

The City’s role in the process which ultimately led to the eviction of, inter alia, the Applicants relates primarily to its role in providing the social benefits upon which many of the tenants, including several of the Applicants, rely.

Of the approximately 150 households affected by the evictions undertaken by Timbercreek, 21 households were in receipt of Rental supplements.

The City is responsible to maintain the centralized wait list (CWL) for families applying for subsidized housing in accordance with provincial legislation. The wait list has approximately 12,000 families waiting for subsidy assistance. There is more demand than there are subsidized units therefore a subsidized unit must become vacant before a household on the centralized wait list can be housed.

However, pursuant to the legislation the City can approve local priorities whereby families are offered units in priority to those waiting chronologically. The City of Ottawa has previously approved a local priority for “displaced subsidized households” who lose their unit for reasons that include loss due to the sale or demolition of the unit.

As a result of the City’s of Ottawa local priorities, all subsidized households residing in the Herongate community were offered this local priority status to able to be offered an alternate subsidized unit as suitable units became available both within the current subsidized housing stock and in the private market.

With the assistance of City staff, all 21 of those households were able to secure new housing prior to the eviction deadline.

In addition to those in receipt of rental supplements, City staff also provided assistance included providing a tenant resource kit for distribution to all non-subsidized families. The kit outlined housing, financial and employment supports, legal aid and other community resources.

City staff also prepared a package for Timbercreek to distribute to non-subsidized households introducing the Below Market Rent (BMR) Program, along with steps to apply to the BMR centralized wait list.

City staff developed an information and marketing package in partnership with the Eastern Ontario Landlords Organization (EOLO) to inform, engage, and support the increase of rent supplement units with private market landlords. This information was distributed by EOLO to its members during the week of July 23, 2018.

Additionally, the South East Ottawa Community Health in partnership with the Community Legal Services of Ottawa legal clinic held a tenant information session on July 5th for those households affected by the Herongate relocation. City staff provided preparatory information and attended the meeting to provide support.

The City submits that in its role as a provider of social benefit services it did not discriminate against any of the Applicants, and in fact the Applications do not make any allegations that those City services were denied on the basis of any prohibited ground of discrimination.

The City’s Role as an Enforcer of Property Standards

The City’s other principal role with respect to the allegations made in the Applications relates to its obligation, pursuant to the Residential Tenancies Act, 2006 (“RTA”), to enforce property standards.

The Applications appear to allege that the number of complaints rose as ownership was transferred to the Timbercreek Respondents. The Applications also submit that City By-Law Services staff “conducted dozens of inspections” and were involved in “issuing dozens of work orders against Timbercreek.” (Application Form 1 at page 31, para. 108)

It is unclear in the Applications’ narrative, yet the Applications appear to imply somehow that the City’s enhanced enforcement actions create liability for the City, but no allegations concerning the denial of this City service for reasons relating to discrimination are made in the Applications.

It is important to note that enforcement actions are undertaken based upon complaints which are made – i.e. the number of complaints concerning a building or area may vary significantly year-to-year based upon the number of individuals who choose to file complaints.

Additionally, complaints may be levied, as implied in the Applications, for reasons relating to building deficiencies per se, but may also relate to any number of other matters. For example, in the three years leading up to the filing of these Applications City staff were called upon to attend the property for reasons relating to shopping carts left on property, needles or syringes being found, or long grass or weeds, and other such complaints.

As well, where a tenant or a landlord is not satisfied with the actions of a property standards officer they may seek redress to the Landlord and Tenant Board (“LTB”).

The City submits that at all times it diligently pursued its mandate and did not engage in any discrimination against the Applicants or any others. In fact, the Applications themselves do not cite a single instance where the City’s actions, or inaction, are allegedly the result of any discrimination and the evidence will clearly show that where appropriate the City did issue remedial orders against Timbercreek. In point of fact, the Applications themselves confirm that the City increased its enforcement actions following a rise in complaints by the residents. The City submits there is no basis for any finding of discrimination against it as a result of its enforcement actions.

The City has no Statutory Role in the Eviction Process

Finally, it is important to note that the City of Ottawa has no role with respect to the evictions of tenants. Evictions are governed by the Residential Tenancies Act, 2006, which is provincial legislation primarily enforced by the Landlord and Tenant Board. The LTB is an adjudicative tribunal in the Social Justice Tribunals Ontario adjudicative group, the same tribunal group which includes this Tribunal.

It is the RTA which sets out the requirements relating to evictions for the purposes of demolition including but not limited to the notice provisions and monetary compensation tenants are entitled to receive when their landlord terminates the tenancy for the purpose of demolition.

Under the RTA, the City of Ottawa has no role, and no authority, to intervene with respect to the issue of evictions for the purpose of demolition, which remains within the purview of the provincial legislature and the LTB constituted under the RTA.

The Applications allege at para. 115 that the City could have prohibited the demolition in order to avoid the necessity of the evictions. The Applications are wrong in this regard.

While the City is responsible for the issuance of a demolition permit under the Building Code, such a permit can only be issued after all tenants are no longer in residence and after all other requirements of the legislation and regulations are met (e.g. utilities have been shut off to the buildings). As such, the City's sole role in the demolition process only arises after the evictions have already taken place. It is the provincial authority, the RTA, which governs the eviction process itself and the City has no authority, statutory or otherwise, to intervene in the process.

No "executive order", whatever the Applications' para. 115 means by that phrase, was available to the City, and the City could not refuse to grant a demolition permit in order to stop evictions from taking place because the issuance of the demolition permit necessary follows any eviction proceedings.

Simply put, the City has no role in the eviction process, and no authority to govern or otherwise influence the process even if it wished to.

These Applications Should be Dismissed as Against the City of Ottawa

The Respondent City of Ottawa submits that there is no foundation for any of the claims of discrimination made against it in these Applications.

The City submits that the Applications allege matters which do not demonstrate a prima facie violation of the Code and there is no statutory or jurisprudential authority which supports the assignment of liability in the manners claimed by the Applications as against the City.

The City submits that the Tribunal should dismiss the allegations as against this Respondent and it reserves the right to seek a preliminary ruling on this issue.