ILER CAMPBELL LLP
BARRISTERS AND SOLICITORS

April 3, 2012

DELIVERED BY COURIER

Andy Koropeski,
Acting General Manager
Transportation Services
Toronto City Hall
23rd floor East.,
100 Queen Street West.
Toronto Ontario M5H 2N2

Dear Mr. Koropeski,

Re: Jarvis Street Bike Lane Decommissioning and Addition of Reversible Lane

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1. Background

1.1 The Toronto Cyclists Union

We represent the Toronto Cyclists Union, on matters related to the Jarvis Bicycle lanes. Founded in 2008, the Toronto Cyclists Union provides a strong, unified voice for Toronto cyclists. It is a membership-based organization with approximately 2100 members bringing together cyclists from all across Toronto, providing a vibrant and amplified voice to achieve the common goals of safety, legitimacy and accessibility of cycling in Toronto.

The Union's vision is:

- We imagine a city that treats cycling as an important part of its transportation network.
- We imagine a city that respects cyclists and encourages more people to ride their bikes.
- We imagine safe, accessible cycling routes throughout the city including designated bicycle lanes that are properly enforced and maintained.
- We imagine infrastructure that support cyclists needs including ample bicycle parking, clear markings and appropriate signage.
- We imagine a vibrant, inclusive and influential cycling community with a major voice in all municipal and budgetary decision-making processes.
- We imagine a city where cycling flourishes.
- And we imagine a cleaner, healthier, safer and more livable streetscape for all Torontonians.

1.2 Jarvis Street Bike Lanes

In May 2009 council approved the installation of bicycle lanes on Jarvis Street, between Queen Street East and Charles Street East. The bicycle lanes, which necessitated the removal of the centre reversible traffic lane, were installed in July 2010.

These bicycle lanes have been extraordinarily successful and have, in tandem with the launching of the BIXI program increased bicycle use on Jarvis Street by three times. They have also improved safety.

In 2011 Councillor John Parker, moved before the Public Works Committee to remove the bike lanes. The Committee voted 4-2 to remove the Jarvis bike lanes. This was followed by a decision by council to eliminate the bike lanes and add a fifth reversible lane in mid-July 2011(the **Project**). The decision reads as follows:

> 11. City Council rescind its decision related to the bicycle lanes on Jarvis Street, and co-ordinate implementation of the proposed separation of bike lanes on Sherbourne Street from Bloor Street to Lake Shore Boulevard as an alternative, and staff be directed to take all steps required to revert Jarvis Street to its pre-existing operation such that implementation can be achieved as soon as possible, with all work to be completed on Sherbourne Street and Jarvis Street in 2012.[1]

The decision received widespread media attention and was opposed by the Toronto Cyclists Union as well as other urban advocates.

2. Summary of Issues

The Project should be elevated to a Schedule C Environmental assessment based on the potential for significant adverse environmental effects from the Project.

A Schedule C environmental assessment would address the potentially significant adverse effects of decommissioning the bike lanes and adding a reversible traffic lane on safety, air quality, efficient transportation, healthy lifestyles, cultural heritage, and the economy.

3. Bike lane decommissioning and reversible centre-lane addition on Jarvis Street is at a minimum subject to Schedule B

The Project involves the decommissioning of bike lanes in both directions on Jarvis street and the addition of a fifth reversible centre lane. This combined undertaking must be assessed at a minimum as a Schedule B project subject to screening under the Municipal Class Environmental Assessment (**MCEA**).

Schedule B of the MCEA lists projects that have the potential for some adverse environmental effects. The City is required to undertake a screening process involving mandatory contact with directly affected public and relevant review agencies, to ensure that they are aware of the Project and that their concerns are addressed. If there are no outstanding concerns, then the proponent may proceed to implementation. Schedule B projects generally include improvements and minor expansions to existing facilities.

We rely on Categories 20 or alternatively 41 of the MCEA which provide for a minimum of a Schedule B assessment for the following categories of projects:

1. Category 20: "Reconstruction or widening where the reconstructed road or other linear paved facilities (e.g. HOV lanes will not be for the same purpose, use, capacity or

[1] http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PW5.1 see Sched A.

at the same location as the facility being reconstructed (e.g. additional lanes, continuous centre turn lane)" where the cost is less than $2.2M;

2. Category 41: "All other road related works" where the cost is less than $2.2M.

The Project involves the reconstruction of Jarvis Street for a different purpose, use or capacity. Removal of the bike lanes and conversion of the space these lanes occupy to a general purpose lane on each side of the road is a change of purpose on its face from a roadway with designated bicycle lanes and four lanes of traffic to a five-lane general purpose road. The addition of a fifth reversible lane increases capacity for general purpose traffic. Reconstruction that results in additional lanes is specifically mentioned in Category 20. Even if this were not true, category 41 would be applicable as the Project does not fit the definitions in any other categories.

The decommissioning of a bike lane and/or the addition of the fifth reversible lane contemplated in the Project cannot be assessed under Schedules A or A+. The undertaking does not include the construction or operation of a bike lane, a localized operational improvement, the retirement of a laneway or an urban resurfacing without horizontal re-alignment for the following reasons:

1. The decommissioning of a bike lane is the opposite of "construction or operation" of a bike lane;

2. The decommissioning of a bike lane and addition of a fifth reversible lane is not a local operational improvement. The alterations are not "operational" as they involve a significant change of purpose. This change of purpose is contrary to the definition of a local operational improvement in the MCEA;

3. The construction of the bike lane was not subject to an EA and therefore does not meet the definition of "retirement" of a laneway under the MCEA;

4. Similarly, there will be horizontal re-alignment and a change of purpose, putting the Project outside the definition of "urban resurfacing."

The Project must fall under categories 20 or 41. It does not meet any of the criteria for Schedules A or A+. It must be assessed, at a minimum, as a Schedule B project.

Failure to assess the Project as at least a Schedule B would be incorrect and be a failure to assess the Project "in accordance with" the requirements of the MCEA.

It is clear that the undertaking is subject to a minimum of a Schedule B assessment under the MCEA. However, for the reasons set out below we submit that this undertaking merits a full Environmental Assessment under Schedule C of the MCEA.

4. <u>There are likely adverse environmental impacts to the Project that should be fully assessed.</u>

Schedule B generally applies to improvements and minor expansions of existing projects. Schedule B is not appropriate where a project may have significant adverse environmental effects.

Under the MCEA, Schedule C applies to projects that may have significant environmental effects. These must be assessed under the full planning and documentation procedures specified in the MCEA. Schedule C projects require that an Environmental Study Report be prepared and filed for review by the public and review agencies. Given the significant public interest in the Project, and the potential for significant environmental effects, the Project should be treated as a Schedule C Municipal Class Environmental Assessment.

Furthermore, even if the City were to proceed with the Project as a Schedule B project (which normally does not require public consultation), discretionary public consultation is clearly called for in the circumstances. The MCEA document provides "For projects which are expected to generate considerable public interest or controversy, the proponent may find it advantageous to introduce a discretionary Step 2 and commence the public consultation process in order that the public may be involved at this stage in defining the problem and formulating the problem statement." To our knowledge, the City has not initiated any such public consultation for the Project.

The Project involves a significant reversal of policy on the part of the City from one that actively promoting cycling on Jarvis Street to one of discouraging cycling in favour of motor-vehicle and general purpose traffic. The alteration of Jarvis Street to remove the existing bicycle lanes and install a fifth reversible lane is a significant alteration of the streetscape. This alteration is likely to have wide-ranging social, environmental, cultural and economic adverse effects.

Without an Environmental Assessment under Schedule C, the necessary mitigation of these impacts, consultation with the public or cyclists in the design of the Jarvis Street revisions, or alternatives to the Project would not be carried out.

In light of staff reports on the use of the Jarvis bike lanes and the minimal adverse traffic impacts of the existing infrastructure, it is evident that alternative approaches may satisfy the identified general purpose traffic needs. A Schedule C assessment would permit full assessment of alternatives to the Project.

Accordingly, a full Schedule C environmental assessment of the Project to remove bicycle lanes on Jarvis Street and install a fifth reversible lane is warranted.

The MCEA document provides that

- "the divisions among Schedules A, A+, B and C projects are … often not distinct"
- "a project may have a greater environmental impact than indicated by the Schedule and in such instances the proponent may, at its discretion, change the project status by elevating it to a higher schedule."
- "While the Class EA document defines the minimum requirements for the environmental assessment planning, the proponent is responsible for "customizing" it to reflect the complexities and needs of a specific project."

Given the significant public interest in the Project, and the potential for significant environmental effects the Project should be treated as a Schedule C Municipal Class Environmental Assessment.

The schedules to the MCEA are intended to assist proponents in understanding the status of various projects. The types of projects and activities listed are intended generally to be categorized into Schedules A, A+, B and C with reference to the magnitude of their anticipated environmental impact. In specific cases however, a project may have greater environmental impact than indicated by the Schedule and in such instances the proponent must change the Project status by elevating it to a higher schedule. Given the varying levels of complexity, the divisions among Schedules A, A+, B and C projects are therefore often not distinct.[2]

The MCEA itself uses the re-designation of an existing lane with significant traffic impacts as an example of a project that could be assessed as Schedule A but that should be assessed as Schedule C:[3]

> ...Take, for example, the re-designation of an existing general purpose lane as a High Occupancy Vehicle (HOV) lane. This could be accomplished with the installation of low cost traffic control devices and as such could be considered as Schedule A projects. However, the potential changes to general purpose traffic patterns could be significant and could have effects on adjacent businesses or communities and as such should perhaps be considered as a Schedule B or C project.

In this instance, far more is contemplated than the re-designation of an existing traffic lane. The Project includes removing bicycle lanes and adding a reversible centre-lane for general purpose traffic. This is a significant change of use, capacity and purpose that has the potential for major traffic pattern changes. It is clear that far more straightforward projects are subject to elevation under the MCEA to a Schedule C project. In this case, there are numerous potentially significant adverse environmental effects that need to be assessed. The City of Toronto is therefore obligated to elevate the project to a Schedule C environmental assessment.

5. <u>There are policy reasons for conducting a Schedule C Environmental Assessment</u>

5.1 Provincial Policy Statement

The Provincial Policy Statement (2005) supports the development of "healthy, active communities" through cycling as a priority and promotes safe, energy efficient transportation:

> **1.5.1** Healthy, active communities should be promoted by:
>
> a. planning public streets, spaces and facilities to be safe, meet the needs of pedestrians, and facilitate pedestrian and non-motorized movement, including but not limited to, walking and cycling;
>
> **1.6.5.1***Transportation systems* should be provided which are safe, energy efficient, facilitate the movement of people and goods, and are appropriate to address projected needs.

The decommissioning of the Jarvis Street bicycle lanes is contrary to these policies because it reduces the safety of cycling and pedestrian use on Jarvis Street, thereby discouraging healthy, active

[2] MCEA, Appendix I - Project Schedules.
[3] *Ibid.*

communities and energy efficient transportation appropriate to projected needs. Transportation by bicycle is the most energy efficient mode of transportation, and generates no pollution, except in its manufacture.[4] Cycling is often the fastest mode of transportation from door to door for distances up to 10 km in urban cores.[5]In contrast, the decommissioning of the Jarvis Street bicycle lanes discourages cycling and encourages ordinary general purpose vehicular traffic which is energy inefficient.

5.2 **The Official Plan supports cycling and walking**

Cycling is an important part of City of Toronto Official Plan. Cycling is most directly addressed in the section 2.4 entitled *Bringing the City Together: A Progressive Agenda of Transportation Change*. This section also includes references to the Toronto Bike Plan. The Policies promoted under section 2.4 of the Official Plan include:

> 1. Travel demand management (TDM) measures will be introduced to reduce car dependency and rush-hour congestion by:
>
> a) increasing the proportion of trips made by transit, walking and cycling;
>
> 7. Policies, programs and infrastructure will be introduced to create a safe, comfortable and bicycle friendly environment that encourages people of all ages to cycle for everyday transportation and enjoyment including:
>
> a) an expanded bikeway network;...
>
> d) measures to improve the safety of cyclists through the design and operation of streets and through education and promotion programs.

The Project runs contrary to, and is non-conforming with the City of Toronto Official Plan by undermining the introduction of safe lanes for bicycle transportation through an expanded bikeway network and improved street design. By design, the undertaking discourages bicycle traffic on Jarvis Street in favor of general purpose traffic.

6. <u>There is significant public concern about the Project</u>

The Toronto Cyclists Union coordinated a petition for the City Council meetings in mid-2011 and had Councillor Mike Layton present it. The petition had 2,001 signatures.

At least 210 letters and emails were sent to Councillors and the Mayor requesting that the lanes not be removed prior to the Council meeting.

Approximately 1,000 people participated in the "Ride for Jarvis" co-ordinated by the Toronto Cyclists Union to show opposition to the removal of the bike lanes the week after the council voted to remove the bike lanes in protest against the decision.

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[4]City of Toronto Bike Plan (June 2001) http://www.toronto.ca/cycling/bikeplan/pdf/chapter01.pdf, at 1-2.
[5]*Ibid.*

There were dozens, if not hundreds, of media articles about the debate over the removal of bike lanes on Jarvis Street, the decision of council, and the estimated costs of removing the bicycle lanes.[6] The management of bike lanes on Jarvis Street is a matter of heated public debate, interest and concern and produces tens of thousands of hits on Google's search engine.

7. The adverse environmental effects of the Project will be significant

The purpose of environmental assessment in Ontario is found in s.2 of the *Environmental Assessment Act*: "The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment."[7]The environment is defined to include "the social, economic and cultural conditions that influence the life of humans or a community."[8] We also submit that any potential adverse effects on the environment must be assessed in keeping with the purpose of the Ontario *Environmental Assessment Act* and the above policies.

7.1 Social Impact

City Staff have noted an increase in cycling use on Jarvis Street with the implementation of the bike lanes in combination with BIXI program, which has nine stations located near the Jarvis Street bike lanes. In Toronto, approximately 48 percent or 939,000 residents over age 15 are cyclists, and approximately 60 percent of households own a bicycle.[9]City Staff monitored Jarvis Street along this section in terms of bicycle counts, motor vehicle traffic volumes and travel times. The results of bike lane addition was that the volume of cyclists increased from 290 to 890 on average over eight hours, a volume increase of over three times.[10]

Decommissioning the bicycle lanes will discourage cycling on Jarvis Street due to both real and perceived safety concerns and will likely result in several adverse environmental effects. This would include reduced bicycle ridership overall, lessened safety of pedestrians, cyclists and motorists who continue to use Jarvis Street, a less effective BIXI program, and impacts to bicycle and other traffic from rerouting of cyclists.

The Project will have adverse social impacts by:

- Reducing access to affordable transportation and recreation. Cycling is a critical mode of transportation and form of recreation for City of Toronto residents.

- Public health impacts of discouraging cycling include reduced fitness and mental health including higher risk of coronary heart disease and higher-cost medical care, and higher rates

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[6] Google shows approximately 53,000 results for "Jarvis Bike Lanes" including: "Debate on Jarvis bike lanes set to continue" (13 Jul 2011) National Post news.nationalpost.com/.../debate-on-jarvis-bike-lanes-set-to-continue/; Toronto News: "Council votes to scrap Jarvis bike lanes," (13 Jul 2011) Toronto Star http://www.thestar.com/news/article/1024305; Toronto News: "Battle over Jarvis bike lane rages on", (12 Jul 2011) Toronto Star www.thestar.com/.../1023995--battle-over-Jarvis-bike-lane-rages-on; "Council votes to remove Jarvis bike lanes," (13 Jul 2011) Toronto Sun www.torontosun.com/.../council-votes-to-remove-jarvis-bike-lanes; Jarvis bike lanes to be removed - Toronto (13 Jul 2011) CBC News ww.cbc.ca/news/canada/toronto/story/2011/.../jarvis-bike-lane.html

[7] *Environmental Assessment Act,* R.S.O., 1990, c.E-18,s.2.

[8] *Environmental Assessment Act*, above, s.1(1)(c).

[9] City of Toronto Bike Plan above at 2-4.

[10] Acting General Manager, Transportation Services, Bikeway Report - 2011 Update (June 9, 2011)

of workplace absenteeism. About two-thirds of Canadians are physically inactive, resulting in about $2.1 billion of direct health care costs in Canada.[11]

- Adversely impacting the safety of cyclists on Jarvis Street by implementation of infrastructure that is likely to result in higher collision rates. An estimated 1,000 cyclists on Jarvis Street depend on the existing lanes for safety.

- Increasing the stigma of cycling on Jarvis street. Cyclists in Toronto are aware of Mayor Rob Ford's recent comments blaming the Jarvis Street bike lanes for alleged increased congestion.[12] This stigma will be increased by the carrying out of the Project.

- The increased car traffic would produce greater nuisance effects (greater noise, potentially worse air quality).

- The removal of bike lanes will increase the likelihood of car/bike collisions along Jarvis St., and may cause car/car collisions as cars swerve out to avoid cyclists.

In addition to the above, the proposed reversible center lane is dangerous to traffic as both cars use it in the wrong direction to pass other cars, and pedestrians unfamiliar with it use it as a refuge while crossing mid-block and may look the wrong way. As stated by iTrans (2010), "given the large number of lanes pedestrians must cross, the use of the [proposed] reversible lane as a refuge, and large blocks between signals, the degree of pedestrian exposure to conflict is undesirable".[13] The impetus of the original EA was to create a safer experience for pedestrians. By keeping the status quo – including bike lanes and reducing the number of car lanes (thus reducing traffic speeds) – both pedestrians and cyclists are safer.

For cyclists who choose to continue using Jarvis, the removal of bike lanes will mean that cyclists and cars will share the outside lanes in both directions. Past experience has shown that with five lanes, each lane on Jarvis St. is narrow enough that cars can't pass bikes without changing lanes, and the iTrans traffic study (2005) stated that Jarvis lane widths with five lanes are considered "substandard" by current design standards.[14] With five small lanes, cars will have to swerve out to other lanes to avoid cyclists, thus potentially negatively affecting commuting times and increasing the likelihood of collisions. As evidence of the dangerous conditions on the road, the Project Documentation for the previous EA indicated that there are "a high percentage of sideswipe collisions, which may be linked to narrow lanes widths".[15]

7.2 **Transportation Efficiency and Economic Impact**

The Project will reduce transportation efficiency in the City of Toronto by:

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[11]City of Toronto Bike Plan, above.
[12] Mayor Rob Ford's form letter response to cycling advocates states: "Ninety-four percent of commuters now face longer commutes on Jarvis Street. Over 15,000 commuters each day are suffering from longer travel times, for the sake of 600 additional cyclists."
[13]iTrans, 2010.
[14]iTrans, 2005.
[15]iTrans, 2010.

- Lengthening transportation times within the city. Cycling is often the fastest mode of transportation from door to door for distances up to 10 km in urban cores.[16]

- Negatively effecting commuting times. The substandard size of the proposed five-lane road would force cars to swerve to avoid cyclists as described above.

- Increasing overall transportation costs. The addition of a through traffic lane on an existing road costs more than adding or maintaining bike lanes. While keeping the bike lanes (the presumed "Do Nothing" alternative) would not cost additional money, there is a cost to removing the lanes (~$270,000). Additionally, road maintenance would be increased, since bikes cause less wear and tear to paved roads when compared to cars.

- Reducing the efficiency of individual trips by encouraging short-distance motor-vehicle traffic. Short distance motor-vehicle trips are the least fuel-efficient and generate the most pollution per kilometre. These trips have the greatest potential for being replaced by cycling and walking.

An iTrans Traffic Feasibility Study (2005) "concluded that, **from a traffic perspective**, it is feasible to remove the centre reversible lane" [emphasis added], which led to the streetscape designs proposed in the original EA.[17] While car traffic service levels may be slightly improved along Jarvis St. if the bike lanes are removed, there will undoubtedly be a decrease in the number of cyclists using the street due to safety concerns.

iTrans (2010) found that Jarvis Street and surrounding streets had acceptable levels of traffic service before the bike lanes were implemented, and that surrounding streets could accommodate modifications to Jarvis if it were decreased to four lanes. City of Toronto traffic monitoring showed that commuting times following the implementation of the bike lanes weren't significantly increased.[18] City staff also confirmed that the traffic impacts are minimal.[19]Small increases to travel times have been attributed by staff to turning lane issues and not the addition of bicycle lanes or the removal of the reversible centre-lane.[20]

7.3 Bio-physical Environmental Impact

The Project will have direct bio-physical environmental impacts as follows:

- Taking Jarvis Street by bicycle is the most energy efficient mode of transportation, and generates no pollution, except in its manufacture.

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[16]City of Toronto Bike Plan, above.
[17]iTrans, 2010.
[18]Dunn and Egan, 2011.
[19]Gary Welsh, P.Eng., General Manager, Transportation Services, Briefing Note: Jarvis Street Bike Lanes, Traffic Impacts (April 20, 2011)http://www.toronto.ca/cycling/reports/pdf/jarvis-briefing-note-april2011.pdf
[20]*Ibid.*

- Trips taken on the Jarvis bicycle lanes mitigated ozone depletion, the greenhouse effect, ground-level air pollution, photochemical smog, acid rain and noise pollution. The removal of the lanes will reduce trips, having the opposite effect.

- There is a potential worsening of air quality along Jarvis Street, as the street will accommodate more cars (five lanes of traffic versus four) and there will be fewer cyclists. This will be offset somewhat by shorter (~2-6 minute) commuting times for cars, based on traffic studies following the implementation of the bike lanes (Dunn and Egan, 2011), as well as improved signalization.

7.4 **Cultural Heritage**

In the original EA (iTrans, 2010), Jarvis Street is described as being a "significant historical and cultural thoroughfare", and is classified as a "Special Street" in the City of Toronto's *Streetscape Manual* (1997) and a "Cultural Corridor" in *Canada's Urban Waterfront – Waterfront Culture and Heritage Infrastructure Plan* (ERA Architects Inc. and Jeff Evenson, 2001). The street, opened in 1845, was the first street to be paved in Toronto and was referred to as Toronto's Champs-Élysées.[21]

Given the cultural and heritage importance of the street, the original EA proposed "user experience (pedestrians, cyclists, transit riders and motorists) should be in keeping with other ceremonial routes such as University Avenue, Yonge Street and Spadina Avenue."[22] Removing the bike lanes on Jarvis St. would create a less accessible and safe street for pedestrians and cyclists, and is not in keeping with the street's storied history.

[21] iTrans, 2010. The Champs-Elysees, as it turns out, has a planned bike lane (http://www.metrofrance.com/info-locale/le-velo-colonisera-les-champs-elysees/pjfh!2jXzJJg6u3SQqdo0MClVg/).
[22] iTrans, 2010.

8. Conclusion and recommendation

The proposed Project to remove existing bicycle lanes and add a fifth reversible centre lane is likely to cause significant adverse environmental effects and is subject to significant public concern. We request that the City of Toronto elevate the assessment of the Project to a Schedule C environmental assessment. To fail to do so would be to carry out the Project in a manner inconsistent with the purpose and intent of both the MCEA and the *Environmental Assessment Act*. If the City does not respond to our request within ten days, we will be submitting our request for a Part II Order to the Minister of the Environment.

Yours truly,
ILER CAMPBELL LLP

Laura Bowman
E-mail: lbowman@ilercampbell.com
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cc:

The Honourable Jim Bradley
Minister of the Environment
77 Wellesley Street West
11th Floor, Ferguson Block
Toronto Ontario, M7A 2T5
minister.moe@ontario.ca

Dan Egan (Manager, Cycling Programs and Infrastructure)
Transportation Services
Cycling Infrastructure & Programs
23rd floor East,
100 Queen Street West
Toronto Ontario M5H 2N2
degan@toronto.ca

John Mende(Director, Transportation Infrastructure Management)
Transportation Infrastructure Management
22nd floor East,
100 Queen Street West
Toronto Ontario M5H 2N2
jmende@toronto.ca

Councillor Denzil Minnan-Wong
Toronto City Hall
100 Queen Street West, Suite C55
Toronto, Ontario M5H 2N2
councillor_minnan-wong@toronto.ca

Councillor Kristyn Wong-Tam
Toronto City Hall
100 Queen Street West, Suite A5
Toronto, Ontario M5H 2N2
councillor_wongtam@toronto.ca