

# THE MUNICIPALITY OF BROCKTON

## BY-LAW NUMBER 2008-31

### A BY-LAW TO REQUIRE THE OWNERS OF PRIVATELY OWNED OUTDOOR SWIMMING POOLS TO ERECT AND MAINTAIN SWIMMING POOL ENCLOSURES

**WHEREAS** pursuant to Section 11 (3) par. 7 of the *Municipal Act*, S.O. 2001, c.25, as amended, provides that a by-law may be passed respecting structures, including fences;

**AND WHEREAS** Section 391 (1) of the *Municipal Act*, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws imposing fees or charges for services or activities provided or done by or on behalf of it;

**AND WHEREAS** it is expedient to impose fees for certain services;

**AND WHEREAS** it is the intention of the Municipality of Brockton to prevent unintentional injury and drowning caused by the failure of property owners to provide and erect approved and acceptable swimming pool enclosures;

**NOW THEREFORE** the Council of the Corporation of the Municipality of Brockton enacts:

#### PART 1 DEFINITIONS AND INTERPRETATION

1. For the purpose of this by-law, the following terms shall have the meanings indicated:

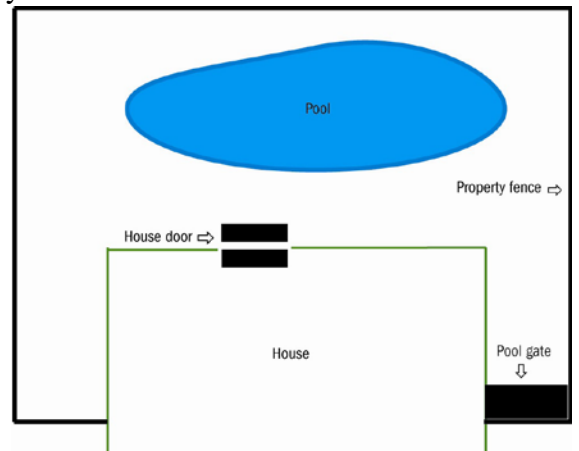
(a) **“Boundary or Property Fence”** means any barrier or structure constructed of chain link metal, wood, stone, metal, concrete, brick or other similar materials or combination of such materials, which is erected for the purpose of screening, safeguarding, retaining or enclosing property or delineating property lines (see Figure 1);

(b) **“Building”** means any permanent and/or temporary structure used or intended to be used for shelter, accommodation, or enclosure of persons, animals, or goods, but shall not include a lawful boundary fence;

(c) **“Chief Building Official”** means the person appointed by the Municipality of Brockton to such a position pursuant to the *Building Code Act*;

(d) **“Fence Height”** means the height measured from the finished floor level or ground level at any point along the length of the fencing to the top of the fence, measured on the outside of the fencing;

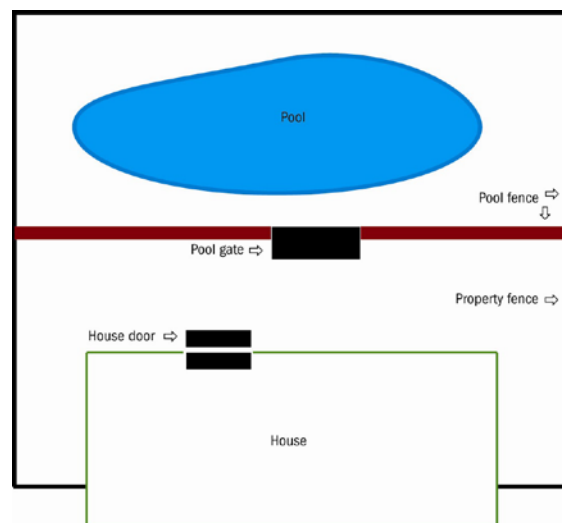
Figure 1: Property Fencing – Three-Sided Fencing



- (e) **“Finished Floor Level”** means a permanent stable surface, such as the top of wood, concrete or brick;
- (f) **“Finished Ground Level”** means a permanent ground level, such as grass, soil or gravel;
- (g) **“Four-Sided Fence”** means a fence or building wall that fully restricts access to the pool separate from the house. (see Figure 2);

Figure 2: Four-Sided Fencing

- (h) **“Gate”** means any part of a swimming pool fence which opens on hinges.
- (i) **“Guard”** means a protective barrier, with or without openings through it, that is around openings in floors or at the open sides of stairs, landings, balconies, mezzanies, galleries, raised walkways or other locations to prevent accidental falls from one level to another.



- (j) **“Hydro-Massage Pool”** or pools commonly referred to as hot tubs, Jacuzzis, whirlpools, spas and other similar products means a pool as defined in this by-law;

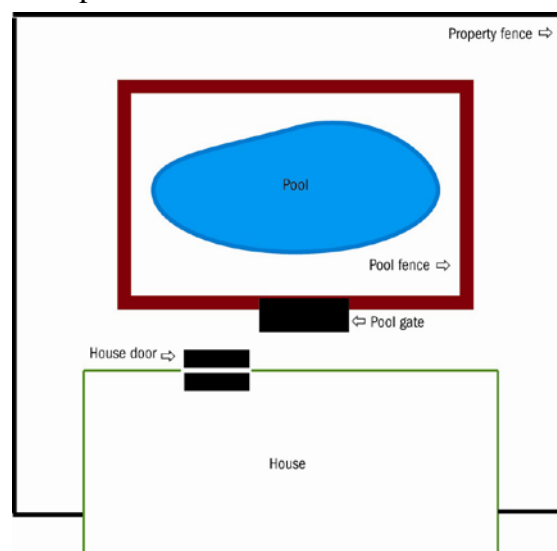
- (k) **“Immediate Pool Area”** means the surrounding area that contains items used for pool activities, including pool equipment, changing sheds, patio furniture and similar items used in conjunction with the use of the pool;

- (l) **“Inside of the Pool Enclosure”** means that side of the fence or gate that faces the pool area;

- (m) **“Isolation Fencing”** means a continuous fence that is effectively the same as a four-sided fence except that all ancillary structures (not related to the function of the swimming pool) are excluded from the pool area. The fence completely separates the pool from the house and the rest of the property (see Figure 3);

Figure 3: Isolation Fencing

- (n) **“Maintain”** means to keep a pool enclosure in a condition that meets the requirements of this by-law and to preserve the condition of the pool enclosure from failure or decline in order to ensure safety and strength.



- (o) **“Outside of the Pool Enclosure”** means that side of the fence or gate that faces

away from the pool area;

- (p) **“Owner”** includes the registered owner of any property; the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would so receive the rent if such land and premises were leased, and a lessee, tenant, mortgagee in possession, or person occupying or in charge of the property;
- (q) **“Pool Enclosure”** means a permanent four-sided fence, isolation fence or three-sided fence, which includes a self-closing and self-latching gate, and which surrounds a pool with the intention of restricting access from outside the pool enclosure;
- (r) **“Permit”** or **“Pool Enclosure Permit”** means a permit issued under this by-law by the Chief Building Official;
- (s) **“Replacement”** means the construction of a swimming pool and/or swimming pool fence that takes the place of a swimming pool and/or swimming pool fence previously constructed;
- (t) **“Self-Closing Device”** means a mechanical device or spring that returns a swimming pool enclosure gate to its closed position within 30 seconds after it has been opened;
- (u) **“Self-Latching Device”** means a mechanical device or latch that is engaged each time the gate is secured to its closed position, which will not allow the swimming pool enclosure gate to be re-opened by pushing or pulling, and which will ensure the swimming pool enclosure gate remains closed until unlatched by either lifting or turning the device itself directly or by a key;
- (v) **“Swimming Pool”** or **“Pool”** means an excavation, structure or product, which is:
  - (i) located outdoors on private property;
  - (ii) capable of being used for the purposes of swimming, wading, paddling or bathing;
  - (iii) capable of holding water in excess of 73.6cm (2 feet 5 inches) in depth at any point;

and includes a hot tub and or spa pool without a lockable hard cover, and a landscape pond meeting the above criteria, but for the purposes of this by-law does not include any pool which is:

- (1) a pond or reservoir located on lands designated as agricultural in any of the Municipality of Brockton’s zoning by-laws or as part of a golf course;
- (2) a pool owned by any public or governmental body, agency or authority, or is under the jurisdiction of the Ontario Building Code;
- (3) an existing natural body of water or stream; or
- (4) a privately owned storm water management facility;

(w) **“Temporary Pool”** means a swimming pool that is designed to be removed periodically on a seasonal or more frequent temporary basis;

(x) **“Three-Sided Fence”** means a fence that uses a wall or side of a building with a door to enclose the pool area.

2. The requirements of this by-law are expressed in metric measurements. Any imperial measurements included in this by-law are approximate and are provided for convenience only.

## **PART 2 GENERAL PROVISIONS**

### **Application of By-Law**

3. This by-law shall be administered by the Chief Building Official or his designate;
4. This by-law shall apply to all pool enclosures constructed, or replaced, within the Municipality of Brockton; as of the passage of this by-law
5. When a Swimming Pool Fence is constructed so that it functions as a boundary fence between two or more adjacent properties, in addition to its function as a swimming pool fence, the provisions of this by-law prevail over any other Municipality by-law that regulates fences;
6. In the event of any conflict between the provisions of this by-law and any provision of the Fence By-law, as may be amended or replaced from time to time, the provisions of this by-law shall prevail;
7. Notwithstanding Section 5,
  - a) no conflict exists between the provisions of this by-law and the provisions of any other by-law or approval if it is possible to comply with both by-laws by choosing an alternate type, design or location for a pool enclosure or pool;
  - b) nothing in this by-law permits the location of a pond, deck, platform or other structure in a location that is not permitted under the municipality of Brockton’s Zoning by-law.

## **PART 3 PROHIBITIONS**

8. No person shall excavate, construct, install, or situate a pool; or cause a pool to be excavated, constructed, installed, or situated; or commence the excavation, construction, installation, placement or replacement of a pool without first obtaining a pool enclosure permit from the Chief Building Official;
9. No person shall excavate, construct, install, or situate a pool; or cause a pool to be excavated, constructed, installed, or situated; or commence the excavation, construction, installation, placement or replacement of a pool that is not completely enclosed by a pool enclosure in accordance with this by-law;

10. No person shall construct or cause to be constructed any pool enclosure that does not conform to the requirements of this by-law, or permit such non-conforming pool enclosure to continue to enclose a pool;
11. No person shall fill a pool with water or cause a pool to be filled with water or allow water to remain in a pool unless:
  - a) the pool is enclosed by a pool enclosure, other than an approved temporary pool enclosure, meeting the requirements of Section 23 of this by-law; and
  - b) if the pool is a newly constructed pool, the Chief Building Official has been notified and the pool enclosure has been inspected and approved;
12. No person shall remove, alter or replace a pool enclosure or any part thereof without having first obtained a permit to do so from the Chief Building Official;
13. No owner shall fail to ensure that:
  - a) all gates forming part of the pool enclosure meet the standards of this by-law;
  - b) all entranceways to a pool enclosure through a wall of a building meet the standards of this by-law; and
  - c) all gates forming part of a pool enclosure are locked when the area is not in active use;
14. No person shall place, pile, attach or lean any object or material against or near a pool enclosure so as to facilitate climbing of the pool enclosure, diminish the structural integrity of a pool enclosure or render the pool enclosure in non-conformity with the provisions of this by-law;
15. No person shall erect a fence adjacent to an existing pool enclosure that does not comply with the requirements of this by-law.

### **Prohibited Fences**

16. No barbed wire, chicken wire or other barbed or sharp material shall be used in the construction of a pool enclosure.
17. No pool enclosure shall be used as a conductor of electricity.

### **PART 4 APPLICATIONS FOR PERMITS**

18. Every application for a pool enclosure permit shall be in a form specified by the Chief Building Official (attached as Schedule 'A') and accompanied by:
  - a) 2 sets of plans showing the location of the pool, all proposed pool equipment (such as filters, slides and heaters) and proposed landscape features in relation to property lines, buildings (including decks and shed), and easements;

- b) complete details of the proposed pool enclosure, including the location and type of proposed fence and gate;
- c) the permit fee(s) specified in the Municipality of Brockton's Fees and Charges By-law as amended from time to time
- d) the proposed access route for construction of the pool from any public right of way to the proposed pool location; and
- e) if the proposed pool is within an unassumed plan of subdivision, the written approval of the developer/owner of the subdivision;

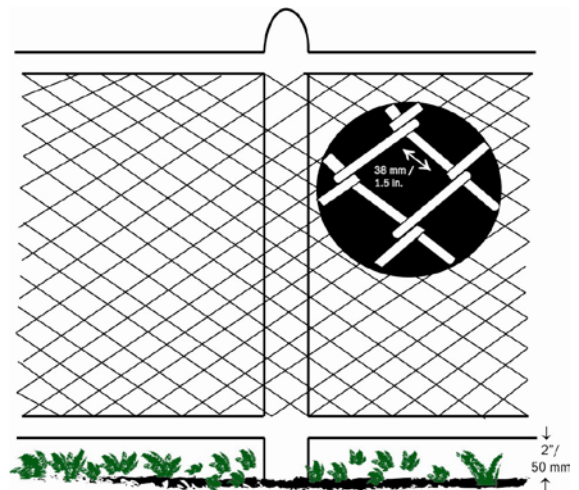
19. The Chief Building Official Shall issue a permit for a pool enclosure where the plans submitted comply with the requirements of this by-law and all applicable regulations and by-laws or approvals. Without limiting the generality of the foregoing, the Chief Building Official shall not issue the permit for the pool enclosure unless a site alteration permit, if required, has been obtained and the proposed location of the pool and pool enclosure complies with the Zoning By-law and any other applicable regulations, by-laws or approvals.

## PART 5 STANDARDS FOR POOL ENCLOSURES

20. The owner of a privately-owned outdoor pool shall erect and maintain a pool enclosure that is designed to prevent climbing, restrict access and satisfies the following standards:

- a) **Height:** the pool enclosure shall extend from the ground to a height of not less than 1.53m (5 feet). Height shall be measured from the finished ground level on the outside (not the pool side) of the pool enclosure, Inside fence height to comply with the Ontario Building Code; when the fence is used as part of a guard attached to a deck surrounding the pool;
- b) **Opening and Materials:**
  - i) where the pool enclosure is constructed of chain link fence, the pool enclosure shall not have any openings that would allow the passage of a spherical object having a diameter exceeding 38 mm (1.5 inches) (see Figure 4);
  - ii) where the pool enclosure is constructed of vertical and horizontal members, if the horizontal structural members are greater than 114.3 cm (45 inches) apart, the horizontal members can be located on the outside of the pool enclosure and the spacing between each vertical member shall not exceed 100 mm (4 inches) (see Figure 5);

Figure 4: Chain Link Openings



iii) where the pool enclosure is constructed of vertical and horizontal members, if the horizontal structural members are less than 114.3cm (45 inches) apart, the horizontal members must be located inside the pool enclosure and the spacing between each vertical member should not exceed 44.45 mm (1.75 inches) (see Figure 6);

c) **Ground Clearance:** the space at any point between the pool enclosure and the finished ground level and/or finished floor level must not exceed 100 mm (4 inches) 50mm (2”) for chain link fencing and the ground beneath the pool enclosure cannot be loose gravel or other material that can be easily removed so as to afford access under the pool enclosure (see Figures 4 and Figure 5);

Figure 5: Vertical and horizontal member spacing and ground clearance

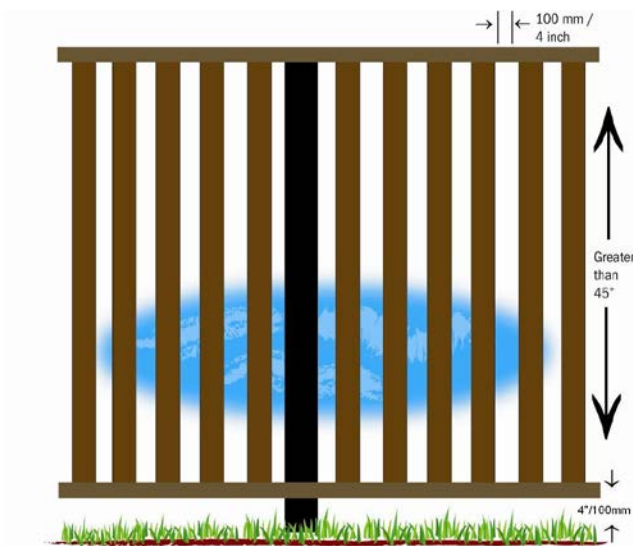
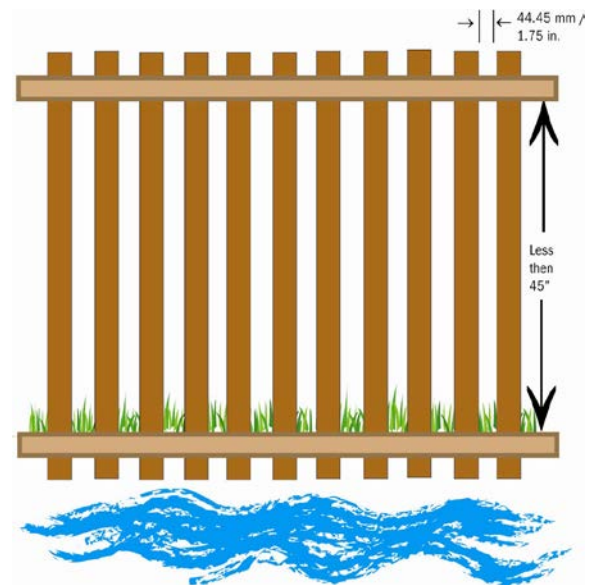


Figure 6: Vertical and horizontal member spacing



d) **Framing and Braces:** except as specified in Section 20.b) ii) all horizontal structural members must be located inside of the pool enclosure as to prevent easy climbing; and

e) **Location:** the pool enclosure may be a boundary fence which complies with the provisions of this by-law provided the fence is no closer than 1.2m (4ft.) from the waters edge and located not less 0.61m (2ft.) from any fence or structure that does not meet the requirements of this by-law.

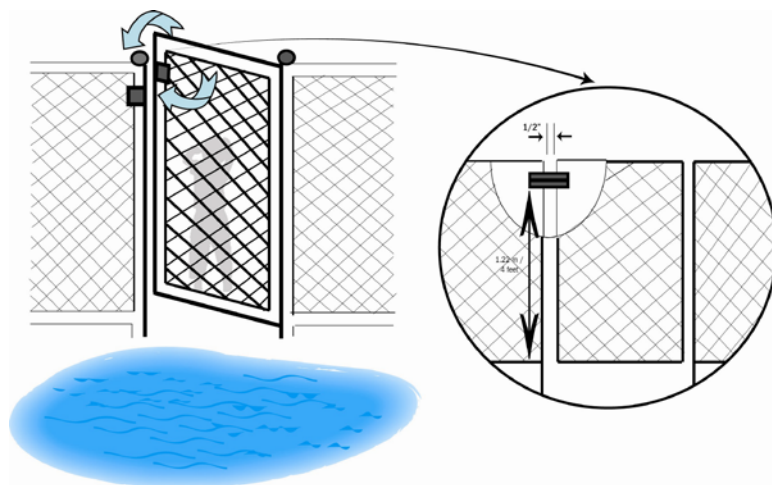
## GATES AND OTHER ACCESS POINTS

Figure 7: Self-closing and self-latching gate installation

### Gates

21. Every owner shall ensure that every gate forming part of a pool enclosure:

- (a) is constructed in accordance with the standards prescribed in section 20 of this by-law;
- (b) is supported on substantial hinges, capable of supporting 90.72kg (200 lbs.) in body weight;
- (c) is equipped with a self-closing device;
- (d) is equipped with a self-latching device that is located at least 1.22m (4 feet) above the finished floor level and/or finished ground level (see Figure 7);
- (e) is equipped with a lock;



22. If the gate to the pool enclosure is a double gate access, made up of two gates at the same location:

- (a) one of the two gates shall have a self-closing device and self-latching device; and
- (b) the gate of this double gate access without a self-closing device and a self-latching device shall have a device permanently affixed to the ground or other non-movable object, which prevents access through this gate without lifting or removing this device and then releasing the latch.

## TEMPORARY FENCE DURING CONSTRUCTION

23. The owner shall ensure that temporary fencing meeting the requirements of this section is in place during all phases of construction of the pool such that unauthorized access to the site is prevented. Temporary fencing shall be of 1.22m (4 feet) high snow fence, or such other fencing material with similar visibility, height and rigidity as may be approved by the Chief Building Official, and shall be securely attached at any opening when the area is left unattended.

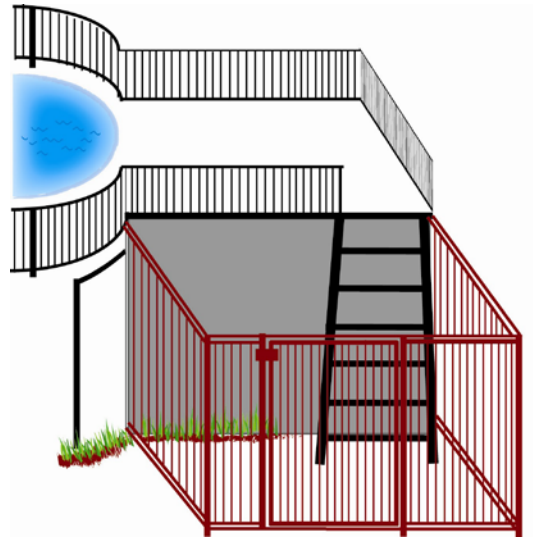


## PART 6 SPECIAL PROVISIONS

### Above-Ground Pools

24. The vertical walls of an above-ground pool can be used as part of a pool enclosure provided that the vertical walls are at least 1.52m (5 feet) in height and do not possess any horizontal members that may facilitate climbing;
25. The ladder area, which provides access to the above-ground pool, must be enclosed by a pool enclosure as defined in this by-law (see Figure 8);
26. Above ground pools with decks installed around the pool must meet the provisions of the Ontario Building Code and allow minimum of 1.2 m (4ft.) between the waters edge and the guard/ fence;

Figure 8: Above-ground pool with fenced ladder area



### Temporary Pools

27. If a pool enclosure permit has been obtained with respect to the pool enclosure for a temporary pool, the temporary pool may be reinstalled and refilled with water without additional permits or inspections provided there have been no alterations to the pool enclosure.

## PART 7 UNDERTAKING TO ENSURE REPAIR

28. Every person erecting, altering, repairing or demolishing a swimming pool and/or swimming pool fence within the Municipality of Brockton who permits the crossing of curbing, sidewalks or paved boulevards by vehicles delivering materials to or removing materials from abutting lands shall deposit with the Chief Building Official upon application for a swimming pool fence permit and prior to the commencement of any work, a completed undertaking to repair any damage to Municipal property such as any damage to the sidewalks, curbing or paved boulevard or to any water service box or other service therein caused by the crossing of such vehicles.
29. The owner of any lands on which any swimming pool and/or swimming pool fence is being erected, altered, repaired or demolished shall take all necessary steps to prevent building material, waste or soil from being spilled or tracked onto the public streets by vehicles going to or coming from the lands during the course of the erection, alteration, repair or demolition and shall be responsible to the Municipality for the cost of removing such building material, waste or soil and the cost of repairing any damaged curbing, sidewalks, or paved or grassed boulevards.

## PART 8 ENFORCEMENT

30. Every person who contravenes any provision of this by-law and is found guilty of an offence and upon conviction shall be subject to a fine as prescribed in the *Provincial Offences Act*, R.S.O. 1990, cP.33, as amended.

31. Where anything required to be done in accordance with this by-law is not done, the Chief Building Official for the Corporation of the Municipality of Brockton may, upon such notice as they deem suitable, do such thing at the expense of the person required to do it and such expense may be recovered by action or in like manner as municipal taxes within the meaning of Section 446 of the *Municipal Act*, S.O. 2001, c25., as amended.

**PART 9 REPEAL - ENACTMENT**

32. By-Law Number 99-54 is hereby repealed.

33. This By-Law comes into force on the date of passing.

READ A FIRST AND SECOND TIME THIS 14<sup>th</sup> DAY OF APRIL, 2008.

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MAYOR – Charlie Bagnato

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CAO/CLERK – Richard Radford

READ A THIRD AND FINAL TIME THIS 28<sup>th</sup> DAY OF APRIL, 2008.

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MAYOR – Charlie Bagnato

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CAO/CLERK – Richard Radford