

Court of Appeal File No: C65861 (M49615)
Superior Court File Nos: CV-18-00603797-0000
CV-18-00602494-0000
CV-18-00603633-0000

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CITY OF TORONTO

Applicant
(Respondent in appeal – Responding Party)

and

ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant – Moving Party)

AND BETWEEN:

ROCCO ACHAMPONG

Applicant
(Respondent in appeal – Responding Party)

and

**ONTARIO (HON. DOUG FORD, PREMIER OF ONTARIO), ONTARIO
(ATTORNEY GENERAL)**

Respondents
(Appellants – Moving Parties)

and

CITY OF TORONTO

Respondent
(Respondent in appeal – Responding Party)

(Title of Proceedings Continued on p. 2)

**FACTUM OF THE ATTORNEY GENERAL OF ONTARIO
(MOTION FOR STAY PENDING APPEAL)**

AND BETWEEN:

**CHRIS MOISE, ISH ADERONMU, and PRABHA KHOSLA, on her own
behalf and on behalf of all members of Women Win TO**

Applicants
(Respondents in appeal – Responding Parties)

and

ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant – Moving Party)

and

**JENNIFER HOLLETT, LILY CHENG, SUSAN DEXTER, GEOFFREY KETTEL AND
DYANOOSH YOUSSEFI**

Intervenors
(Respondents in appeal – Responding Parties)

**FACTUM OF THE ATTORNEY GENERAL OF ONTARIO
(MOTION FOR STAY PENDING APPEAL)**

September 13, 2018

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PART I – OVERVIEW

1. On September 10, 2018, the Honourable Justice Edward Belobaba released his reasons for decision in the three applications in the Court below that the provisions of the *Better Local Government Act, 2018* (the “Act” or “Bill 5”) that imposed a 25-ward structure for the 2018 City of Toronto municipal election (the “Impugned Provisions”¹) unjustifiably violated s 2(b) of the *Charter*. Justice Belobaba issued a declaration that the Impugned Provisions were immediately of no force and effect. He further ordered that “the City’s election on October 22, 2018 shall proceed as scheduled but on the basis of 47 wards and not 25 wards.”²
2. The Attorney General of Ontario seeks a stay of the Order of the Honourable Justice Belobaba (the “Application Judge”) dated September 10, 2018 (the “Order”).
3. A stay is in the interest of justice. The test for granting a stay is met. The Attorney General of Ontario has served a Notice of Appeal raising serious issues to be adjudicated on appeal, raising serious doubt as to the basis for the Application Judge’s finding of an infringement of s 2(b) of the *Charter* that is not justified under s 1 of the Charter, serious issues of procedural fairness in the Court below that materially affected the outcome, and a serious question of whether the remedy ordered oversteps the proper role of the Court and enters into the legislative sphere.
4. There would be irreparable harm if a 25-ward election were not held on October 22 in accordance with the duly enacted law which has now been declared invalid at first instance.

¹ Sections 4 to 7 of Schedule 1 and Schedule 3 of the Act and O Reg 407/18 and O Reg 408/18 made pursuant thereto, subject the following exceptions: (a) the part of section 1 of Schedule 3 of the Act that adds subsections 10.1(1) and 10.1(10) to the *Municipal Elections Act, 1996*, SO 1996, c 32, Sch [“MEA”], to the extent that it is necessary to permit s 4, 5 and 12 of O Reg 407/18 to remain in force; (b) the part of section 1 of Schedule 3 of Bill 5 that adds subsection 10.2 to the *MEA*; and (c) sections 4, 5, 12 of O Reg 407/18.

² Decision of The Honourable Justice Belobaba dated September 10, 2018 [“Application Decision”] at para 86, Motion Record of the Attorney General of Ontario [“AG Motion Record”], Tab 4 at 49; Order of The Honourable Justice Belobaba, September 10, 2018 at para 6, AG Motion Record, Tab 3 at 27.

Toronto's City Clerk advised City Council as of August 20, 2018 that it was too late to reverse course and organize a 47-ward election without compromising the election's integrity. She advised that preparation for a 25-ward election in accordance with the Act was on course and continuing. The Clerk was and is duty-bound to implement the law in force.³ The immediate declaration of invalidity and order directing the holding of a 47-ward election now requires her to reverse course. Twenty-one days elapsed since the Clerk's advice to Council on August 20, 2018 and the issuance of the Order under appeal on September 10, 2018. As of the date of the hearing of this motion, it will be only 34 days before the election.

5. The Supreme Court has held that courts weighing the balance of convenience should nearly always assume that irreparable harm to the public interest will result from a suspension of duly enacted legislation, even when it has been ruled unconstitutional at first instance.⁴ In this case, Ontario submits that it is in the public interest to allow the 25-ward election to proceed as planned on October 22 under the existing legislation, pending Ontario's appeal.

PART II – FACTS RELEVANT TO STAY

6. The Act received Royal Assent and came into force on August 14, 2018. It is an amending act which amends provisions of the MEA and the *City of Toronto Act, 2006*⁵ (the "Amendments") with the result that the number of City wards is reduced from 47 to 25, the

³ *MEA*, *supra* note 1, s 11.

⁴ *RJR-MacDonald Inc. v Canada (AG)*, [1994] 1 SCR 311 (QL) at paras 80-81 [*RJR-MacDonald*]; *Harper v Canada (AG)*, 2000 SCC 57 at para 9 [*Harper*].

⁵ SO 2006, c 11 ("*COTA*"). Specifically, the Act, *inter alia*: (1) amends *COTA* s 127 that divides the City of Toronto into wards; (2) re-enacts *COTA* s 128 to set out rules that provide that the City is divided into wards whose boundaries are identical to those of the electoral districts for Ontario that are within the boundaries of the City, commencing on the day city council is organized following the 2018 regular election; (3) amends *COTA* s 130 to provide that the current composition no longer applies after city council is organized following the 2018 regular election; (4) re-enacts *COTA* s 135 to set out rules regarding the composition of city council commencing on the day city council is organized following the 2018 regular election; (5) amendments to the City's power to determine the governance of the City, to establish, change or dissolve wards, and to change the composition of city council; (6) adds a new section to the *MEA* to address nominations for the 2018 election under the 25-ward structure and provides for a regulation-making authority under the *MEA* to address other transitional issues.

boundaries of the wards aligned with those of the federal and provincial ridings in Toronto, and the number of City councillors (not counting the Mayor, who is elected at large) reduced from 47 to 25 (one per ward). Under the Act, the authority formerly in *COTA* for the City to establish its ward structure and boundaries and Council composition was expressly removed, and the City bylaws that had been passed to establish ward structure, boundaries and Council composition were deemed not to have been passed.⁶

7. The purpose of the Act is to achieve greater voter parity among Toronto's wards in 2018 and, by reducing the number of Councillors, to improve the efficiency and effectiveness of City Council and to save money for Toronto's taxpayers.⁷ The 25-ward boundaries established under the Act align with the federal and provincial electoral boundaries within Toronto (which are independently reviewed by a federal commission to ensure they provide effective representation in the federal and provincial context).⁸ At Second Reading, the responsible Minister explained the rationale for Bill 5:⁹

First, they [Councillors in support of a 25-ward model] agree that a smaller council will lead to better decision-making at Toronto city hall, which would benefit Torontonians as a whole. They gave an example of the current 44-member council having 10-hour debates on issues that would end with the vast majority of councillors voting the same as they would have at the beginning of the debate. ...

Second, they point out that it will save money, and those savings go beyond just the savings of those councillors' salaries. The current 44-member council also creates a huge challenge for the Toronto bureaucracy, which has to respond to motion upon motion, to reports, reports and more reports, and then to deferrals and then more deferrals. [At the] most recent city council meeting, ... there were 128 members' motions presented. If we allowed council to grow to 47 and hadn't acted quickly, many believe the situation would have become worse. ...

Third, it would result in a fair vote for residents, which was the very reason Toronto itself undertook a review of its ward boundaries. The Toronto councillors I referred to earlier

⁶ See note 5 *supra*.

⁷ Legislative Assembly of Ontario, *Hansard* [*Hansard*] August 2, 2018 at 606-607, Book of Authorities of the Moving Party, the Attorney General of Ontario ["AG Ontario Motion BOA"], Tab 13.

⁸ *Hansard*, August 2, 2018 at 606, AG Ontario Motion BOA, Tab 13.

⁹ *Hansard*, August 2, 2018 at 606-607, AG Ontario Motion BOA, Tab 13.

reminded everyone that the Supreme Court of Canada said that voter parity is a prime condition of effective representation. They gave examples of the current ward system, where there are more than 80,000 residents in one ward and 35,000 in another. They acknowledge that this voter disparity is the result of self-interest, and that the federal and provincial electoral district process is better because it is an independent process which should apply to Toronto as well. ... The wards we are proposing are arrived at through an independent process.

8. As of August 20, 2018, the City Clerk was prepared to run a 25-ward election on October 22 in accordance with the Act. She so stated in her written report to Council on August 17, 2018 and at her appearance before Council on August 20, 2018.¹⁰
9. The Clerk's written report of August 17, 2018 notes that the *MEA* provides her with "significant discretion in administering elections" and that the "independence of the municipal clerk for election purposes is a fundamental underpinning of the legislative framework."¹¹ Council has no authority to direct her as to the conduct of elections.¹²
10. The Clerk stated that from the time Bill 5 was introduced in the Legislative Assembly (on July 30, 2018), she had undertaken "emergency contingency planning" with the assistance of resources from "within the City, partnerships with the Municipal Property Assessment Corporation (MPAC), Elections Ontario, the Ministry of Municipal Affairs and Housing, City agencies and others in developing a contingency plan." She stated that "the level of support and cooperation across the Toronto Public Service, partners and vendors has been unprecedented and has been a key factor in enabling the Clerk to prepare for these changes."¹³ She concluded that as of August 17, 2018 (three days after the in-force date of the Act) she was confident that she had the capacity to administer the 2018 municipal election on a 25-ward basis as required by the Act and that she had taken the necessary steps to develop

¹⁰ "Report for Information: The Impact of the Better Local Government Act, 2018 (Bill 5) on Toronto's 2018 Municipal Election" (the "Clerk's Written Report"), AG Motion Record, Tab 5A.

¹¹ Clerk's Written Report at 3, AG Motion Record, Tab 5A at 63.

¹² Clerk's Written Report at 3, AG Motion Record, Tab 5A at 63.

¹³ Clerk's Written Report at 4, AG Motion Record, Tab 5A at 64.

contingency plans to accommodate the changes required in time for the October 22, 2018 election.¹⁴

11. The Clerk considered the risk to the 2018 election “in the event a challenge to Bill 5 is successful in the courts.”¹⁵ The Clerk stated that reverting to a 47-ward model so close to the election raised unacceptable levels of risk:

Reverting back to a 47 ward model so close to election day raises unacceptable levels of risk and undermines the trust and confidence of candidates and voters. The City Clerk is concerned she will be unable to undertake the necessary due diligence required to administer an election while meeting the principles of the [MEA].¹⁶

12. On August 20, 2018, Toronto’s City Council held a special meeting styled “Legal Options to Challenge Bill 5, the *Better Local Government Act, 2018*.” During the August 20 meeting, in answer to questions from Councillors, the Clerk and her Deputy confirmed their readiness for a 25-ward election. Answering questions on the ability to prepare two election models concurrently, they stated that “it would be impossible to prepare for both election models going forward...”¹⁷

13. The Clerk stated that it takes 15,000 to 18,000 people to run an election. Reverting to a 47-ward model at this point “will risk confusing the public, confusing candidates, confusing our workers – all of which need to be trained... it simply is not feasible to run systems and do all the preparation work for two elections at the same time.”¹⁸ She expressed concern that, if she is required to administer a 47-ward election, there will be a controverted election.¹⁹

14. When asked what needed to be fixed in the event that the City reverts to a 47-ward

¹⁴ Clerk’s Written Report at 5, AG Motion Record, Tab 5A at 65.

¹⁵ Clerk’s Written Report at 5, AG Motion Record, Tab 5A at 65.

¹⁶ Clerk’s Written Report at 5, AG Motion Record, Tab 5A at 65.

¹⁷ Affidavit of Adam Kanji (“Kanji Aff”) at para 7, AG Motion Record, Tab 5 at 53.

¹⁸ Kanji Aff at para 7, AG Motion Record, Tab 5 at 54; Student-Prepared Transcript of August 20, 2018 Toronto City Council Meeting [“Council Transcript”], AG Motion Record, Tab 6 at 154.

¹⁹ Kanji Aff at para 7, AG Motion Record, Tab 5 at 54; Council Transcript, AG Motion Record, Tab 6 at 168.

election, the City Clerk and her Deputy provided a catalogue of necessary revisions, observing that “none of them are simple fixes.”²⁰

- “Some work related to geography”;
- “Remap voting places”;
- “Re-permit voting locations”;
- “Manual data entry on staffing system to accommodate reassigning 15,000-18,000 election day staff”;
- “Repack all of our bags, which are thousands”;
- “Redo all of our distribution for the warehouse”;
- “The biggest issue is the ballot production is a very involved process...we have over 2 million ballots that we produce with an external vendor. We are incredibly careful and build a lot of accuracy into it. That activity becomes very compressed if we need to go back to a 47 Ward model”;
- “We rely heavily on information technology – we have a data hub and a results chain and many applications that we use to automate manual business practices. All of those systems would have to be rejigged and end-to-end tests conducted”;
- and
- “Provide notice to the electorate on where they are able to vote...one of the applications we have developed is MyVote...the electorate puts their address in and it gives them a voting location...we would have to recode this back to a 47 Ward model.”

15. The Clerk was and is duty bound to implement the law in force.²¹ The immediate declaration of invalidity and order directing the holding of a 47-ward election now requires her to reverse course, and the legislative objectives of Bill 5, enacted in the public interest, will be defeated. Twenty-one days elapsed since the Clerk’s advice to Council on August 20, 2018 and the issuance of the Order under appeal on September 10, 2018. As of the date of the

²⁰ Kanji Aff at para 7, AG Motion Record, Tab 5 at 54; Council Transcript, AG Motion Record, Tab 6 at 171-172.

²¹ *MEA*, *supra* note 1, s 11.

hearing of this motion, it will be only 34 days before the election.

PART III – THE LAW

A. It is in the interest of justice to grant a stay pending appeal

16. Rule 63.02(1)(a) provides that an order may be stayed pending appeal by the court to which an appeal has been taken. The test for granting a stay is the same as that for granting interlocutory injunctive relief: whether (i) there is a serious issue to be adjudicated; (ii) there will be irreparable harm if the stay is refused; and, (iii) the balance of convenience favours granting the stay.²² The overarching principle is that the court must decide whether it is in the interests of justice to grant the stay.²³

B. There is a serious issue to be adjudicated

17. The first branch of the test sets a low threshold that the matter is not “vexatious or frivolous.”²⁴ This requirement is easily met in this case. In the appeal, the Attorney General of Ontario will raise the following issues:

- a) Whether the Application Judge erred in law in holding: (1) s 2(b) of the *Charter* was infringed as a result of the timing of the passage of the Act; (2) that s 2(b) was infringed by the change to the number of City wards and includes a right to “effective representation” as that term is understood under s 3 of the *Charter* (which only applies to federal and provincial elections).²⁵

²² *Ogden Entertainment Services v Retail, Wholesale Canada, Canadian Service Sector, U.S.W.A. Local 440* (1998), 1998 CarswellOnt 1787 (CA) (WL Can) at para 4; *RJR-MacDonald*, *supra* note 4 at paras 43, 77-80.

²³ *Tisi v St Amand*, 2017 ONCA 539 at para 4.

²⁴ *RJR-MacDonald*, *supra* note 4 at para 44.

²⁵ Municipal elections are not protected under s 3 of the *Charter*: *Haig v Canada*, [1993] 2 SCR 995 at 1031, 1033; *Baier v Alberta*, 2007 SCC 31 at para 39. Municipalities are creatures of statute. Municipalities operate on power delegated by the Legislature. In delegating power to municipalities, the sovereign Legislature does not abdicate any of its power. The Legislature may revoke a municipality’s powers at any time.

- b) Whether the Application Judge erred in extending the application of the concept of “effective representation” so as to establish a maximum number of constituents per councillor;
- c) Whether the Application Judge made errors of law and palpable and overriding errors of fact by giving weight to irrelevant factors and in holding that Ontario had not put forward sufficient evidence of a pressing and substantial objective, despite the clearly stated evidence of the Legislature’s objectives reflected in the legislative debates and in the record overall;
- d) Whether the Application Judge erred in law and made palpable and overriding errors of fact in holding that Ontario had not established minimal impairment because enacting the legislation after the election would have been “less impairing” despite the fact that delaying the intended reforms of Toronto City Council would not have achieved the government’s objectives at all, or as effectively;
- e) Whether the Application Judge erred in granting an order with immediate effect directing a 47-ward election, despite the fact that this exceeds what is required to remedy the constitutional breach found and is contrary to the principle that courts should not intrude upon the legislative sphere, especially in connection with legislation prescribing the rules or structure for elections;²⁶ and
- f) Whether the Application Judge erred in law in failing to provide procedural fairness to the Attorney General of Ontario, which had a material effect on the Judge’s findings on key issues.

²⁶ See *Dixon v British Columbia (AG)*, 1989 CarswellBC 101 at paras 14-16 (BCSC) [*Dixon II*]; *RJR-MacDonald*, *supra* note 4 at paras 71-72.

18. None of the above grounds are frivolous or vexatious.

C. Refusing to grant the stay would cause irreparable harm

19. The second branch requires that harm flowing from a refusal to grant the stay cannot be remedied at a later date if the decision is overturned on appeal.²⁷ The irreparable nature of such harm refers to the nature of the harm suffered, rather than its magnitude or quantity.²⁸

The Court of Appeal has held that “[a] public authority can almost always show irreparable harm if the stay is not granted by demonstrating its actions have been taken to promote the public interest.”²⁹ This includes carrying out duly enacted legislated provisions,³⁰ even where those provisions have been held unconstitutional at first instance.³¹

20. In this case, refusing to grant the stay would cause irreparable harm as the effect of the Application Judge’s Order is to halt the operation of duly enacted legislative provisions held invalid at first instance. In enacting Bill 5, the Legislature has determined that the following objectives are in the public interest:

- a) achieving better voter parity for the 2018 Toronto election;
- b) making Council more effective and efficient; and
- c) saving taxpayer expense.

Without the Act in effect, the residents of Toronto, and Ontario, lose the benefit of these changes.

²⁷ *RJR-MacDonald*, *supra* note 4 at paras 57-58.

²⁸ *RJR-MacDonald*, *supra* note 4 at paras 59, 79.

²⁹ *Henco Industries Ltd v Haudenosaunee Six Nations*, (2006) 82 OR (3d) 338 (CA) at para 21.

³⁰ *RJR-MacDonald*, *supra* note 4 at paras 71-73, 80-81; *Harper*, *supra* note 4 at paras 9-11; *Metropolitan Stores (MTS) Ltd v Manitoba Food & Commercial Workers, Local 832*, [1987] 1 SCR 110, 1987 CarswellMan 176 at paras 37, 38, 55-66, 79, 84, 87-89 [*Met Stores*].

³¹ *Bedford v Canada (AG)*, 2010 ONCA 814 at paras 66-68 [*Bedford ONCA*], citing *Canadian Council for Refugees et al v Canada*, 2008 FCA 40 at para 34.

21. Furthermore, the City Clerk had advised Council that (as of August 20, 2018) she was prepared to run a 25-ward election on October 22 and that reverting to a 47-ward election would cause her concerns regarding the integrity of the election and whether the results would be controverted.

22. In the circumstances, it is in the public interest to run the 25-ward election on October 22. In the event that the Attorney General is ultimately successful on appeal, no further action would be required. In the event that the claimants are successful on appeal, it is not a foregone conclusion that a 47-ward election would be held. The Attorney General would ask the Court to grant a suspended declaration of invalidity to provide the Legislature an opportunity to respond with legislation that cures any constitutional breach while achieving the Legislature's objectives as far as possible. This would be the appropriate remedy in the event of any finding of *Charter* breach on the appeal.

D. The balance of convenience favours granting the stay

23. On the third branch of the test, the Supreme Court has held that courts weighing the balance of convenience must consider the public interest in the continued operation of duly enacted law,³² even if it has been found unconstitutional at first instance.³³ The Supreme Court has directed that the courts must presume that the public interest and the balance of convenience favours the continued operation of legislation.³⁴ It is in the public interest to allow the 25-ward election to proceed as planned on October 22 under the existing legislation.

24. The Supreme Court has also held that to resist a stay sought by a public authority that

³² *RJR-MacDonald*, *supra* note 4 at paras 64, 71-73, 80-81; *Harper*, *supra* note 4 at paras 9-11; *Met Stores*, *supra* note 30 at paras 37, 38, 55-66, 79, 84, 87-89.

³³ *Bedford ONCA*, *supra* note 31 at paras 66-68, citing *Canadian Council for Refugees et al v Canada*, *supra* note 31 at para 34.

³⁴ *RJR-MacDonald*, *supra* note 4 at paras 80-81; *Harper*, *supra* note 4 at paras 9-11.

would allow the continued operation of legislation (or to obtain a suspension of legislation), the claimants must establish that the public interest (and not merely their private interests) weigh in favour of the suspension of the legislation.³⁵ Here the claimants are unable to do so. They simply seek their preferred form of election and cite reliance interests they have in proceeding with an election based on the new 47-ward structure. No Toronto election has ever been run with 47 wards. The 47-ward structure is a new creation, which was legally confirmed only five months prior to the introduction of Bill 5.³⁶ Granting their wish at this time would result in greater confusion and would put the October 22, 2018 election at risk.

25. In *Bedford*,³⁷ the Superior Court found a federal statute unconstitutional on the basis of unjustifiably depriving vulnerable women of their security of the person. The Attorneys General of Canada and Ontario sought a stay pending appeal. The Court of Appeal granted the motion. In his reasons for granting the stay, Rosenberg JA articulated several general principles supporting the granting of stays in appeals concerning the constitutional validity of laws passed by democratically elected legislatures:

In constitutional cases, the public interest is a “special factor” that must be considered in the balance of convenience stage of the test. The Supreme Court has indicated that there is legal presumption that statutes are enacted in the public interest which is applied as part of the *RJR* test.³⁸

26. Rosenberg JA confirmed that this presumption remains in effect even where a judge at first instance has held that the legislation is unconstitutional³⁹ and described the question

³⁵ *RJR-MacDonald*, *supra* note 4 at paras 66, 80-81.

³⁶ It was only on March 6, 2018, that the Divisional Court dismissed an application for leave to appeal from the Ontario Municipal Board decision dated December 15, 2017: *Natale v Toronto (City)*, [2018] OJ No 1180.

³⁷ *Bedford v Canada (AG)*, 2010 ONSC 4264 at paras 365-366, 506 [*Bedford* ONSC].

³⁸ *Bedford* ONCA, *supra* note 29 at para 12; *Met Stores*, *supra* note 30 at paras 55-56; *Harper*, *supra* note 4 at para 9; *RJR-MacDonald*, *supra* note 4 at paras 80-81.

³⁹ *Bedford* ONCA, *ibid* at para 66-68, citing *Canadian Council for Refugees et al v Canada*, *supra* note 31 at para 34; *Mets Stores*, *supra* note 30 at paras 55-56; *Harper*, *supra* note 4 at paras 9,11; *RJR-MacDonald*, *supra* note 4 at para 80-81 .

before the Court in a stay motion following a declaration of unconstitutionality as follows:

...whether a stay should be granted in a context where (1) there is a *prima facie* right of the government to a full review of the first-level decision; (2) the government has a presumption of irreparable harm if the judgment is not stayed pending that review; and (3) the responding parties must demonstrate that suspension of the legislation would provide a public benefit to tip the public interest component of the balance of convenience in their favour.⁴⁰

27. Sharpe JA’s decision on the motion to the Court of Appeal for stay pending appeal in *Frank* is also instructive (though the motion for a stay was dismissed in that case). In *Frank*, an election law provision was found unconstitutional by the Superior Court shortly before four federal by-elections were called. The provision excluded Canadian citizens who had been absent from Canada for more than five years from eligibility to vote in federal elections. The first branch of the test for stay pending appeal was met, but Sharpe JA concluded that neither irreparable harm nor the balance of convenience had been made out.

28. The Court noted that the impugned statutory provision, a simple exclusion, was not a “complex statutory scheme or administrative apparatus to be dismantled or constructed in order to give effect to the trial judgment”. Where the impugned statutory provisions are more complex, the balance of convenience would favour a stay “to avoid the cost and disruption that would flow from implementing a new regime based upon a trial judgment that may need to be undone in the event of a successful appeal.”⁴¹ Refusing the stay in *Frank*, Sharpe JA held, would not create “a legislative void” or gap in the overall election law, since the statute already granted many non-resident citizens the right to vote, and the declaration simply extended this right to a broader class. This extension was unlikely to produce a “floodgate of

⁴⁰ *Bedford* ONCA, *supra* note 31 at para 13.

⁴¹ *Frank v Canada (AG)*, 2014 ONCA 485 at para 27 [*Frank*].

votes”.⁴²

29. The Court went on to describe that Elections Canada had taken “minimal” administrative steps required to permit non-resident to vote immediately after the Superior Court decision (which was issued 59 days before the by-elections and 49 days before the hearing of the stay motion). The record indicated that it may not have been possible for Elections Canada to “undo what it has already done” in time for the election. Granting the stay would therefore incur cost and inconvenience instead of avoiding it. Sharpe JA acknowledged that his decision was based on the particular facts of that motion, as “very often, the public interest in the orderly administration of the law will tilt the balance of convenience in favour of maintaining impugned legislation pending the final determination of its validity on appeal”.⁴³

30. In the present case, the balance of convenience favours a stay. Allowing the 25-ward election to proceed would fulfill the Legislature’s objectives and avoid cost, confusion and inconvenience, rather than cause it.⁴⁴ The Order has brought to a halt preparation for the 25-ward election that was to proceed on October 22 pursuant to duly enacted legislation (found invalid at first instance). The balance of convenience favours providing the public with the benefit of the law – in this case, the 25-ward October 22 election. The impugned provision is not a simple exclusion as was considered in *Frank*, and is more akin to a “complex statutory scheme or administrative apparatus to be dismantled or constructed in order to give effect to the trial judgment.”

31. Furthermore, based on the advice of the Toronto City Clerk to Council on August 20,

⁴² *Frank, ibid* at paras 29-30.

⁴³ *Frank, supra* note 41 at para 17.

⁴⁴ *Frank, ibid* at para 27.

2018, there is concern that a rushed 47-ward election may not be able to be conducted with integrity and the results may be controverted. This concern is only exacerbated at this late date. If the 47-ward election is allowed to proceed and the Act is ultimately held constitutional, additional disruption and cost would be incurred to unravel the 47-ward election. The converse is not the case if the Attorney General is ultimately unsuccessful on appeal and, as would be appropriate and consistent with the jurisprudence, the Court of Appeal's declaration is suspended to allow the Legislature to respond.

PART V – ORDER REQUESTED

32. Under s 106 of the *Courts of Justice Act*,⁴⁵ this Court may grant a stay on the motion of any party on such terms as are considered just. The Attorney General of Ontario seeks an Order of this Court staying the Order pending the outcome of the Appeal before this Court and requests consequential relief with respect to certain dates established by the *Municipal Elections Act, 1996* and Ontario Regulation 407/18 that will have passed while the Order of Justice Belobaba was in effect.

33. In particular, if this Court grants a stay, the Attorney General requests the following:

- a) An order extending the nomination day of September 14, 2018, in subsection 10.1 (3) of the *Municipal Elections Act, 1996*, to the date that is two calendar days following the date this Court grants a stay of the Order of Justice Belobaba, or if that date is a holiday (as defined in Rule 1.03(1) of the *Rules of Civil Procedure*), then the next date that is not a holiday;
- b) An order extending the date by which the clerk shall have the voters' list reproduced to the date that is two calendar days following the date this Court grants a stay of the Order of Justice Belobaba, or if that day is a holiday, then the next date that is not a holiday (as defined in Rule 1.03 of the *Rules of Civil Procedure*) and substituting that date for the references to September 17, 2018 in subsections 4 (1), 11 (2), 13 (2) and 13 (3) of Ontario Regulation 407/18.

⁴⁵ RSO 1990, c C43.

- c) An order extending the date by which the clerk shall provide final spending limits to candidates under subsections 88.9.1 (4), 88.20 (13) and 88.21 (14) of the *MEA* to the date that is five business days following the the date this Court grants a stay of the Order of Justice Belobaba.

34. Two hours will be required for the oral argument of the motion, not including reply.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13th DAY OF SEPTEMBER, 2018.

Robin Basu

Yashoda Ranganathan

Audra Ranalli

Of counsel for the Respondent, the Attorney General of Ontario

SCHEDULE 'A'

List of Authorities

- 1 *RJR-MacDonald Inc v Canada (AG)*, [1994] 1 SCR 311 (QL)
- 2 *Harper v Canada (AG)*, 2000 SCC 57
- 3 Legislative Assembly of Ontario, *Hansard*, August 2, 2018
- 4 *Ogden Entertainment Services v Retail, Wholesale Canada, Canadian Service Sector, U.S.W.A. Local 440* (1998), 1998 CarswellOnt 1787 (CA)
- 5 *Tisi v St Amand*, 2017 ONCA 539
- 6 *Haig v Canada*, [1993] 2 SCR 995
- 7 *Baier v Alberta*, 2007 SCC 31
- 8 *Dixon v British Columbia (AG)*, 1989 CarswellBC 101 (BCSC)
- 9 *Henco Industries Ltd v Haudenosaunee Six Nations*, (2006) 82 OR (3d) 338 (CA)
- 10 *Metropolitan Stores (MTS) Ltd v Manitoba Food & Commercial Workers, Local 832*, [1987] 1 SCR 110, 1987 CarswellMan 176
- 11 *Bedford v Canada (AG)*, 2010 ONCA 814
- 12 *Canadian Council for Refugees et al v Canada*, 2008 FCA 40
- 13 *Natale v Toronto (City)*, [2018] OJ No 1180
- 14 *Bedford v Canada (AG)*, 2010 ONSC 4264
- 15 *Frank v Canada (AG)*, 2014 ONCA 485

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Constitution Act, 1982

Being Schedule B to the Canada Act 1982 (UK), 1982, c 11

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Guarantee of Rights and Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(b) freedom of expression

Democratic Rights

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

**PART VII
GENERAL**

Primacy of Constitution of Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Courts of Justice Act, RSO 1990, c C.43

Stay of proceedings

106 A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered

Rules of Civil Procedure, RRO 1990, Reg 194

DEFINITIONS

1.03 (1) In these rules, unless the context requires otherwise,

...

“holiday” means,

(a) any Saturday or Sunday,

(b) New Year’s Day,

(b.1) Family Day,

(c) Good Friday,

(d) Easter Monday,

(e) Victoria Day,

(f) Canada Day,

(g) Civic Holiday,

(h) Labour Day,

(i) Thanksgiving Day,

(j) Remembrance Day,

(k) Christmas Day,

(l) Boxing Day, and

(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor,

and where New Year’s Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday; (“jour férié”)

STAY BY ORDER

By Trial Court or Appeal Court

63.02 (1) An interlocutory or final order may be stayed on such terms as are just,

- (a) by an order of the court whose decision is to be appealed;
- (b) by an order of a judge of the court to which a motion for leave to appeal has been made or to which an appeal has been taken. O. Reg. 465/93, s. 8.

Expiry of Trial Court Stay

(2) A stay granted under clause (1) (a) expires if no notice of motion for leave to appeal or no notice of appeal, as the case may be, is delivered and the time for the delivery of the relevant notice has expired. O. Reg. 534/95, s. 7.

Setting aside or Varying Stay

(3) A stay granted under subrule (1) may be set aside or varied, on such terms as are just, by a judge of the court to which a motion for leave to appeal may be or has been made or to which an appeal may be or has been taken. O. Reg. 465/93, s. 8.

**SCHEDULE 1
CITY OF TORONTO ACT, 2006**

4 Section 127 of the Act is amended by adding the following subsection:

Application

(2) This section does not apply after city council is organized following the 2018 regular election.

5 Sections 128 and 129 of the Act are repealed and the following substituted:

Division of wards after 2018 regular election

128 (1) On the day city council is organized following the 2018 regular election, the City is divided into wards whose boundaries are identical to those of the electoral districts for Ontario that are within the boundaries of the City.

Same

(2) For the purposes of subsection (1), the electoral districts for Ontario are those determined under the *Representation Act, 2015* as it read on the day the *Better Local Government Act, 2018* received Royal Assent.

Conduct of 2018 regular election

(3) The 2018 regular election shall be conducted as if the division of the City into wards, as determined under subsections (1) and (2), was already in effect.

Regulations

(4) The Minister may make regulations for implementing the purposes, provisions and intention of this section and, without restricting the generality of the foregoing, the Minister may make regulations governing transitional matters that arise out of the implementation of this section.

Retroactivity

(5) A regulation made under subsection (4) is, if it so provides, effective with reference to a period before it was filed.

Conflicts

(6) In the event of a conflict between a regulation under subsection (4) and a provision of this Act or any other Act or regulation, the regulation made under subsection (4) prevails.

Same

(7) In the event of a conflict between this section and a provision of any other Act or a regulation made under any other Act, this section prevails.

By-law not passed

129 A by-law passed under section 128, as that section read immediately before the *Better Local Government Act, 2018* received Royal Assent, is deemed not to have been passed.

6 Section 130 of the Act is amended by adding the following subsection:

Application

(2) This section does not apply after city council is organized following the 2018 regular election.

7 Section 135 of the Act is repealed and the following substituted:

City council following 2018 regular election

135 (1) Commencing with the city council that is organized following the 2018 regular election, city council shall be composed of,

- (a) the head of council; and
- (b) other members, the number of which equals the number of wards as determined under section 128.

Rules re composition of city council

(2) The following rules apply to the composition of city council:

1. The members of city council shall be elected in accordance with the *Municipal Elections Act, 1996*.
2. The head of council shall be elected by general vote.
3. One member of council shall be elected for each of the wards determined under section 128.

Conduct of 2018 regular election

(3) The 2018 regular election shall be conducted as if the composition of city council, as determined under subsections (1) and (2), was already in effect.

Regulations

(4) The Minister may make regulations for implementing the purposes, provisions and intention of this section and, without restricting the generality of the foregoing, the Minister may make regulations governing transitional matters that arise out of the implementation of this section.

Retroactivity

(5) A regulation made under subsection (4) is, if it so provides, effective with reference to a period before it was filed.

Conflicts

(6) In the event of a conflict between a regulation under subsection (4) and a provision of this Act or any other Act or regulation, the regulation made under subsection (4) prevails.

Same

(7) In the event of a conflict between this section and a provision of any other Act or a regulation made under any other Act, this section prevails.

Rules re previously passed by-law changing city council

135.1 (1) A by-law passed under section 135, as that section read immediately before the *Better Local Government Act, 2018* received Royal Assent, is deemed not to have been passed.

Exception re s. 83 (1) of the *Municipal Elections Act, 1996*

(2) An order shall not be made under subsection 83 (1) of the *Municipal Elections Act, 1996* by reason only of the clerk of the City doing anything, before a by-law passed under section 135 of this Act, as it read immediately before the *Better Local Government Act, 2018* received Royal Assent, in relation to the conduct of the 2018 regular election,

(a) as if the by-law were not already in effect; or

(b) as if the by-law were already in effect.

8 Paragraphs 3 and 4 of subsection 151 (2) of the Act are repealed.

Commencement

9 This Schedule comes into force on the day the *Better Local Government Act, 2018* receives Royal Assent.

SCHEDULE 3
MUNICIPAL ELECTIONS ACT, 1996

1 The *Municipal Elections Act, 1996* is amended by adding the following sections before the heading “Election Officials”:

2018 regular election, City of Toronto

10.1 (1) Except as otherwise provided, this section applies with respect to the 2018 regular election within the City of Toronto.

Exception, head of council

(2) Subsections (3) to (9) do not apply to a nomination for the office of head of council.

New nomination day

(3) Despite section 31, nomination day is September 14, 2018 and the following rules apply:

1. Nomination day as set out in section 31 is deemed not to have occurred.
2. The period for filing a nomination is deemed to have run continuously from May 1, 2018 until September 14, 2018.

Notifying the clerk re office on the council

(4) If a person has filed a nomination under section 33 for an office on the council and wishes to continue to be a candidate in the election, the person shall notify the clerk in writing before 2 p.m. on September 14, 2018 of the office on the council, other than the office of head of council, for which the person wishes to be nominated.

Notifying clerk re office on a school board

(5) If a person has filed a nomination under section 33 for an office on a school board and wishes to continue to be a candidate in the 2018 regular election, the person shall notify the clerk in writing before 2 p.m. on September 14, 2018 of the office on the same school board for which the person wishes to be nominated.

Same, not a new nomination

(6) The giving of notice to the clerk under subsection (4) or (5) does not constitute a new nomination.

Same, not multiple campaigns

(7) For the purposes of subsection 88.24 (3), a person who has notified the clerk under subsection (4) or (5) shall not be considered to be a candidate for more than one office on the same council or school board, as the case may be.

Deemed withdrawal of nomination

(8) A person who has filed a nomination is deemed to have withdrawn his or her nomination if he or she has not notified the clerk under subsection (4) or (5).

Notice by clerk

(9) As soon as possible after the day the *Better Local Government Act, 2018* receives Royal Assent, the clerk shall notify in writing each person who filed a nomination under section 33 for an office on the council, other than the office of head of council, or for an office on a school board and the notice shall include the following:

1. A statement that if the person wishes to continue to be a candidate in the 2018 regular election, the person must notify the clerk under subsection (4) or (5), as applicable.
2. A statement that if the person does not notify the clerk under subsection (4) or (5), the person will be deemed to have withdrawn his or her nomination.
3. Any other information as may be prescribed.

Regulations

(10) The Minister may make regulations for implementing the purposes, provisions and intention of this section and, without restricting the generality of the foregoing, the Minister may make regulations,

- (a) prescribing anything that is referred to, in this section, as prescribed;
- (b) varying the operation of any of the provisions of this Act for the purposes of the 2018 regular election; and
- (c) with respect to this Act, governing transitional matters that arise out of the implementation of this section, including any such transitional matters that may arise for the 2022 regular election or any by-election that takes place before the 2022 regular election.

Same

(11) A regulation made under subsection (10) may limit the circumstances in which an order under subsection 83 (1) may be made in relation to the conduct of the 2018 regular election.

Retroactivity

(12) A regulation made under subsection (10) is, if it so provides, effective with reference to a period before it was filed.

Conflict

(13) In the event of a conflict between a regulation made under subsection (10) and a provision of this Act or of any other Act or regulation, the regulation made under subsection (10) prevails.

2018 regular election, certain regional municipalities

Deemed withdrawal of nominations

10.2 (1) A person who has filed a nomination for the office of head of council of a municipality referred to in subsection 218.1 (1) of the *Municipal Act, 2001* in the 2018 regular election is deemed to have withdrawn his or her nomination under section 36 of this Act immediately before the applicable deadline set out in that section.

Regulations

(2) The Minister may make regulations that, in the opinion of the Minister, are advisable or necessary for the purposes of carrying out the 2018 regular election for the municipalities referred to in subsection 218.1 (1) of the *Municipal Act, 2001* and, without restricting the generality of the foregoing, the Minister may make regulations,

- (a) varying the operation of any of the provisions of this Act for those purposes;
- (b) governing transitional matters that arise out of the implementation of section 218.1 of the *Municipal Act, 2001*.

Same

(3) A regulation made under subsection (2) may limit the circumstances in which an order under subsection 83 (1) may be made in relation to the conduct of the 2018 regular election for the municipalities referred to in subsection 218.1 (1) of the *Municipal Act, 2001*.

Retroactivity

(4) A regulation made under subsection (2) is, if it so provides, effective with reference to a period before it was filed.

Conflict

(5) In the event of a conflict between a regulation made under subsection (2) and a provision of this Act or of any other Act or regulation, the regulation made under subsection (2) prevails.

Commencement

2 This Schedule comes into force on the day the *Better Local Government Act, 2018* receives Royal Assent.

2018 AND 2022 REGULAR ELECTIONS — SPECIAL RULES

PART I

CITY OF TORONTO — 2018 REGULAR ELECTION

Application

1. This part applies to the 2018 regular election in the City of Toronto.

Voting subdivisions

2. (1) The division of the City of Toronto into voting subdivisions under subsection 18 (1) of the Act before the day the *Better Local Government Act, 2018* received Royal Assent is deemed not to have occurred.

(2) The reference to March 31 in subsections 18 (1) and (2) of the Act shall be read as a reference to August 20, 2018.

Preliminary list

3. (1) The preparation and delivery of a preliminary list for the City of Toronto under subsection 19 (1) of the Act before the day the *Better Local Government Act, 2018* received Royal Assent is deemed not to have been prepared or delivered.

(2) Despite subsection 19 (1.1) of the Act, the preliminary list required under subsection 19 (1) of the Act shall be delivered no later than September 7, 2018.

Voters' list

4. (1) In subsections 23 (2), 24 (1) and 25 (3) of the Act, a reference to September 1 shall be read as a reference to September 17, 2018.

(2) Subsection 27 (1) of the Act does not apply.

Certification or rejection of nominations

5. For greater certainty, a decision of the clerk of the City of Toronto to certify or reject a nomination under subsection 35 (2) or (3) of the Act made on or before July 30, 2018 remains in effect and is final.

Voting proxy appointments

6. (1) Despite subsection 44 (4) of the Act, a person may appoint a voting proxy for the election beginning on September 17, 2018.

(2) A certificate that was applied to an appointing document by the clerk under subsection 44 (7) of the Act before the day the *Better Local Government Act, 2018* received Royal Assent is deemed not to have been applied.

Notice to clerk

7. (1) The notice provided to the clerk under subsection 10.1 (4) or (5) of the Act shall be in the form established by the clerk under subsection 12 (2) of the Act.

(2) A person shall not provide notice to the clerk of the City of Toronto under subsection 10.1 (4) or (5) of the Act before August 20, 2018.

Notice by clerk

8. The following information is prescribed for the purposes of subsection 10.1 (9) of the Act:

1. A copy of the form referred to in subsection 7 (1) of this Regulation.
2. A statement that the first day notice may be provided under subsection 10.1 (4) or (5) of the Act is August 20, 2018.

Filing of nomination

9. A nomination for an office on the council or an office on a school board shall not be filed under section 33 of the Act between July 28, 2018 and August 19, 2018.

Certificate, permitted amount of candidate's expenses

10. (1) Sections 33.0.1 and 33.0.2 of the Act do not apply and instead the rules set out in this section apply.

(2) Upon the giving of notice by a person to the clerk under subsection 10.1 (4) or (5) of the Act, the clerk shall do the following:

1. Calculate the applicable maximum amount of the person's expenses for the purposes of subsection 88.20 (6) of the Act, as of the date the notice was given, using the number of electors referred to in paragraph 1 of subsection 11 (2) of this Regulation.

2. Give the person a certificate of the applicable maximum amount referred to in paragraph 1 as of the date of the notice.
3. Calculate the applicable maximum amount for the purposes of subsection 88.9.1 (1) of the Act, as of the date the notice was given, using the number of electors referred to in paragraph 1 of subsection 11 (2) of this Regulation.
4. Give the person a certificate of the applicable maximum amount referred to in paragraph 3 as of the date of the notice.

(3) Upon the filing of a person's nomination, the clerk shall do the following:

1. Calculate the applicable maximum amount of the person's expenses for the purposes of subsection 88.20 (6) of the Act, as of the filing date, using the number of electors referred to in paragraph 1 of subsection 11 (2) of this Regulation.
2. Give the person, or the agent filing the nomination for the person, a certificate of the applicable maximum amount referred to in paragraph 1 as of the filing date.
3. Calculate the applicable maximum amount for the purposes of subsection 88.9.1 (1) of the Act, as of the filing date, using the number of electors referred to in paragraph 1 of subsection 11 (2) of this Regulation.
4. Give the person, or the agent filing the nomination for the person, a certificate of the applicable maximum amount referred to in paragraph 3 as of the filing date.

(4) The clerk's calculations under subsections (2) and (3) are final.

Campaign contributions and expenses

11. (1) Subsections 88.9.1 (2), 88.20 (11) and 88.21 (11) of the Act do not apply and instead the rules set out in this section apply.

(2) For the purposes of subsections 88.9.1 (1), 88.20 (7) and 88.21 (7) of the Act, for the 2018 regular election the number of electors is the greater of the following:

1. The number of electors determined from the voters' list from the 2014 regular election, as it existed on September 12, 2014, adjusted for applications under sections 24 and 25 of the Act that were approved as of that day.
2. The number of electors determined from the voters' list for the 2018 regular election as it exists on September 17, 2018.

Exception re s. 83 (1)

12. (1) An order shall not be made under subsection 83 (1) of the Act by reason only of the clerk doing anything, before the *Better Local Government Act, 2018* received Royal Assent, in relation to the conduct of the 2018 regular election,

- (a) as if the amendments set out in section 1 of Schedule 3 to the *Better Local Government Act, 2018* were not already in effect; or
- (b) as if the amendments set out in section 1 of Schedule 3 to the *Better Local Government Act, 2018* were already in effect.

(2) An order shall not be made under subsection 83 (1) of the Act by reason only of the clerk doing anything, after the *Better Local Government Act, 2018* received Royal Assent, in relation to the conduct of the 2018 regular election arising out of the implementation of the amendments set out in section 1 of Schedule 3 to the *Better Local Government Act, 2018*.

PART II

CITY OF TORONTO — 2022 REGULAR ELECTION

Campaign contributions and expenses

13. (1) For the purposes of the 2022 regular election and any by-election that takes place before the 2022 regular election in the City of Toronto, subsections 88.9.1 (2) and (3), 88.20 (11) and (12) and 88.21 (11), (12) and (13) of the Act do not apply and instead the rules set out in this section apply.

(2) With respect to the 2022 regular election, for the purposes of subsections 88.9.1 (1), 88.20 (7) and 88.21 (7) of the Act, the number of electors is the greater of the following:

- 1. The number of electors determined from the voters' list for the 2018 regular election as it existed on September 17, 2018.
- 2. The number of electors determined from the voters' list for the current election, as it exists on September 15 in the year of the current election, adjusted for changes made under sections 24 and 25 of the Act that are approved as of that day.

(3) With respect to any by-election that takes place before the 2022 regular election, for the purposes of subsections 88.9.1 (1), 88.20 (7) and 88.21 (7) of the Act, the number of electors is the greater of the following:

- 1. The number of electors determined from the voters' list for the 2018 regular election as it existed on September 17, 2018.

2. The number of electors determined from the voters' list for the by-election, as it exists after the clerk has made corrections under subparagraph 4 iii of subsection 65 (4) of the Act.

PART III

REGIONAL MUNICIPALITIES — 2018 REGULAR ELECTION

Exception re s. 83 (1)

14. (1) An order shall not be made under subsection 83 (1) of the Act by reason only of the clerk of a municipality listed in subsection 218.1 (1) of the *Municipal Act, 2001* doing anything, before the *Better Local Government Act, 2018* received Royal Assent, in relation to the conduct of the 2018 regular election,

(a) as if the amendments set out in section 1 of Schedule 3 to the *Better Local Government Act, 2018* were not already in effect; or

(b) as if the amendments set out in section 1 of Schedule 3 to the *Better Local Government Act, 2018* were already in effect.

(2) An order shall not be made under subsection 83 (1) of the Act by reason only of the clerk doing anything, after the *Better Local Government Act, 2018* received Royal Assent, in relation to the conduct of the 2018 regular election arising out of the implementation of the amendments set out in section 1 of Schedule 3 to the *Better Local Government Act, 2018*.

PART IV

COMMENCEMENT

Commencement

15. This Regulation comes into force on the day it is filed.

WARDS

Wards

1. (1) The name of a ward described in section 128 of the Act shall be the same as the name of the electoral district for Ontario that, under section 128 of the Act, corresponds to that ward.

(2) For clarity, the names of the wards are as follows:

1. Etobicoke North.
2. Etobicoke Centre.
3. Etobicoke – Lakeshore.
4. Parkdale – High Park.
5. York South – Weston.
6. York Centre.
7. Humber River – Black Creek.
8. Eglinton – Lawrence.
9. Davenport.
10. Spadina – Fort York.
11. University – Rosedale.
12. Toronto – St. Paul’s.
13. Toronto Centre.
14. Toronto – Danforth.
15. Don Valley West.
16. Don Valley East.
17. Don Valley North.
18. Willowdale.
19. Beaches – East York.
20. Scarborough Southwest.
21. Scarborough Centre.
22. Scarborough – Agincourt.
23. Scarborough North.
24. Scarborough – Guildwood.

25. Scarborough – Rouge Park.

Ward boundaries

2. For greater certainty, if the boundary of an electoral district for Ontario extends outside the boundaries of the City, the boundary of the ward that corresponds to that electoral district does not extend outside the boundaries of the City.

Commencement

3. This Regulation comes into force on the day it is filed.

Wards continued

127 Without limiting subsection 125 (1), the wards of the City on the day on which the City is continued by that subsection are the same as they were immediately before the City was continued. 2006, c. 11, Sched. A, s. 127.

Changes to wards

128 (1) Without limiting sections 7 and 8, those sections authorize the City to divide or redivide the City into wards or to dissolve the existing wards.

Conflict

(2) In the event of a conflict between a by-law described in subsection (1) and any provision of this Act, other than this section or section 129, a conflict with a provision of any other Act or a conflict with a regulation made under any other Act, the by-law prevails.

Notice

(3) Within 15 days after the by-law is passed, the City shall give notice of the passing of the by-law to the public specifying the last date for filing a notice of appeal under subsection (4).

Appeal

(4) Within 45 days after the by-law is passed, the Minister or any other person or agency may appeal to the Local Planning Appeal Tribunal by filing a notice of appeal with the City setting out the objections to the by-law and the reasons in support of the objections.

Notices forwarded to Tribunal

(5) Within 15 days after the last day for filing a notice of appeal under subsection (4), the City shall forward any notices of appeal to the Local Planning Appeal Tribunal.

Other material

(6) The City shall provide any other information or material that the Tribunal requires in connection with the appeal. 2006, c. 11, Sched. A, s. 128 (6); 2017, c. 23, Sched. 5, s. 12 (3).

Tribunal decision

(7) The Tribunal shall hear the appeal and may, despite any Act, make an order affirming, amending or repealing the by-law.

Coming into force of by-law

- (8) The by-law comes into force on the day the new city council is organized following,
- (a) the first regular election after the by-law is passed if the by-law is passed before January 1 in the year of the regular election and,
 - (i) no notices of appeal are filed,
 - (ii) notices of appeal are filed and are all withdrawn before January 1 in the year of the election, or
 - (iii) notices of appeal are filed and the Tribunal issues an order to affirm or amend the by-law before January 1 in the year of the election; or
 - (b) the second regular election after the by-law is passed, in all other cases except where the by-law is repealed by the Tribunal.

Election

(9) Despite subsection (8), where the by-law comes into force on the day the new city council is organized following a regular election, that election shall be conducted as if the by-law was already in force.

Notice to assessment corporation

- (10) When a by-law described in this section is passed, the clerk of the City shall notify the assessment corporation,
- (a) before January 1 in the year of the first regular election after the by-law is passed, if clause (8) (a) applies;
 - (b) before January 1 in the year of the second regular election after the by-law is passed, if clause (8) (b) applies.

Petition re wards

129 (1) Electors in the City may present a petition to city council asking the council to pass a by-law dividing or redividing the City into wards or dissolving the existing wards. 2006, c. 11, Sched. A, s. 129 (1).

Number of electors required

(2) The petition requires the signatures of 500 of the electors in the City. 2006, c. 11, Sched. A, s. 129 (2).

Definition

(3) In this section,

“elector” means a person whose name appears on the voters’ list, as amended up until the close of voting on voting day, for the last regular election preceding a petition being presented to council under subsection (1). 2006, c. 11, Sched. A, s. 129 (3).

Failure to act

(4) If city council does not pass a by-law in accordance with the petition within 90 days after receiving the petition, any of the electors who signed the petition may apply to the Local Planning Appeal Tribunal to have the City divided or redivided into wards or to have the existing wards dissolved. 2006, c. 11, Sched. A, s. 129 (4); 2006, c. 32, Sched. B, s. 32 (1); 2017, c. 23, Sched. 5, s. 13 (1).

Order

(5) The Tribunal shall hear the application and may, despite any Act, make an order dividing or redividing the City into wards or dissolving the existing wards and subsection 128 (6) applies with necessary modifications in respect to the hearing. 2006, c. 11, Sched. A, s. 129 (5); 2017, c. 23, Sched. 5, s. 13 (2).

Coming into force

(6) An order of the Tribunal under this section comes into force on the day the new city council is organized following,

- (a) the first regular election after the order is made, if the order is made before January 1 in the year of the regular election; or
- (b) the second regular election after the order is made, if the order is made on or after January 1 in the year of a regular election but before voting day. 2006, c. 11, Sched. A, s. 129 (6); 2017, c. 23, Sched. 5, s. 13 (3).

Election

(7) Despite subsection (6), if an order comes into force on the day the new city council is organized following a regular election, that election shall be conducted as if the order was already in force. 2006, c. 11, Sched. A, s. 129 (7).

Deemed by-law

(8) Once an order of the Tribunal is in force, the order is deemed to be a by-law of the City and may be amended or repealed by the City by by-law described in section 128. 2006, c. 11, Sched. A, s. 129 (8); 2006, c. 32, Sched. B, s. 32 (2); 2017, c. 23, Sched. 5, s. 13 (4).

City Council

City council continued

130 Without limiting subsection 125 (1), the composition of city council on the day on which the City is continued by that subsection is the same as it was immediately before the City was continued. 2006, c. 11, Sched. A, s. 130.

Changes to city council

135 (1) Without limiting sections 7 and 8, those sections authorize the City to change the composition of city council.

Conflict

(2) In the event of a conflict between a by-law described in subsection (1) and any provision of this Act, other than this section, a conflict with a provision of any other Act or a conflict with a regulation made under any other Act, the by-law prevails.

Requirements

(3) The following rules apply to the composition of city council:

1. There shall be a minimum of five members, one of whom shall be the head of council.
2. The members of council shall be elected in accordance with the *Municipal Elections Act, 1996*.
3. The head of council shall be elected by general vote.
4. The members, other than the head of council, shall be elected by general vote or wards or by any combination of general vote and wards.

Coming into force

(4) A by-law changing the composition of city council does not come into force until the day the new council is organized,

- (a) after the first regular election following the passing of the by-law; or
- (b) if the by-law is passed in the year of a regular election before voting day, after the second regular election following the passing of the by-law.

Exception re by-law passed before 2018 regular election

(4.1) Despite clause 135 (4) (b), if a by-law changing the composition of city council is passed on or after January 1, 2018 and on or before June 30, 2018, the by-law may, if it so provides, come into force as early as the day the new council is organized after the 2018 regular election.

Same

(4.2) If a by-law referred to in subsection (4.1) is passed, a determination shall not be made under subsection 83 (1) of the *Municipal Elections Act, 1996* by reason only of the clerk of the City doing anything, before the by-law is passed, in relation to the conduct of the 2018 regular election,

- (a) as if the by-law were not already in effect; or
- (b) as if the by-law were already in effect.

Election

(5) The regular election held immediately before the coming into force of the by-law shall be conducted as if the by-law was already in force.

Term unaffected

(6) Nothing in this section authorizes a change in the term of office of a member of council.

City of Toronto Act, 2006, SO 2006, c 11, Sch A [Present]

Wards continued

127 (1) Without limiting subsection 125 (1), the wards of the City on the day on which the City is continued by that subsection are the same as they were immediately before the City was continued. 2006, c. 11, Sched. A, s. 127.

Application

(2) This section does not apply after city council is organized following the 2018 regular election. 2018, c. 11, Sched. 1, s. 4.

Division of wards after 2018 regular election

128 (1) On the day city council is organized following the 2018 regular election, the City is divided into wards whose boundaries are identical to those of the electoral districts for Ontario that are within the boundaries of the City.

Same

(2) For the purposes of subsection (1), the electoral districts for Ontario are those determined under the *Representation Act, 2015* as it read on the day the *Better Local Government Act, 2018* received Royal Assent.

Conduct of 2018 regular election

(3) The 2018 regular election shall be conducted as if the division of the City into wards, as determined under subsections (1) and (2), was already in effect.

Regulations

(4) The Minister may make regulations for implementing the purposes, provisions and intention of this section and, without restricting the generality of the foregoing, the Minister may make regulations governing transitional matters that arise out of the implementation of this section.

Retroactivity

(5) A regulation made under subsection (4) is, if it so provides, effective with reference to a period before it was filed.

Conflicts

(6) In the event of a conflict between a regulation under subsection (4) and a provision of this Act or any other Act or regulation, the regulation made under subsection (4) prevails.

Same

(7) In the event of a conflict between this section and a provision of any other Act or a regulation made under any other Act, this section prevails.

By-law not passed

129 A by-law passed under section 128, as that section read immediately before the *Better Local Government Act, 2018* received Royal Assent, is deemed not to have been passed.

City Council

City council continued

130 (1) Without limiting subsection 125 (1), the composition of city council on the day on which the City is continued by that subsection is the same as it was immediately before the City was continued. 2006, c. 11, Sched. A, s. 130.

Application

(2) This section does not apply after city council is organized following the 2018 regular election. 2018, c. 11, Sched. 1, s. 6.

City council following 2018 regular election

135 (1) Commencing with the city council that is organized following the 2018 regular election, city council shall be composed of,

- (a) the head of council; and
- (b) other members, the number of which equals the number of wards as determined under section 128.

Rules re composition of city council

(2) The following rules apply to the composition of city council:

1. The members of city council shall be elected in accordance with the *Municipal Elections Act, 1996*.
2. The head of council shall be elected by general vote.
3. One member of council shall be elected for each of the wards determined under section 128.

Conduct of 2018 regular election

(3) The 2018 regular election shall be conducted as if the composition of city council, as determined under subsections (1) and (2), was already in effect.

Regulations

(4) The Minister may make regulations for implementing the purposes, provisions and intention of this section and, without restricting the generality of the foregoing, the Minister may make regulations governing transitional matters that arise out of the implementation of this section.

Retroactivity

(5) A regulation made under subsection (4) is, if it so provides, effective with reference to a period before it was filed.

Conflicts

(6) In the event of a conflict between a regulation under subsection (4) and a provision of this Act or any other Act or regulation, the regulation made under subsection (4) prevails.

Same

(7) In the event of a conflict between this section and a provision of any other Act or a regulation made under any other Act, this section prevails.

Rules re previously passed by-law changing city council

135.1 (1) A by-law passed under section 135, as that section read immediately before the *Better Local Government Act, 2018* received Royal Assent, is deemed not to have been passed. 2018, c. 11, Sched. 1, s. 7.

Exception re s. 83 (1) of the *Municipal Elections Act, 1996*

(2) An order shall not be made under subsection 83 (1) of the *Municipal Elections Act, 1996* by reason only of the clerk of the City doing anything, before a by-law passed under section 135 of this Act, as it read immediately before the *Better Local Government Act, 2018* received Royal Assent, in relation to the conduct of the 2018 regular election,

(a) as if the by-law were not already in effect; or

(b) as if the by-law were already in effect. 2018, c. 11, Sched. 1, s. 7.

Municipal Elections Act, 1996, SO 1996, c 32, Sched

2018 regular election, City of Toronto

10.1 (1) Except as otherwise provided, this section applies with respect to the 2018 regular election within the City of Toronto. 2018, c. 11, Sched. 3, s. 1.

Exception, head of council

(2) Subsections (3) to (9) do not apply to a nomination for the office of head of council. 2018, c. 11, Sched. 3, s. 1.

New nomination day

(3) Despite section 31, nomination day is September 14, 2018 and the following rules apply:

1. Nomination day as set out in section 31 is deemed not to have occurred.
2. The period for filing a nomination is deemed to have run continuously from May 1, 2018 until September 14, 2018. 2018, c. 11, Sched. 3, s. 1.

Notifying the clerk re office on the council

(4) If a person has filed a nomination under section 33 for an office on the council and wishes to continue to be a candidate in the election, the person shall notify the clerk in writing before 2 p.m. on September 14, 2018 of the office on the council, other than the office of head of council, for which the person wishes to be nominated. 2018, c. 11, Sched. 3, s. 1.

Notifying clerk re office on a school board

(5) If a person has filed a nomination under section 33 for an office on a school board and wishes to continue to be a candidate in the 2018 regular election, the person shall notify the clerk in writing before 2 p.m. on September 14, 2018 of the office on the same school board for which the person wishes to be nominated. 2018, c. 11, Sched. 3, s. 1.

Same, not a new nomination

(6) The giving of notice to the clerk under subsection (4) or (5) does not constitute a new nomination. 2018, c. 11, Sched. 3, s. 1.

Same, not multiple campaigns

(7) For the purposes of subsection 88.24 (3), a person who has notified the clerk under subsection (4) or (5) shall not be considered to be a candidate for more than one office on the same council or school board, as the case may be. 2018, c. 11, Sched. 3, s. 1.

Deemed withdrawal of nomination

(8) A person who has filed a nomination is deemed to have withdrawn his or her nomination if he or she has not notified the clerk under subsection (4) or (5). 2018, c. 11, Sched. 3, s. 1.

Notice by clerk

(9) As soon as possible after the day the *Better Local Government Act, 2018* receives Royal Assent, the clerk shall notify in writing each person who filed a nomination under section 33 for an office on the council, other than the office of head of council, or for an office on a school board and the notice shall include the following:

1. A statement that if the person wishes to continue to be a candidate in the 2018 regular election, the person must notify the clerk under subsection (4) or (5), as applicable.
2. A statement that if the person does not notify the clerk under subsection (4) or (5), the person will be deemed to have withdrawn his or her nomination.
3. Any other information as may be prescribed. 2018, c. 11, Sched. 3, s. 1.

Regulations

(10) The Minister may make regulations for implementing the purposes, provisions and intention of this section and, without restricting the generality of the foregoing, the Minister may make regulations,

- (a) prescribing anything that is referred to, in this section, as prescribed;
- (b) varying the operation of any of the provisions of this Act for the purposes of the 2018 regular election; and
- (c) with respect to this Act, governing transitional matters that arise out of the implementation of this section, including any such transitional matters that may arise for the 2022 regular election or any by-election that takes place before the 2022 regular election. 2018, c. 11, Sched. 3, s. 1.

Same

(11) A regulation made under subsection (10) may limit the circumstances in which an order under subsection 83 (1) may be made in relation to the conduct of the 2018 regular election. 2018, c. 11, Sched. 3, s. 1.

Retroactivity

(12) A regulation made under subsection (10) is, if it so provides, effective with reference to a period before it was filed. 2018, c. 11, Sched. 3, s. 1.

Conflict

(13) In the event of a conflict between a regulation made under subsection (10) and a provision of this Act or of any other Act or regulation, the regulation made under subsection (10) prevails. 2018, c. 11, Sched. 3, s. 1.

Duties of clerk

11 (1) The clerk of a local municipality is responsible for conducting elections within that municipality, subject to the following exceptions:

1. The clerks specified in the regulations made under the *Education Act* are responsible for certain aspects of the elections of members of school boards, as set out in those regulations.
2. The clerks specified in section 11.1 are responsible for certain aspects of the election of members of the council of an upper-tier municipality, as provided for in that section.
3. Repealed: 2002, c. 17, Sched. F, Table.
4. The clerks specified in subsection (5) are responsible for certain aspects of the election with respect to a question an upper-tier municipality submits to its electors under clause 8 (1) (b) or (c). 1996, c. 32, Sched., s. 11 (1); 1999, c. 14, Sched. F, s. 6 (4); 2000, c. 5, s. 29 (1); 2002, c. 17, Sched. F, Table.

ROCCO ACHAMPONG and ONTARIO and CITY OF TORONTO
Applicant (Respondent in appeal) Respondent (Appellants) Respondent (Respondent in Appeal)

THE CITY OF TORONTO and ATTORNEY GENERAL OF ONTARIO
Applicant (Respondent in appeal) Respondent (Appellant)

CHRIS MOISE *et al.* and ATTORNEY GENERAL OF ONTARIO and CITY OF TORONTO
Applicants (Respondent in appeal) Respondent (Appellants) Respondent (Respondent in Appeal)

Court of Appeal File No.: C65861 (M49615)

Superior Court File No:CV-18-00602494-0000

Superior Court File No:CV 18-00603797-0000

Superior Court File No:CV-18-00603633-0000

**COURT OF APPEAL FOR ONTARIO
Proceeding commenced at Toronto**

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