

<p style="text-align: center;">Court File No. CV-18-00602494-0000</p> <p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>B E T W E E N :</p> <p style="text-align: center;">ROCCO ACHAMPONG</p> <p style="text-align: right;">Applicant</p> <p style="text-align: center;">- and -</p> <p style="text-align: center;">ONTARIO (HON. DOUG FORD, PREMIER OF ONTARIO), ONTARIO (ATTORNEY-GENERAL), and CITY OF TORONTO</p> <p style="text-align: right;">Respondents</p>	<p style="text-align: center;">Court File No. CV-18-00603797-0000</p> <p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>B E T W E E N :</p> <p style="text-align: center;">CITY OF TORONTO</p> <p style="text-align: right;">Applicant</p> <p style="text-align: center;">- and -</p> <p style="text-align: center;">ATTORNEY GENERAL OF ONTARIO</p> <p style="text-align: right;">Respondent</p>
<p style="text-align: center;">Court File No. CV-18-00603633-0000</p> <p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>B E T W E E N :</p> <p style="text-align: center;">CHRIS MOISE, ISH ADERONMU and PRABHA KHOSLA on her own behalf and on behalf of all members of WOMEN WIN TO</p> <p style="text-align: right;">Applicants</p> <p style="text-align: center;">- and -</p> <p style="text-align: center;">ATTORNEY GENERAL OF ONTARIO and THE CORPORATION OF THE CITY OF TORONTO</p> <p style="text-align: right;">Respondents</p>	

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PART I. OVERVIEW AND FACTS

1. This case concerns the integrity of the democratic process. The Ontario government's passage of Bill 5, in the midst of the election, offends the democratic principles and norms that govern municipal elections. It undermines the rights of the almost 3 million residents of the City of Toronto to participate in fair elections for their City Council. The passage of Bill 5, hastily and without consultation, is contrary to principles that form the cornerstone of Canadian democracy. The Province's actions are unconstitutional.

2. Bill 5 amends virtually every element of Toronto's electoral system: nomination periods, election rules, campaign finance, donation limits, ward boundaries, and the creation of the voters list. The predictability and certainty of a democratic election have been undermined by granting the Minister extensive regulatory powers to override the statutes governing the conduct of the election at any time. It is an unprecedented legislative enactment.

3. Bill 5 was introduced in the Legislature on July 30, 2018 – three months after the start of the election, and after the close of nominations. The Bill received Royal Assent on August 14, 2018, less than 10 weeks before voting day on October 22, 2018, and approximately two-thirds of the way through the campaign period. It constitutes a wholesale re-drawing of the electoral map for the City of Toronto, reducing the City's 47 wards to 25 with consequential shifts of electors between wards.

4. The effect of Bill 5 has been significant. It has created confusion and frustration for both candidates and electors, resulting in prejudice. Importantly, the effect of Bill 5 has been to change the “rules” in the midst of the election period, undermining both the integrity and the fairness of the election. Even now, the rules for this election are still capable of changing as a result of the Minister’s extraordinary discretion under Bill 5.

5. Jennifer Hollett, Lily Cheng, and Dyanoosh Youssefi are candidates who registered to run for City Council. Susan Dexter and Geoffrey Kettel are actively involved in their local residents associations. Collectively, the Intervenors are all residents and electors in the City of Toronto. All have been impacted by the passage of Bill 5 and will be affected by the outcome of these court Applications.

PART II. LEGAL QUESTION

6. The Intervenors have intervened in three separate Applications, all of which raise challenges to the passage of the *Better Local Government Act, 2018* (“Bill 5”),¹ in the middle of an ongoing election, as inconsistent with the *Constitution Act*,² and the general law.

7. The Intervenors submit that the passage of Bill 5, without consultation and in the middle of an election, is contrary to the democracy principle enshrined in the *Constitution Act, 1867*. Consequently, Bill 5 should be quashed.

¹ SO 2018, C 11.

² *Constitution Act, 1867* (UK), 30 & 31 Vict, c3, reprinted in RSC 1985, Appendix II, No 5 [“*Constitution Act, 1867*”]; *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [“*Constitution Act, 1982*”]; *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [“*Charter*”].

PART III. SUBMISSIONS

A. *The Unwritten Constitutional Principles and Democracy*

8. It is trite law that in addition to the written text, the *Constitution Act* contains unwritten principles which govern the exercise of constitutional authority. In the *Secession Reference*, the Supreme Court of Canada explained:

These supporting principles and rules, which include constitutional conventions and the workings of Parliament, are a necessary part of our Constitution because problems or situations may arise which are not expressly dealt with by the text of the Constitution. In order to endure over time, a constitution must contain a comprehensive set of rules and principles which are capable of providing an exhaustive legal framework for our system of government. Such principles and rules emerge from an understanding of the constitutional text itself, the historical context, and previous judicial interpretations of constitutional meaning. In our view, there are four fundamental and organizing principles of the Constitution which are relevant to addressing the question before us (although this enumeration is by no means exhaustive): federalism; democracy; constitutionalism and the rule of law; and respect for minorities.³

9. The Constitutional principles and rules are not simply an interpretative guide; rather they are “the vital unstated assumptions” upon which the text of the Constitution is based, and are the Constitution’s lifeblood.⁴ The principles are binding on courts and governments, and give rise to substantive legal obligations.⁵ They fill in gaps in the express written text and are grounded in the text of the Constitution, because, as the Court explains, “problems or situations may arise which are not expressly dealt with by the text.”⁶

³ *Reference re Secession of Quebec*, [1998] 2 SCR, 217, at para 32 (SCC) Book of Authorities of the Intervenors Jennifer Hollett et al [“**Hollett Book of Authorities**”], **Tab 1** [“*Secession Reference*”].

⁴ *Ibid.* at paras 49, 51.

⁵ *Ibid.* at paras 53, 54; *Lalonde v Ontario (Commission de restructuration des services de santé)* (2001), 56 OR (3d) 505, 2001 CarswellOnt 4275 (Ont CA) at para 116, **Hollett Book of Authorities**, **Tab 2** [“*Lalonde*”].

⁶ *Secession Reference*, *supra* note 3 at paras 53, 54; *Lalonde*, *supra* note 5 at para 118.

10. The Province's interference in Toronto's election is a situation of the very nature contemplated for the application of these unwritten Constitutional principles and rules.

1. The Democracy Principle

11. One of the unwritten principles which forms part of the Constitution is democracy.

As held by the Supreme Court in the *Secession Reference*:

...the democracy principle can best be understood as a sort of baseline against which the framers of our Constitution, and subsequently, our elected representatives under it, have always operated. It is perhaps for this reason that the principle was not explicitly identified in the text of the *Constitution Act, 1867* itself. To have done so might have appeared redundant, even silly, to the framers.⁷

In the words of the Court, "the democratic nature of our political institutions was simply assumed."⁸

12. This principle is the cornerstone of our democracy and our Constitution. It is the baseline against which the Constitution was framed, and it remains the baseline against which limits to *Charter* rights are justified under section 1.⁹

13. Democracy has both institutional and individual elements. Institutionally, the democracy principle requires that governments be elected by popular franchise.¹⁰ Individually, the democracy principle protects the right of individuals to participate in the

⁷ *Secession Reference*, *supra* note 3 at para 62.

⁸ *Ibid.* at para 62.

⁹ *R v Oakes*, [1986] 1 SCR 103 at 136 (SCC), **Hollett Book of Authorities, Tab 3.**

¹⁰ *Secession Reference*, *supra* note 3 at para 65.

political process.¹¹ Unsurprisingly, section 3 of the *Charter* and the right to vote are intertwined with the democracy principle.

14. Section 3 of the *Charter* protects the right to vote, and the right to run for office as a candidate, in provincial and federal elections. The purpose of section 3 is “the preservation of the right of each citizen to play a meaningful role in the electoral process.”¹² While section 3 of the *Charter* is not directly applicable to municipal elections, the Constitutional principle of democracy is not so narrowly confined. The democracy principle extends beyond legislative bodies at the federal and provincial levels to encompass political institutions generally:¹³ “to be accorded legitimacy, democratic institutions must rest, ultimately, on a legal foundation. That is, they must allow for the participation of, and accountability to, the people, through public institutions created under the Constitution.”¹⁴

15. The close relationship, and even overlap, between the democracy principle and section 3, means that the jurisprudence exploring the meaning of section 3 is central to understanding the content of the democracy principle, as well as its application to municipal elections.¹⁵

¹¹ *Secession Reference*, *supra* note 3 at para 65.

¹² *Figuroa v Canada (Attorney General)*, 2003 SCC 37 at para 58, **Hollett Book of Authorities, Tab 4** [“*Figuroa*”],

¹³ *Secession Reference*, *supra* note 3 at para 62, citing *OPSEU v Ontario (Attorney General)*, [1987] 2 SCR 2 at 57 (SCC), **Hollett Book of Authorities, Tab 5** [“*OPSEU*”].

¹⁴ *Secession Reference*, *supra* note 2 at para. 67.

¹⁵ *Masters’ Assn. of Ontario v Ontario*, 2010 ONSC 3714 at para 106, affirmed 2011 ONCA 243, **Hollett Book of Authorities, Tab 6** [“*Masters’ Assn of Ontario*”].

16. The Supreme Court's section 3 jurisprudence makes clear that of central importance to democracy is the requirement that the electoral process be fair.¹⁶ For example, the Supreme Court has found that rules that treat candidates from smaller political parties differently are unfair, and inconsistent with section 3.¹⁷ In *Harper v. Canada*, the Supreme Court also found that confidence in the fairness of the electoral process was a pressing and substantial objective:

Maintaining confidence in the electoral process is essential to preserve the integrity of the electoral system which is the cornerstone of Canadian democracy. In *R v. Oakes* (citation omitted), Dickson J concluded that faith in social and political institutions, which enhance the participation of individuals and groups in society, is of central importance in a free and democratic society. If Canadians lack confidence in the electoral system, they will be discouraged from participating in a meaningful way in the electoral process.¹⁸

17. Both *Figueroa* and *Harper* considered how campaign finance rules impact the fairness of the electoral process. In *Figueroa*, the Court noted that "participation in the electoral process has an intrinsic value independent of its impact on the actual outcome of elections,"¹⁹ and held that legislation which exacerbates pre-existing disparity in the capacity of various political parties or candidates to participate in the election is inconsistent with section 3.²⁰ More broadly, the Supreme Court has held that, in order to accord with both section 3 and the democracy principle, democratic institutions must

¹⁶ *Figueroa*, *supra* note 12 at para 51.

¹⁷ *Ibid.* at para 58.

¹⁸ *Harper v Canada*, 2004 SCC 33 at para 103, **Hollett Book of Authorities, Tab 7** ["*Harper*"].

¹⁹ *Figueroa*, *supra* note 12 at para 29.

²⁰ *Ibid* at paras 48-54.

allow for meaningful participation in an electoral process, and that the electoral process be one that is fair.²¹

18. In addition, both constitutional and non-constitutional case law demonstrates the curial concern with the fair conduct of elections and serve to inform the content of the democratic principle. Our normative values around democracy require several features of a fair election to be present:

- a. An “effective democracy” requires public faith and confidence in fair elections;²²
- b. An electoral system should strive to treat candidates and voters fairly in the conduct of elections;²³
- c. Our electoral systems are premised on an “egalitarian model”, meaning each citizen should have an equal opportunity to participate in the electoral process;²⁴
- d. Loss of an opportunity to vote is the loss of a democratic right, even in local elections, and constitutes irreparable harm;²⁵ and

²¹ *Secession Reference*, *supra* note 3 at para 65; *Figueroa*, *supra* note 12 at paras 37, 51.

²² *Opitz v Wrzesnewskyj*, 2012 SCC 55 at para 38, **Hollett Book of Authorities, Tab 8.**

²³ *Ibid.* at para 45.

²⁴ *Conservative Fund Canada v Canada (Chief Electoral Officer)*, 2010 ONCA 882 at para 83, leave to appeal to SCC refused, 34097 (5 May 2011), **Hollett Book of Authorities, Tab 9.**

²⁵ *Gift Lake Métis Settlement v Alberta (Minister of Aboriginal Relations)*, 2015 ABQB 654 at para 93, **Hollett Book of Authorities, Tab 10.**

- e. There is a “political stability consideration”, which is consistent with the “consideration of preserving the integrity of the electoral process”, that militates against last minute changes to elections; and²⁶
- f. The Court has inherent jurisdiction to deal with matters of elections where there is no legislation which otherwise applies,²⁷ and judicial scrutiny is needed to ensure public confidence and trust in the electoral process.²⁸

19. The Constitution grants the Province jurisdiction over “Municipal Institutions” in the Province.²⁹ However, this authority remains subject to Constitutional limitations. The Province must exercise its authority in a manner consistent with the democracy principle. Municipal governments are public, democratic, political institutions.³⁰ While section 3 may not apply to their elections, this Court has held that the constitutional principle of democracy which requires fair elections with meaningful participation still applies.³¹ The principle certainly applies to the Province’s decision to change the rules in the midst of an ongoing election, by passing Bill 5.

²⁶ *Stevens v Conservative Party of Canada*, 2005 FCA 383 at para 47, leave to appeal to SCC refused, 31281 (27 April 2006), **Hollett Book of Authorities, Tab 11**.

²⁷ *Yukon (Chief Electoral Officer) v. Nelson*, 2014 YKSC 26 at para 24, **Hollett Book of Authorities, Tab 12**; *Ta'an Kwäch'än Council, Re*, 2006 YKSC 62 at paras 24-26, **Hollett Book of Authorities, Tab 13**.

²⁸ *Bielli v Canada (Attorney General)*, 2012 FC 916 at para 11, **Hollett Book of Authorities, Tab 14**. Importantly, the Government of Ontario has attempted to inoculate itself against potential challenges arising from the clear prejudicial effects of Bill 5 by restricting the Superior Court’s jurisdiction under s 83(1) to review the validity of the election. The Court’s jurisdiction was restrained in Ministerial Regulations: “2018 and 2022 Regular Elections – Special Rules”, O Reg 407/18, s 12(1) [“2018 Election Regulations”].

²⁹ *Constitution Act, 1867*, s. 92(8).

³⁰ *Pacific National Investments v. Victoria City*, [2000] 2 SCR 919 at para 33 (SCC), **Hollett Book of Authorities, Tab 15**.

³¹ *Jackson v Vaughan (City)*, 2009 CarswellOnt 1490 (Ont Sup Ct) at para. 19, affirmed 2010 ONCA 118, **Hollett Book of Authorities, Tab 16**.

B. The Passage of Bill 5 is Inconsistent with the Democracy Principle

1. The Province's Power to Intervene in Municipal Elections is Not Unlimited

20. State action is always subject to constitutional oversight. The basic structure of the Constitution contemplates the existence of political institutions,³² and its text references the existence of municipal institutions explicitly. Individual rights of participation in those institutions form the bedrock of the democracy principle.

21. The Province has used its authority under the Constitution to create a system of municipal governance for municipalities across the province. The *Municipal Elections Act, 1996*³³ provides for municipal governance based on core democratic principles. Our local representatives are elected by popular franchise and the *Municipal Elections Act* establishes rules surrounding the conduct of elections to ensure that elections are transparent and fair for electors and candidates.³⁴

22. The setting of ward boundaries, for municipalities across the province, was similarly subject to statutory requirements aimed to ensure the fairness of municipal elections. In Toronto, prior to the passage of Bill 5, the *City of Toronto Act* required that any city by-law to enact ward boundaries had to be passed before January 1 in an election year, and any appeals resolved by the same date, in order to be in force for the election.

³² *OPSEU, supra* note 13 at 57.

³³ SO 1996, c.32, Sched. [*"Municipal Elections Act"*]

³⁴ In *Cusimano v. Toronto (City)*, 2011 ONSC 2527 (reversed on other grounds 2011 ONSC 7271 (Div Ct) and 2012 ONCA 907), **Hollett Book of Authorities, Tab 17**, this court held that the principles of the *Municipal Elections Act* included that: elections shall be fair and non-biased, elections shall be accessible to the voters, the integrity of the process shall be maintained throughout the election, and voters and candidates shall be treated fairly and consistently.

23. For the City of Toronto, the established processes for municipal elections have now been upended. Moreover, Bill 5 grants the Minister the power to interfere in the election at any time without notice and, potentially, with retroactive effect.³⁵

24. Having established municipal governance based on democratic principles, the Province's interference in the conduct of the election after it has started offends the democracy principle.

25. Individual rights to participate in fair elections, at any level of government, must be understood to form part of the Constitution though the principle of democracy. At minimum, the Province cannot actively interfere in a democratic process mid election without running afoul of the Constitution.

2. The Effect of Bill 5

26. Bill 5 immediately redraws the electoral map for the City of Toronto from 47 to 25 wards. The changes to the composition of city wards vary significantly. Some wards are merging with parts of at least four other wards,³⁶ other wards are split in two, and still others are being merged together.³⁷

27. In addition to the geographic changes to city wards, Bill 5 changed the nomination period for candidates, election rules, and the rules governing campaign

³⁵ The Minister's regulation-making powers are detailed in the *City of Toronto Act, 2006*, SO 2006, c 11, Sched A, ss 128(4) and 135(4), [*"City of Toronto Act"*], and the *Municipal Elections Act, supra* note 33 ss 10.1(1), 10.2(2).

³⁶ Affidavit of J. Hollett at para. 38, Record of the Intervenors Jennifer Hollett et al [**"Hollett Intervenor Record"**], **Volume 1, Tab A**, p 11.

³⁷ Affidavit of G. Kettel at para. 24, **Hollett Intervenor Record, Volume 2, Tab D**, p 629; Affidavit of L. Cheng at para. 21, **Hollett Intervenor Record, Volume 2, Tab B**, p 182.

finances. These changes to the rules, midway through the election, are fundamentally unfair.

28. The passage of Bill 5 was hasty and conducted without any consultation. Neither the nearly 3,000,000 citizens of Toronto nor any of the candidates had any warning that the government was contemplating such a change when the election period started on May 1, 2018. The manner in which Ontario has elected to effect this change has created confusion for electors and candidates, and undermined people's faith in the electoral process: this mid-election change creates manifest unfairness to those participating in this election. It is a violation of the principle of democracy.

(a) *Changes to Ward Boundaries and City Council Composition in the Midst of an Election Resulting in a "Guesswork Foundation" to Democracy*

29. Under the previous version of the *City of Toronto Act*, the City was empowered to enact ward boundaries through by-law.³⁸ The by-law could only come into force for the next election if the by-law was passed before January 1 and any appeals were resolved before the same date.³⁹ The effect of this rule was to require that ward boundaries be set no later than ten months before voting day, and four months before the start of the election campaign period.

30. The City of Toronto complied with the Act to change its ward boundaries and composition of council. By-Law 267-2017 was passed by City Council on March 29, 2017, and changed the ward boundaries and City Council composition for the

³⁸ *City of Toronto Act*, supra note 35, s 128(1), as amended by the *Better Local Government Act, 2018*, SO 2018, c 11, Schedule 1, s 5.

³⁹ *City of Toronto Act*, supra note 35, s 128(8), as amended by the *Better Local Government Act, 2018*, SO 2018, c 11, Schedule 1, s 5.

Election.⁴⁰ Errors in By-Law 267-2017 were subsequently corrected in By-law 464-2017, passed April 28, 2017.⁴¹ The City of Toronto's decision was upheld by the Ontario Municipal Board on December 15, 2017, with leave to appeal to the Divisional Court subsequently refused.⁴² Consequently, nominations opened May 1, 2018, for the Election using the 47-ward system in accordance with the *Municipal Elections Act*.⁴³

31. For over a year before nominations opened in the election, voters and candidates had access to information about the 47 ward boundaries. Those boundaries were set, as required, before January 1, 2018. Candidates believed that they could rely on the composition of these wards when deciding whether to run for office.⁴⁴

I perceived the rules of the election to be set in stone since, to my knowledge, the rules had never been changed during an election. After the Divisional Court dismissed the appeal from the Ontario Municipal Board decision upholding the 47 wards, I did not anticipate the ward boundaries would change. Nor did I imagine that rules around nomination and campaign finances would change in an election cycle, particularly once nominations had opened.⁴⁵

32. On July 27, the day nominations closed for the 47-ward election, the Province announced its intention to introduce legislation that would have the effect of reducing the number of wards for the 2018 election to 25. Bill 5 was given first reading on July 30, after nominations had already closed. The Province thus knew of all candidates duly nominated in each ward before introducing Bill 5.

⁴⁰ City of Toronto, By-Law 297-2017, Exhibit O to the Affidavit of G. Carbone, **Application Record of the City of Toronto, Volume 3 of 4**.

⁴¹ City of Toronto, By-Law 464-2017, Exhibit P to the Affidavit of G. Carbone, **Application Record of the City of Toronto, Volume 3 of 4**.

⁴² *Di Ciano v Toronto (City)*, MM170033 (Ont Municipal Board), leave to appeal denied, *Natale v City of Toronto*, 2018 ONSC 1475 (Div Ct), **Hollett Book of Authorities, Tabs 18 and 19**.

⁴³ *Municipal Elections Act*, *supra* note 33, s 31.

⁴⁴ Affidavit of J. Hollett at para. 22, **Hollett Intervenor Record, Volume 1, Tab A**, p 7; Affidavit of L. Cheng at para. 21, **Hollett Intervenor Record, Volume 2, Tab B**, p 182.

⁴⁵ Affidavit of J. Hollett at para. 22, **Hollett Intervenor Record, Volume 1, Tab A**, p 7.

33. Bill 5 deemed the previous legislative instruments passed by the City of Toronto to alter ward boundaries and council composition to have not passed.⁴⁶ In other words, the City of Toronto's by-laws were in effect for more than a year, but have now been deemed never to have been passed.

34. The passage of Bill 5 significantly impacted the election in many of the city's wards. The nature of each ward, and its composition, informed campaign strategies and fundraising.⁴⁷ Candidates made decisions about which community organizations to visit, which doors to knock on, and how their campaign would unfold. Yet now, approximately two-thirds of the ways through the election period, candidates find themselves seeking election from a different group of electors and in different communities than when their campaigns started.⁴⁸

35. The implications of mid-electoral boundary changes are numerous and problematic. Candidates may find themselves running against candidates they would otherwise support and who they did not intend to challenge. Donors may have donated to two candidates who are now running against each other. Electors who donated to candidates in their ward may find those candidates are not running in their new ward. Electors may have donated to candidates who have been forced to drop out. In both scenarios, the ability of electors to re-donate is hampered by the maximum donation amount set by statute.

⁴⁶ *City of Toronto Act*, *supra* note 35, ss 129, 135.1.

⁴⁷ Affidavit of J. Hollett at paras 27-28, **Hollett Intervenor Record, Volume 1, Tab A**, p 9; Affidavit of D. Youssefi at para. 15, **Hollett Intervenor Record, Volume 2, Tab B**, p 646.

⁴⁸ Affidavit of D. Youssefi at paras 27-28, **Hollett Intervenor Record, Volume 2, Tab B**, p 649.

36. Electors are also confused. Jennifer Hollett explains how she first heard about the change to the ward boundaries through the media during her campaign launch, and quickly found herself facing voters who were confused by the changes:

I also understood that the Government of Ontario had only announced that it planned to legislate these changes, but had not in fact changed the law. In the meantime, I felt like it was a confusing legal “grey zone”. No one I spoke to knew what was happening. Voters I spoke with expressed considerable confusion about which ward they were in, and what legal status the election had. We were uncertain what we would communicate to volunteers about strategy. This was exacerbated by the two weeks of legal limbo before the Government’s legislation, Bill 5 Better Local Government Act, 2018, (“Bill 5”) received Royal Assent.⁴⁹

...

The voters I speak with are confused. They understand that the rules have changed, but do not understand why those rules have changed and how. Instead of discussing municipal issues in the campaign, such as transit and safer streets, residents are asking about ward boundary changes and how they affect them.⁵⁰

37. After learning of the Province’s intention to change the ward boundaries, Sue Dexter, a member of the Harbord Village Residents Association, wanted to understand what was happening. Despite calls to her City Councillor and her attendance at the City of Toronto Council meeting on July 27, 2018, she could not get answers. “It seemed to me there was considerable uncertainty as to what would happen to the election. Council itself seemed unaware of the proposed changes.”⁵¹

⁴⁹ Affidavit of J. Hollett at para. 35, **Hollett Intervenor Record, Volume 1, Tab A**, p 9 [emphasis added].

⁵⁰ Affidavit of J. Hollett at para. 47, **Hollett Intervenor Record, Volume 1, Tab A**, p 13; Affidavit of D. Youssefi at para. 31, **Hollett Intervenor Record, Volume 2, Tab B**, pp 650-651.

⁵¹ Affidavit of S. Dexter at paras 17-18, **Hollett Intervenor Record, Volume 2, Tab C**, p 197.

38. Geoffrey Kettel, Co-President of the Leaside Property Owner's Association, and Co-Chair of the Federation of North Toronto Resident's Association, was similarly concerned to learn about the proposed changes:

I viewed the ward boundary review process as an excellent exercise in consultative democracy, and felt a strong affinity with the communities in my ward. The Provincial Government's introduction of Bill 5 disregards the process I took part in. The ward boundary review process had considered all kinds of factors, including representation, population growth, and the needs of communities. I was not aware of any similar process having been undertaken by the Provincial Government to consider similar factors in re-drawing ward boundaries.

The 2018 Great Waterfront Trail Adventure ran approximately 600 km from Ajax to the Quebec border along Lake Ontario, and took place between July 29 and August 3. Throughout the trip I spoke with other participants and residents of the towns we visited. Everyone I spoke with, including municipal politicians, was shocked and concerned about what precedent the Provincial Government's actions set for interfering in municipal elections.⁵²

39. Mr. Kettel also notes that the changes to his ward means he no longer knows which candidates are running in his ward, and which will be running in a different ward.⁵³ This level of uncertainty with the campaign period two-thirds completed, is by definition a grave unfairness.

40. "Guesswork is a poor foundation for democracy."⁵⁴ Voters must be "reasonably informed of all the possible choices" and have a genuine opportunity to take part in governance through democracy.⁵⁵ Yet, the Province, through Bill 5, has now left voters

⁵² Affidavit of G. Kettel at paras 21-22, **Hollett Intervenor Record, Volume 2, Tab D**, pp 627-628.

⁵³ Affidavit of G. Kettel at para. 25, **Hollett Intervenor Record, Volume 2, Tab D**, pp 629.

⁵⁴ *Mitchell v Jackman*, 2017 NLTD(G) 150 at para. 106, **Hollett Book of Authorities, Tab 20**.

⁵⁵ *Harper*, *supra* note 18 at para 71; *Figueroa*, *supra* note 12 at para 30.

confused about what is happening to council composition, who is running in their ward, and uncertain as to the electoral process.⁵⁶

41. Ideas and policies for the future of the City are not being explored. Instead, candidates are spending a disproportionate amount of their time explaining the changes resulting from the passage of Bill 5.⁵⁷ Candidates are unable to reach voters, because of the change to their ward boundaries.⁵⁸ Neither electors nor candidates can meaningfully participate in this election.

(b) Barriers to Nomination Impede Participation in Elections

42. Under the previous version of the *Municipal Elections Act*, the nomination period was set by statute. Each election year, the first day for nominations is May 1,⁵⁹ and the final day for nominations was the “fourth Friday in July in the year of the election.”⁶⁰ The 2018 Toronto Municipal Election proceeded according to this statutory timeline. Nominations closed on July 27, 2018, as required by statute.

43. Eighteen days after the nomination period closed, Bill 5 was enacted which deemed the final nomination day not to have occurred,⁶¹ and deemed the nomination period to have remained open during a time it was in fact closed.⁶² The new final nomination date was modified to be September 14.⁶³ Those persons who had already

⁵⁶ Affidavit of J. Hollett at para. 47, **Hollett Intervenor Record, Volume 1, Tab A**, p 13; Affidavit of G. Kettel at para. 25, **Hollett Intervenor Record, Volume 2, Tab D**, pp 629.

⁵⁷ Affidavit of J. Hollett at para. 47, **Hollett Intervenor Record, Volume 1, Tab A**, p 13; Affidavit of D. Youssefi at para. 31, **Hollett Intervenor Record, Volume 2, Tab E**, p 650.

⁵⁸ Affidavit of D. Youssefi at para. 50, **Hollett Intervenor Record, Volume 2, Tab E**, p 648.

⁵⁹ *Municipal Elections Act*, *supra* note 33, s 33(4).

⁶⁰ *Ibid.*, s 31.

⁶¹ *Ibid.*, s 10.1(3)1.

⁶² *Ibid.*, s 10.1(3)2.

⁶³ *Ibid.*, s 10.1(3).

been nominated were required to notify the Clerk to confirm nomination, or be deemed to have withdrawn.⁶⁴

44. Candidates for City Council are required to obtain 25 signatures of nominators in order to file nomination papers.⁶⁵ When notifying the Clerk to confirm nomination, candidates choose which of the 25 wards they wish to run in. Those persons who originally nominated the candidate may not be supportive their run in the new ward, particularly if it results in the candidate running against another candidate the nominator would otherwise support.

45. Subsequent to the enactment of Bill 5, additional changes to the nomination process were made by the Province. On August 15, the Minister exercised his new regulatory powers to make further changes to the nomination process, including prohibiting the filing of a nomination between July 28 and August 19,⁶⁶ and restricting the confirmation of candidates' nominations until on or after August 20.⁶⁷

46. On its face, this regulatory ping pong is confusing. The clear statutory framework was replaced with an unclear patchwork of administrative provisions, which have continued to evolve even after the enactment of Bill 5 and may well be subject to further change at the Minister's discretion.

⁶⁴ *Municipal Elections Act*, *supra* note 33, ss 10.1(4) and 10.1(8).

⁶⁵ *Ibid.*, s 33(2)(a.1).

⁶⁶ 2018 Election Regulations, *supra* note 28, s 9.

⁶⁷ *Ibid.*, s 7(2).

(c) Prejudicial Effect in the Administration of the Election

47. Normally, voters' lists are finalized by September 1.⁶⁸ After that date, candidates can request a voters' list for all electors in their ward,⁶⁹ and voters' can have their name added or removed from the list.⁷⁰ The Regulations made under the Act, pursuant to Bill 5, have now pushed back the completion of voters' lists until September 17.⁷¹ Furthermore, the Regulations suspend the statutory requirement that the Clerk prepare an interim list to provide to candidates.⁷² The loss of two critical weeks only four weeks before voting day compromises the ability of candidates to reach electors. This is exacerbated by the unexpected doubling of the population of most wards.

48. In addition, as of August 27, advance voting days have not yet been confirmed. Advance voting serves to increase democratic participation in the formation of elected bodies. Under the *Municipal Elections Act*, the Clerk determines the dates(s), location(s) and hours of advance voting.⁷³ Well in advance of Bill 5, the Clerk had exercised her discretion and provided public information on advance voting in all 47 wards. Due to the constantly changing electoral environment instigated by Bill 5, the Clerk has had to cancel those plans. Advance polling arrangements are now "to be determined". Electors who are unable to vote on voting day now have no information on how to exercise their right to vote, and may simply end up not voting at all.

⁶⁸ *Municipal Elections Act*, *supra* note 33, ss 23(5), 24(1), 25(3).

⁶⁹ *Ibid.*, s 23(4).

⁷⁰ *Ibid.*, s 24(1).

⁷¹ 2018 Election Regulations, *supra* note 28, s 4(1).

⁷² *Ibid.*, s 3(2), suspending s 27(1) of the *Municipal Elections Act*.

⁷³ *Municipal Elections Act*, *supra* note 33, s 43.

(d) Shifting Rules around Campaign Financing and the Fairness of the Election

49. The *Municipal Elections Act* provides for the City Clerk to calculate each candidate's maximum allowable expenses on the date they file their nomination. The calculation is based on the number of electors in their ward.⁷⁴ Similarly, the maximum permitted amount of contributions is calculated as of a candidate's nomination date.⁷⁵ Any candidate who registered before July 27, 2018 received this calculation from the City Clerk. Candidates then fundraised and made expenditures in accordance with these calculations.⁷⁶

50. Bill 5 did not change these calculations. However, the regulations subsequently enacted by the Minister with retroactive application effectively suspended these provisions of the *Municipal Elections Act*. Now the calculation of permitted expenses and contributions will be made upon giving notice to the Clerk of confirmation of nomination.⁷⁷ Candidates who were nominated before July 27 and subsequently confirm their nomination with the Clerk will receive two different calculations: one for a race under the 47-ward system, and one for a race under the 25-ward system.

51. This is prejudicial to a candidate's ability to participate in a fair election. Many candidates made expenditures for products: t-shirts, buttons, banners, and printed material bearing ward specific information (such as ward numbers or maps) that are no

⁷⁴ *Municipal Elections Act*, *supra* note 33, s 33.0.1.

⁷⁵ *Ibid.*, s 33.0.2.

⁷⁶ Affidavit of L. Cheng at para. 28, **Hollett Intervenor Record, Volume 1, Tab B**, p 184; Affidavit of D. Youssefi at para. 20, **Hollett Intervenor Record, Volume 2, Tab E**, p 648; Affidavit of J. Hollett at para. 40, **Hollett Intervenor Record, Volume 1, Tab A**, p 11.

⁷⁷ 2018 Election Regulations, *supra* note 28, ss 10, 11.

longer correct.⁷⁸ Expenditures made by candidates before the change in the ward boundaries are deemed to have occurred as part of the “same campaign”⁷⁹ and so are now essentially lost. Candidates who enter the race after the regulations came into force are allowed to start with a “fresh” expenditure limit:

This process has been unfair to my donors. They donated money on the basis of their understanding of one system, and donors are only allowed to contribute a limited amount every electoral cycle. However, now there are new wards, candidates who are dropping out, and new candidates who are submitting nomination forms. It is possible a donor contributed the maximum amount to a candidate who used to be running in their ward, but is now running in another ward due to Bill 5. This seems arbitrary and prejudicial to participation in a fair democratic process.⁸⁰

...

Further, I've already used up a significant portion of my budget on campaign materials which cannot be used now. This is unfair to anyone who signed up to run before August 14, 2018. Anyone who enters the race after August 14 starts with a fresh budgetary allowance and has not spent any money, and they can expend their funds on accurate materials. But the City Clerk has informed candidates that any expenditures prior to August 14 still count toward to maximum allowable expenditures.⁸¹

52. One of the intervenors, Jennifer Hollett, had raised just over 50% of her maximum allowable for campaign expenditures when the Province announced its intention to change the ward boundaries. As a result of the confusion about whether the regulations would eventually permit her to transfer those funds to a new campaign or

⁷⁸ Affidavit of L. Cheng at para. 18, **Hollett Intervenor Record, Volume 1, Tab B**, p 182; Affidavit of D. Youssefi at para. 20, **Hollett Intervenor Record, Volume 2, Tab E**, p 648; Affidavit of J. Hollett at para. 26, **Hollett Intervenor Record, Volume 1, Tab A**, p 8.

⁷⁹ *Municipal Elections Act*, *supra* note 33, s 10.1(7).

⁸⁰ Affidavit of L. Cheng at para. 26, **Hollett Intervenor Record, Volume 1, Tab B**, p 183.

⁸¹ Affidavit of L. Cheng at para. 28, **Hollett Intervenor Record, Volume 1, Tab B**, p 184.

whether she would be required to refund them, her campaign stopped making expenditures entirely.⁸²

53. Electors who made donations to candidates who are no longer candidates in their ward, or who withdraw completely, are similarly prejudiced. Such donations are neither refunded nor re-credited for donation limit purposes, and the elector will have simply lost the ability to participate in the re-drawn electoral landscape.⁸³

54. Candidates spend considerable time and energy developing fundraising and expenditure strategies.⁸⁴ These strategies are tailor-made for the variables unique to a ward: population, demographics, donor base. Candidates are left with a significant shortfall when their maximum limits change two-thirds of the way through an election period. Moreover, a breach of the *Municipal Elections Act* comes with stiff penalties and can result in forfeiture of office and future ineligibility for election or appointment to office,⁸⁵ or can result in being guilty of an offence.⁸⁶

55. The right of each citizen to participate in the political life of the country is one that is of fundamental importance in a free and democratic society.⁸⁷ The ability to participate in a process that is fair is fundamental to the principle of democracy.⁸⁸

⁸² Affidavit of J. Hollett at para. 43, **Hollett Intervenor Record, Volume 1, Tab B**, p 12.

⁸³ Campaign contributions are subject to the maximums set out in *Municipal Elections Act*, *supra* note 33, s 88.9.

⁸⁴ Affidavit of D. Youssefi, paras 15-16, 19, **Hollett Intervenor Record, Volume 2, Tab E**, pp 646-647.

⁸⁵ *Municipal Elections Act*, *supra* note 33, s 88.23.

⁸⁶ *Ibid.*, s 92(1).

⁸⁷ *Figuroa*, *supra* note 12 at para 26.

⁸⁸ *Secession Reference*, *supra* note 3 at para 65; *Figuroa*, *supra* note 12 at paras 37, 51.

56. For an elector to be informed, they must be able to weigh relative strengths and weaknesses of each candidate.⁸⁹ Electors cannot exercise an informed vote if candidates have insufficient resources to communicate their ideas to the electorate.⁹⁰ This undermines meaningful participation and the fairness of the election if a candidate's inability to effectively communicate arises from the change of the rules in the middle of the election campaign.

57. Bill 5 has undermined the trust that both electors and candidates have in the democratic process:

I carefully calculated the emotional cost of my candidacy to my family. I thought that giving back to the community was worth this emotional cost. Initially, there was a positive atmosphere and my team felt that we were participating in a full, fair democratic election. Bill 5 extinguished that feeling. We no longer feel empowered. Changing the map in the middle of an election has taken away our trust in the system, and makes democracy seem illusory. The Government's actions have stolen our trust in a system that we were just learning to participate in.⁹¹

C. *Bill 5 Should be Quashed*

58. Constitutional principles can be used to invalidate state action.⁹²

59. Unwritten constitutional principles also provide an independent basis for striking down statutes. These constitutional principles give rise to substantive legal obligations, which are binding on courts and governments.⁹³ The principles are the "lifeblood" of the

⁸⁹ *Harper, supra* note 18 at para 71.

⁹⁰ *Figuroa, supra* note 12 at para 63

⁹¹ Affidavit of L. Cheng at para. 32, **Hollett Intervenor Record, Volume 1, Tab B**, p 185.

⁹² See, e.g., *Lalonde, supra* note 5.

⁹³ *Secession Reference, supra* note 3 at para 54.

Constitution, and “are a necessary part of our Constitution.”⁹⁴ Any action or legislation that offends a part of the Constitution may be struck down.

60. In *Imperial Tobacco*, the Supreme Court held that “it is difficult to conceive of how the rule of law [one of the four unwritten constitutional principles] could be used as a basis for invalidating legislation...based on its content.”⁹⁵ However, nine years later, in *Trial Lawyers Association*, a majority of the Supreme Court held that the rule of law considerations formed the basis for striking down subordinate regulations of a province.⁹⁶ Justice Rothstein, in dissent, noted the effect of the majority’s ruling was to ignore the Court’s holding in *Imperial Tobacco*.⁹⁷ *Trial Lawyers Association* modified the holding in *Imperial Tobacco* to acknowledge that, in cases where “concerns...are not abstract or theoretical”,⁹⁸ violations of the rule of law provide a basis to challenge delegated legislation.

61. It is unreasonable to make a distinction between government action and government legislation when it comes to the requirement to comply with Constitutional principles. Courts have held that “[i]t is a valid argument to say that unwritten constitutional principles may give rise to substantive legal obligations or legal remedy.”⁹⁹ The legal remedy, as always, will depend on the context. For example, in *Polewsky*, the Divisional Court held that the rule of law, in light of the common law constitutional right

⁹⁴ *Secession Reference*, *supra* note 3 at paras 32, 51 [emphasis added].

⁹⁵ *British Columbia v Imperial Tobacco Canada Ltd.*, 2005 SCC 49 at para 59, **Hollett Book of Authorities, Tab 21** [*“Imperial Tobacco”*].

⁹⁶ *Trial Lawyers Assn. of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59 at paras 38-42, **Hollett Book of Authorities, Tab 22** [*“Trial Lawyers”*].

⁹⁷ *Ibid.*, at paras 95-102.

⁹⁸ *Ibid.*, at para 40.

⁹⁹ *Canadian Bar Assn. v British Columbia*, 2008 BCCA 92 at para 44, **Hollett Book of Authorities, Tab 23**.

of access to justice, compelled the enactment of statutory provisions.¹⁰⁰ The principles and rules that form part of the Constitution must constrain the exercise of all state authority. The Province cannot be permitted to evade basic democratic norms simply by exercising their authority over subordinate government bodies.

62. Finally, other constitutional principles, such as protection for minorities and democracy, are distinguishable from the rule of law.¹⁰¹ In *Imperial Tobacco* the Supreme Court noted that the principle of the rule of law was nebulous and difficult to define. It explicitly noted that as a principle, the rule of law pertained more to the application of legislation than its content, and therefore did not lend itself to use as an independent basis to challenge legislation.¹⁰²

63. In any event, the Court of Appeal did not encounter similar issues with the unwritten Constitutional principle of respect for minorities in *Lalonde*. In that case, the Court of Appeal held that the Province had been unable to justify its departure from the Constitutional principle when it decided to significantly reduce the services offered at Ottawa's only francophone hospital.¹⁰³ Despite the finding that the provisions of the *Charter* did not apply, the Province's decision was quashed on unwritten principles alone.

64. In this case, it is the fact of the legislation, at this juncture, in the middle of an election campaign, absent any consultation or notice that is subject to constitutional

¹⁰⁰ *Polewsky v Home Hardware Stores Ltd*, 2003 CarswellOnt 2755 (Ont Div Ct) at para 76, leave to appeal allowed 2004 CarswellOnt 763 (Ont CA), **Hollett Book of Authorities, Tab 24** cited with approval by Cromwell J (concurring in result) in *Trial Lawyers*, *supra* note 96 at paras. 71-72.

¹⁰¹ *Lalonde*, *supra* note 5 at 505.

¹⁰² *Imperial Tobacco*, *supra* note 95 at paras 59, 61-62.

¹⁰³ *Lalonde*, *supra* note 5 at para 184.

oversight and scrutiny. It is not difficult to see how such action offends the democracy principle.

65. The Province's legislative competence over Municipal Institutions is not boundless. Parliamentary sovereignty "may be attenuated where the exercise of parliamentary power would threaten the very foundations of our democratic order."¹⁰⁴ For example, in *Reference re Alberta Legislation*, the Supreme Court held that despite the wide ambit of provincial authority over newspapers, the limit was reached when the exercise of the right of public discussion, a core component of democracy, was "substantially interfered with".¹⁰⁵ Similarly, in *Vriend v Alberta*, the Supreme Court held that judicial intervention based on the democratic principle was warranted where the interests of a minority had been denied consideration.¹⁰⁶ In *Masters Association of Ontario*, this Court found two breaches of constitutional principles sufficient to ground constitutional remedies.¹⁰⁷

66. Canadians enjoy fundamental rights to participate in political activities. Provincial legislatures may not enact legislation to the effect of which "would be to substantially interfere with the operation of this basic constitutional structure."¹⁰⁸

67. Bill 5 offends the principle of democracy. It interferes with the conduct of an election, in the midst of that election, with voting day only weeks away. It has caused

¹⁰⁴ Vincent Kazmierski, "Draconian but Not Despotic: The "Unwritten" Limits of Parliamentary Sovereignty in Canada" (2010) 41 Ottawa L Rev 245 at 278, **Hollett Book of Authorities, Tab 25**.

¹⁰⁵ [1938] SCR 100, 1938 CarswellAlta 88 at para. 111 (SCC), **Hollett Book of Authorities, Tab 26**.

¹⁰⁶ [1998] 1 SCR 493 at para. 176 (SCC), cited in *Lalonde*, *supra* note 5 at para 107, **Hollett Book of Authorities, Tab 27**.

¹⁰⁷ *Masters' Assn. of Ontario*, *supra* note 15 at para 130

¹⁰⁸ *OPSEU*, *supra* note 13 at paras 143-144.

confusion for candidates and electors, and threatens the fairness of the democratic process. The Bill should be quashed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

August 28, 2018



Per:

Donald Eady / Caroline V. (Nini) Jones / Jodi Martin
Paliare Roland Rosenberg Rothstein LLP
Lawyers for the Intervenors

SCHEDULE "A" – AUTHORITIES

1. *Reference re Secession of Quebec*, [1998] 2 SCR 217
2. *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 56 OR (3d) 505, 2001 CarswellOnt 4275 (Ont CA)
3. *R v. Oakes*, [1986] 1 SCR 103
4. *Figueroa v. Canada (Attorney General)*, 2003 SCC 37
5. *OPSEU v. Ontario (Attorney General)*, [1987] 2 SCR 2
6. *Masters' Assn. of Ontario v. Ontario*, 2010 ONSC 3714
7. *Harper v. Canada*, 2004 SCC 33
8. *Opitz v. Wrzesnewskyj*, 2012 SCC 55
9. *Conservative Fund Canada v. Canada (Chief Electoral Officer)*, 2010 ONCA 882
10. *Gift Lake Métis Settlement v. Alberta (Minister of Aboriginal Relations)*, 2015 ABQB 654
11. *Stevens v. Conservative Party of Canada*, 2005 FCA 383
12. *Yukon (Chief Electoral Officer) v. Nelson*, 2014 YKSC 26
13. *Ta'an Kwäch'än Council, Re*, 2006 YKSC 62
14. *Bielli v. Canada (Attorney General)*, 2012 FC 916
15. *Pacific National Investments v. Victoria City*, [2000] 2 SCR 919
16. *Jackson v. Vaughan (City)*, 2009 CarswellOnt 1490 (Ont Sup Ct); aff'd 2010 ONCA 118.
17. *Cusimano v. Toronto (City)*, 2011 ONSC 2527; rev'd on other grounds 2011 ONSC 7271 (Div. Ct) and 2012 ONCA 907
18. *Di Ciano v. Toronto (City)*, MM170033 (Ont Municipal Board)
19. *Natale v. City of Toronto*, 2018 ONSC 1475 (Div. Ct).
20. *Mitchell v. Jackman*, 2017 NLTD(G) 150
21. *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49
22. *Trial Lawyers Assn. of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59
23. *Canadian Bar Assn. v. British Columbia*, 2008 BCCA 92
24. *Polewsky v. Home Hardware Stores Ltd*, 2003 CarswellOnt 2755 (Ont Div. Ct)
25. Vincent Kazmierski, "Draconian but Not Despotic: The "Unwritten" Limits of Parliamentary Sovereignty in Canada" (2010) 41 Ottawa L Rev. 245
26. *Reference Re Alberta Statutes - The Bank Taxation Act; The Credit of Alberta Regulation Act; and the Accurate News and Information Act*, [1938] SCR 100, 1938 CarswellAlta 88
27. *Vriend v Alberta*, [1998] 1 SCR 493

SCHEDULE "B" – STATUTES AND REGULATIONS

City of Toronto Act, 2006, SO 2006, c 11, Sched A

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 of Toronto Act, 2006, SO 2006, c 11, Sched A (cont.)

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.

City of Toronto Act, 2006, SO 2006, c 11, Sched A, as amended by the Better Local Government Act, 2018, SO 2018, c 11, Schedule 1, s 5.

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.

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.

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.

(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).

Municipal Elections Act, 1996, SO 1996, c 32, Sched (cont.)

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.

Municipal Elections Act, 1996, SO 1996, c 32, Sched (cont.)

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.

...

Municipal Elections Act, 1996, SO 1996, c 32, Sched (cont.)

Voters' list

23 (1) The preliminary list, as corrected under section 22, constitutes the voters' list.

Reproduction, revision arrangements

(2) On or before September 1 in the year of a regular election, the clerk shall,

(a) have the voters' list reproduced; and

(b) determine where and at what time applications for revisions to the voters' list may be made under sections 24 and 25.

Copies for local boards, municipalities, Minister

(3) On written request, the clerk shall provide a copy of the voters' list to,

(a) the secretary of a local board any of whose members are required to be elected at an election conducted by the clerk, or that has submitted a question to the electors;

(b) the clerk of the local municipality responsible for conducting the elections in any combined area for school board purposes;

(c) the clerk of an upper-tier municipality any of whose members are required to be elected at an election conducted by the clerk, or that has submitted a by-law or question to the electors;

(d) the Minister, if he or she has submitted a question to the electors; ...

Copies for candidates

(4) On the written request of a certified candidate for an office, the clerk shall provide him or her with the part of the voters' list that contains the names of the electors who are entitled to vote for that office.

Same

(5) The clerk shall not provide a copy of the voters' list under subsection (3) or a part of the voters' list under subsection (4) until September 1.

Municipal Elections Act, 1996, SO 1996, c 32, Sched (cont.)

Application for change re own name

24 (1) During the period that begins on September 1 and ends at the close of voting on voting day, a person may make an application to the clerk requesting,

- (a) that the person's name be added to or removed from the voters' list; or
- (b) that information on the voters' list relating to the person be amended.

Form and manner of application

(2) The application shall be in writing and shall be filed,

- (a) in person, by the applicant or his or her agent;
- (b) by mail, by the applicant; or
- (c) in any other format and manner that the clerk specifies.

Application approved

(3) If satisfied that the applicant is entitled to have the requested change made, the clerk shall,

- (a) endorse the application to indicate approval; and
- (b) return the endorsed application to the applicant or notify the applicant that the application has been approved and the voters' list will be changed to reflect the approved application.

Application refused

(4) If not satisfied that the applicant is entitled to have the requested change made, the clerk shall,

- (a) note the reason for refusal on the application; and
- (b) return the annotated application to the applicant.

Municipal Elections Act, 1996, SO 1996, c 32, Sched (cont.)

Removal of deceased person's name from voters' list

25 (1) The clerk may, on his or her own initiative, remove a person's name from the voters' list until the close of voting on voting day if the clerk is satisfied that the person has died.

...

Timing of application

(3) A person may make an application to the clerk requesting that a deceased person's name be removed from the voters' list during the period that begins on September 1 and ends at the close of voting on voting day. 2016, c. 15, s. 19.

Form and manner of application

(4) The application shall be in writing and shall be filed,

(a) in person, by the applicant or his or her agent;

(b) by mail, by the applicant; or

(c) in any other format and manner that the clerk specifies.

Clerk's decision final

26 The clerk's decision under section 24 or 25 is final.

List of changes

Interim list

27 (1) During the period beginning on September 15 and ending on September 25 in the year of a regular election, the clerk shall,

(a) prepare an interim list of the changes to the voters' list approved under sections 24 and 25 on or before September 15; and

(b) give a copy of the interim list to each person who received a copy of the voters' list under section 23 and to each certified candidate.

Final list

(2) Within 30 days after voting day, the clerk shall,

(a) prepare a final list of the changes to the voters' list approved under sections 24 and 25; and

(b) give a copy of the final list of changes to the Municipal Property Assessment Corporation.

Municipal Elections Act, 1996, SO 1996, c 32, Sched (cont.)

Nomination day

31 Nomination day for a regular election is the fourth Friday in July in the year of the election.

...

Filing of nomination

33 (1) A person may be nominated for an office by filing a nomination in the clerk's office, in person or by an agent.

Endorsement of nominations for council

(1.1) Subject to subsection (1.4), the nomination of a person for an office on a council must be endorsed by at least 25 persons, and they may endorse more than one nomination.

Same

(1.2) Persons endorsing a nomination under subsection (1.1) must be eligible to vote in an election for an office within the municipality, if a regular election was held on the day that the person endorses the nomination.

...

Formal requirements

(2) The nomination shall,

(a) be in the prescribed form;

(a.1) in the case of a nomination for an office on a council that must be endorsed by at least 25 persons, be endorsed in accordance with subsection (1.1) and be accompanied by a prescribed declaration by each of the persons endorsing the nomination;

(b) be accompanied by a declaration of qualification in the prescribed form, signed by the person being nominated; and

(c) be accompanied by the prescribed nomination filing fee.

Exception, endorsement

(2.1) If the person was previously nominated for an office on the same council in the same election and at that time filed the endorsed nomination and declarations described in clause (2) (a.1), that clause does not apply in connection with any subsequent campaign under subsection 88.24 (3).

...

Municipal Elections Act, 1996, SO 1996, c 32, Sched (cont.)

Time for filing

33 (4) The nomination may be filed,

(a) on any day on or after May 1 in the year of the regular election that is before nomination day, at a time when the clerk's office is open; or

(b) on nomination day, between 9 a.m. and 2 p.m.

...

Certificate, permitted amount of candidate's expenses

33.0.1 (1) Upon the filing of a person's nomination, the clerk shall calculate the applicable maximum amount of the person's expenses for the purposes of subsection 88.20 (6), as of the filing date, using the number of electors referred to in paragraph 1 of subsection 88.20 (11), and shall give the person, or the agent filing the nomination for the person, a certificate of the applicable maximum amount as of the filing date.

Calculation final

(2) The clerk's calculation is final.

Certificate, permitted amount of contributions to a candidate's own campaign

33.0.2 (1) Upon the filing of a person's nomination, the clerk shall calculate the applicable maximum amount for the purposes of subsection 88.9.1 (1), as of the filing date, using the number of electors referred to in paragraph 1 of subsection 88.9.1 (2), and shall give the person, or the agent filing the nomination for the person, a certificate of the applicable maximum amount as of the filing date.

Calculation final

(2) The clerk's calculation is final.

...

Advance vote

43 (1) Before voting day, each local municipality shall hold an advance vote on one or more dates.

(2) Subject to subsection (3), the clerk shall establish,

(a) the date or dates on which the advance vote is held;

(b) the number and location of voting places for the advance vote; and

(c) the hours during which the voting places shall be open for the advance vote, which may be different for different voting places.

(3) The advance vote shall not be held more than 30 days before voting day.

Municipal Elections Act, 1996, SO 1996, c 32, Sched (cont.)

Effect of default by candidate

88.23 (1) A candidate is subject to the penalties listed in subsection (2), in addition to any other penalty that may be imposed under this Act,

(a) if the candidate fails to file a document as required under section 88.25 or 88.32 by the relevant date;

(b) if a document filed under section 88.25 shows on its face a surplus, as described in section 88.31, and the candidate fails to pay the amount required by subsection 88.31 (4) to the clerk by the relevant date;

(c) if a document filed under section 88.25 shows on its face that the candidate has incurred expenses exceeding what is permitted under section 88.20; or

(d) if a document filed under section 88.32 shows on its face a surplus and the candidate fails to pay the amount required by that section by the relevant date.

Penalties

(2) Subject to subsection (7), in the case of a default described in subsection (1),

(a) the candidate forfeits any office to which he or she was elected and the office is deemed to be vacant; and

(b) until the next regular election has taken place, the candidate is ineligible to be elected or appointed to any office to which this Act applies.

...

Maximum contributions to candidates

88.9 (1) A contributor shall not make contributions exceeding a total of \$1,200 to any one candidate in an election.

...

Offences re campaign finances

Offences by candidate

92 (1) A candidate is guilty of an offence and, on conviction, in addition to any other penalty that may be imposed under this Act, is subject to the penalties described in subsection 88.23 (2),

(a) if the candidate incurs expenses that exceed the amount determined for the office under section 88.20; or

(b) if the candidate files a document under section 88.25 or 88.32 that is incorrect or otherwise does not comply with that section.

Exception, action in good faith

(2) However, if the presiding judge finds that the candidate, acting in good faith, committed the offence inadvertently or because of an error in judgment, the penalties described in subsection 88.23 (2) do not apply.

2018 and 2022 Regular Elections – Special Rules, O Reg 407/18

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.

2018 and 2022 Regular Elections – Special Rules, O Reg 407/18 (cont.)

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...

2018 and 2022 Regular Elections – Special Rules, O Reg 407/18 (cont.)

...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.

2018 and 2022 Regular Elections – Special Rules, O Reg 407/18 (cont.)

(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.

2018 and 2022 Regular Elections – Special Rules, O Reg 407/18 (cont.)

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.

Court File No. CV-18-00602494-0000
Court File No. CV-18-00603633-0000
Court File No., CV-18-00603633-0000

ROCCO ACHAMPONG

Applicant

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

Applicant

CITY OF TORONTO

Applicant

-and-

**ONTARIO (HON. DOUG FORD, PREMIER OF ONTARIO),
ONTARIO (ATTORNEY-GENERAL), and CITY OF TORONTO**

Respondent

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

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