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

B E T W E E N :

CITY OF TORONTO

Applicant
(Respondent in appeal - Responding Party)

- and -

ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant - Moving Party)

A N D B E T W E E N :

ROCCO ACHAMPONG

Applicant
(Respondent in appeal - Responding Party)

- and -

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

Respondents
(Appellants - Moving Parties)

(Title of Proceedings Continued on p.2)

FACTUM OF THE RESPONDING PARTIES, CHRIS MOISE et al.
(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 TORONTO

Applicants
(Respondents in appeal - Responding Parties)

- and -

THE ATTORNEY GENERAL OF ONTARIO and THE CORPORATION OF THE CITY OF TORONTO

Respondent
(Appellant - Moving Party)

- and -

JENNIFER HOLLETT, LILY CHENG, SUSAN DEXTER, GEOFFREY KETTEL and DYANOOSH YOUSSEFI

Interveners
(Respondents in appeal - Responding Parties)

FACTUM OF THE RESPONDING PARTIES, CHRIS MOISE et al.
(Motion for Stay Pending Appeal)

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PART I - OVERVIEW

1. After a full day hearing considering the submissions of counsel representing nearly a dozen parties, and having reviewed thousands of pages of evidence, The Honourable Mr. Justice Belobaba concluded that the *Better Local Government Act, 2018* ("Bill 5") unjustifiably infringed the Applicants' s. 2(b) rights to freedom of expression by drastically altering the boundaries and reducing the number of wards in the middle of the ongoing City of Toronto 2018 municipal election. As a result, in order to remedy this unjustified breach of constitutional rights, Justice Belobaba ordered that the election be conducted in accordance with the 47 ward boundaries in place at the outset of the election campaign.

2. The stay now sought by the Attorney-General would not simply preserve its rights pending an appeal, rather, it would grant the substantive, final outcome it sought in the legislation found to be constitutionally infirm, namely, mid-election substitution of 25 wards, an outcome that could not subsequently be undone or remedied by a decision on appeal by this Court.

3. For the reasons set out below, it is the position of the Moise Respondents that the Attorney-General's request for a stay is without merit and should be dismissed. The Government has failed to establish a strong *prima facie* case that the decision below would be overturned. Permitting the election to proceed in accordance with the 47 ward model arrived at through a years-long expert review and democratic imprimatur would not result in any irreparable harm, but rather would advance the public interest. The balance of convenience – both public and private – clearly favours the certainty of adhering to the election rules and boundaries that all Torontonians understood would be in place, not the uncertainty, instability and unconstitutional effects that would follow a return to Bill 5.

PART II - FACTS

A. THE TORONTO WARD BOUNDARY REVIEW & THE 2018 MUNICIPAL ELECTION

4. The official campaign period for Toronto's 2018 municipal election commenced on May 1, 2018, with the election scheduled to occur on October 22, 2018 under a 47-ward structure.[1] Within this structure, candidates for City Council began actively campaigning, canvassing, conducting outreach, distributing campaign literature, and engaging community members on important local issues.[2]

5. The 47-ward structure was the result of a lengthy consultation process known as the Toronto Ward Boundary Review (TWBR).[3] From 2013-2017, the TWBR conducted research, held extensive public consultations[4] and considered numerous ward boundary options, including mirroring the 25 electoral districts used for provincial and federal elections.[5] The 25-ward structure was soundly rejected by the TWBR because it would have resulted in disproportionately large wards that City Councillors could not adequately serve or represent.[6] The TWBR recommended an increase in the number of wards from 44 to 47 which it concluded would best accomplish "effective representation".[7] In November 2016, Toronto City Council explicitly rejected attempts to implement a 25-ward model,[8] and adopted the 47-ward model

[1] *City of Toronto et al v. Ontario (Attorney General)*, 2018 ONSC 5151 ("*Reasons for Decision*"), at para 4
[2] *Reasons for Decision, supra*, at para 29; Affidavit of Chris Moise ["Moise Affidavit"], at paras 19-21; Affidavit of Jamaal Myers ["Myers Affidavit"], at paras 8-9, 11-12, 22, 24; Affidavit of Rocco Achampong ["Achampong Affidavit'], at paras 13-21; Affidavit of Mariana Valverde ["Valverde Affidavit"], at paras 15-16, 19-23; Affidavit of Chiara Padovani ["Padovani Affidavit"], at para 15
[3] *Reasons for Decision, supra* at para 54; Affidavit of Myer Siemiatycki ["Siemiatycki Affidavit"], at para 12, and Exhibit "B" therein; Affidavit of Gary Davidson ["Davidson Affidavit"] at paras 9-13, and 16
[4] *Reasons for Decision, supra* at para 54; Davidson Affidavit, at paras 9-13, and 16
[5] *Reasons for Decision, supra* at para 54; Davidson Affidavit, at paras 19, 21-28
[6] *Reasons for Decision, supra* at para 55; Siemiatycki Affidavit, at para 17 and Exhibit "B" therein; Davidson Affidavit, at paras 24-28
[7] *Reasons for Decision, supra*, at para 54; Siemiatycki Affidavit, at paras 19-20; Affidavit of Giuliana Carbone ["Carbone Affidavit"], at Exhibits "O" and "P"
[8] Davidson Affidavit, at para 30

recommended by the TWBR.[9] This decision was upheld by the Ontario Municipal Board on December 15, 2017, and the Divisional Court refused leave to appeal on March 6, 2018.[10]

6. Registrations for candidates for the 2018 election began on May 1, 2018 and closed on July 27, 2018.[11] In total, 292 City Council candidates registered across the 47 wards.[12] The field of candidates for the 2018 election was diverse, including a significant number of women, racialized and LGBTQ+ persons.[13]

B. BILL 5

7. On July 30, 2018, on the same day that the City Clerk certified the candidates for Council, and more than halfway through the campaign period, the Minister of Municipal Affairs and Housing introduced Bill 5, which received Royal Assent on August 14, 2018, and which re-drew electoral boundaries that had formed the basis for the ongoing campaign.[14] Bill 5 also created wards with average population sizes of over 100,000, doubling ward populations, and imposed the very model that had been soundly rejected by both the TWBR and by Toronto's elected government.[15]

8. It is beyond dispute that Bill 5's interference with the City's election, by radically changing the size and number of wards for the election in the middle of the campaign, was

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[9] Siemiatycki Affidavit, at paras 19-20; Carbone Affidavit, Exhibits "O" and "P"
[10] With the exception of a minor change in one ward boundary. Leave to appeal the decision of the Board (now known as the Local Planning Appeal Tribunal), *Di Ciano v Toronto (City),* 2017 CanLII 85757 (ON LPAT), was denied by the Divisional Court: *Natale v City of Toronto*, 2018 ONSC 1475; *Reasons for Decision, supra*, at para 54
[11] *Reasons for Decision, supra*, at para 4
[12] Affidavit of Fiona Murray ["Murray Affidavit"], at paras 6 and 16
[13] Siemiatycki Affidavit, at para 29.
[14] *Reasons for Decision, supra* at para 5;
[15] *Reasons for Decision, supra* at paras 5, 54-58;

unprecedented in Canadian history.[16] When Bill 5 took effect, the City Clerk's preparations for the October 22 election, based on a 47-ward election, were well underway.[17]

C. THE APPLICANTS AND THE PROCEEDINGS BELOW

9. Three applications were brought on an urgent basis to challenge Bill 5. The Applicants included the City of Toronto; Rocco Achampong; and Chris Moise, a candidate for city council,[18] Ish Aderonmu, an elector, and an active volunteer in a municipal election campaign,[19] and Prabha Khosla, an elector involved with Women Win TO (WWTO), an organization working to equip women and trans candidates to run successful campaigns for City Council.[20] Additional interveners joined the proceedings on both sides of the case.

10. On September 10, 2018, the Application Judge ruled that Bill 5 infringed freedom of expression in two distinct ways.[21] First, as set out more fully below, he found an infringement of candidates' free expression because the changes to the City's electoral districts in the middle of the election campaign substantially interfered with candidates' and electors' constitutionally protected expressive activities.[22] Second, as summarized below, he found that the imposition of a 25 ward structure with an average population size of 111,000 infringed the freedom of expression of municipal voters to cast a vote that could result in meaningful and effective representation.[23]

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[16] *Reasons for Decision, supra* at para 6;
[17] *Reasons for Decision, supra* at para 5;
[18] Moise Affidavit, at paras 2, 13-15.
[19] Aderonmu Affidavit, at paras 4, 6-7, 14.
[20] Affidavit of Prabha Khosla ["Khosla Affidavit"] at paras 1-2,8, 9, 19; Willson Affidavit, at paras 7-8, 11; Padovani Affidavit, at paras 1, 12-13; Affidavit of Cheryl Lewis-Thurab ["Lewis-Thurab Affidavit"], at paras 1, 6-10.
[21] *Reasons for Decision, supra* at para 10.
[22] *Reasons for Decision, supra* at para 32.
[23] *Reasons for Decision, supra* at para 60.

11. The Application Judge found that the Attorney General had not established a pressing and substantial objective for the legislation.[24] He assessed the two objectives advanced by the Attorney General: improved efficiency through a 'more streamlined' City Council; and voter parity. He found no evidence that a 47-seat City Council was 'dysfunctional,' or that 25 wards would better achieve efficiency and voter parity.[25] Further, the Application Judge found that there was no evidence that the objectives of streamlining council and achieving voter parity were so pressing and substantial that they had to take effect in the middle of the election.[26] But in any event, the Application Judge also held that Bill 5 failed the proportionally test under s. 1.[27]

12. The Application Judge made no determination on the s. 2(d) and s. 15 Charter breach arguments raised by the Moise Applicants,[28] nor the arguments raised by other parties based on unwritten constitutional principles.

D. EVENTS SUBSEQUENT TO THE APPLICATION JUDGE'S RULING

13. On September 10, 2018, shortly after the Application Judge's decision was released, the City of Toronto released the following public statement:

> The City Clerk will commence preparations to administer the October 22 election under the 47-ward model, with advance voting starting on October 10. Nominations for candidates under the 47-ward model were closed on July 27 and certified.[29]

Nominations for City Council are closed, and preparations are under way to conduct the October 22, 2018 election based on the 47 ward structure.

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[24] *Reasons for Decision, supra* at para 72.
[25] *Reasons for Decision, supra* at para 68
[26] *Reasons for Decision, supra* at para 72
[27] *Reasons for Decision, supra* at paras. 74-76.
[28] *Reasons for Decision, supra* at para 13.
[29] Affidavit of Joshua Mandryk sworn September 14, 2018 ["Mandryk Affidavit"], at para 3 and Exhibit "A"

14. On or around 2:00 p.m. on September 10, hours after the decision below was released, the Premier of Ontario announced that he intended to recall the Legislature and introduce legislation substantially similar to Bill 5 that would invoke s. 33 of the *Constitution Act, 1982*, the notwithstanding clause. The Premier decried the size, cost, and dysfunction of City Hall, but made no mention of voter parity or effective representation as being objectives of Bill 5.[30]

PART III – THE LAW

A. THE MOVING PARTIES HAVE FAILED TO SHOW A STRONG PRIMA FACE CASE

15. The Toronto municipal election will be held in just over one month, and early voting is set to begin on October 10th. Realistically, this Court will not be able to entertain, let alone decide this appeal prior to ballots being cast. As a result, the outcome of this motion to stay Justice Belobaba's decision will effectively decide whether the mid-election changes to the pre-existing 47 ward structure imposed by Bill 5 – found to be unconstitutional by Justice Belobaba – are to be reinstated. This will, for all practical purposes, grant final relief to the successful party.[31]

16. Where the results of an interlocutory motion for a stay will in effect amount to a final determination of the issue, the general rule that courts will only require an arguable case does not

[30] Mandryk Affidavit, at paras 5-9, and Exhibit "B"

[31] There may be compelling reasons for this Court to exercise its discretion to hear this appeal in due course, notwithstanding its mootness, due to the fact that interference with ongoing elections present a problem that is 'capable of repetition, yet evasive of review': *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342 at 360-361. This fact does not diminish the fact that, for the purposes of the specific relief that the Responding Parties are seeking, this motion will constitute a final determination of the dispute.

apply.[32] Rather, in such cases, Courts will engage in a "reversion to a stricter standard"[33] characterized by the "strong *prima face* case" test.[34]

17. Recently the Supreme Court of Canada described the nature of the strong *prima face* case test, stressing the high threshold that a moving party must meet:

> This brings me to just what is entailed by showing a "strong prima facie case". Courts have employed various formulations, requiring the applicant to establish a "strong and clear chance of success"; a "strong and clear" or "unusually strong and clear" case; that he or she is "clearly right" or "clearly in the right"; that he or she enjoys a "high probability" or "great likelihood of success"; a "high degree of assurance" of success; a "significant prospect" of success; or "almost certain" success. Common to all these formulations **is a burden on the applicant to show a case of such merit that it is very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be satisfied that there is a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice.**[35]

18. As a result, the Attorney-General not only must demonstrate that each of the two independent s. 2(b) violations found by the Applications Judge[36] were clearly wrong, but also that they will also very likely succeed on appeal on o the claims related to ss. 2(d) and 15 of the *Charter*, as well as the unwritten constitutional principle of the rule of law and democracy.[37] In

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[32] *RJR-MacDonald Inc v. Canada (Attorney General)*, [1994] 1 SCR 311 at 338; *Enbridge Pipelines Inc. v. Williams*, 2017 ONSC 1642 (CanLII) at para. 39; *May v. CBC/Radio Canada*, 2011 FCA 130 (CanLII) at 20-21; Robert J. Sharpe, *Injunctions and Specific Performance* (Loose-leaf, Rev. No. 26, Nov. 2017) at 2.210 [*Sharpe*].
[33] *RJR-MacDonald, supra* at 335.
[34] *Fontaine v. Canada (Attorney General)*, 2018 ONCA 749 (In Chambers) at para. 16; *Enbridge Pipelines, supra* at para. 40; *Hammond v. Hamilton-Wentworth District School Board*, 2005 CanLII 44389 (ON SC) at para. 30; *Propurchaser.com v. Wifidelity Inc.*, 2017 ONSC 4905 (CanLII) at para. 14;
[35] *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 (CanLII) at para. 17 (citations omitted, emphasis added).
[36] *Reasons for Decision, supra* at para. 20.
[37] *Reasons for Decision, supra* at para. 13 (specifically making no findings on these grounds in light of finding on 2(b)).

this respect, the Respondents are entitled to seek to uphold the Application Judge's decision on these alternative grounds, even in the absence of a cross-appeal.[38]

19. Given the evidence before the Applicant Judge, and the legal analysis he applied, the Moving Party cannot meet its burden to demonstrate that they are very likely to succeed on the appeal.

i) Freedom of Expression – Interference in Ongoing Election

20. As correctly recognized by the Application Judge,[39] in a s. 2(b) claim, the Court asks two questions: does the activity in question fall within the scope of freedom of expression; and is the purpose or effect of the impugned legislation is to interfere with that expression.[40]

21. The myriad activities that surround municipal elections are paradigmatic expressive acts. The Supreme Court has consistently recognized that freedom of expression is of crucial importance in a democratic society[41] and that the political process lies at the very core of the values that s. 2(b) guarantees.[42] As Dickson C.J. explained in *Keegstra* "the connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy."[43] It is "difficult to imagine a guaranteed right more important to a democratic society."[44]

22. Thus, standing for office, seeking to represent a particular constituency, speaking with electors, holding rallies, soliciting donations, and asking for support are not merely expressive

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[38] *Woodside v Gibraltar General Insurance Co.* (1991), 1 OR (3d) 474 (CA) at 475-476.
[39] *Reasons for Decision, supra* at para. 26.
[40] *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 978.
[41] *Libman v. Quebec (AG)*, [1997] 3 SCR 569 [*Libman*] at para 28, and cases cited therein.
[42] *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at 1355-56; *R v Zundel*, [1992] 2 SCR 731 at 752-53.
[43] *R v Keegstra*, [1990] 3 SCR 697 at 763-64.
[44] *Edmonton Journal*, *supra*, at 1336 *per* Cory J.

acts, but expression that lies at the core of s. 2(b). Equally so, participating in political discourse, expressing concerns to candidates, providing financial support for those running for office, and casting a ballot are fundamental expressive acts at the core of s. 2(b) of the *Charter*.[45]

23. The Application Judge's conclusion that expressive activities surrounding the ongoing 2018 municipal election "obviously" falls within the scope of s. 2(b) is clearly correct.[46]

24. The second question is whether the change in electoral districts mid-election interfered with the expressive activities of election participants– either candidates or electors. The Record before the Application judge described the interference in detail which nullified and rendered ineffective both past and ongoing expression.

25. Once the campaign period began under the original 47 ward structure, numerous candidates for office began to express themselves in earnest.[47] Importantly, they did not simply engage in political expression in the abstract. They engaged in strategic expression directed towards a particular goal: election to a particular public office in a particular constituency.

26. This expression took many forms, including the development and distribution of campaign materials to inform voters *in particular wards* of their positions on issues affecting those voters and wards.[48] Candidates and volunteers canvassed to reach the thousands of electors,[49] attended community events, spoke to groups in their wards, and disseminated the

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[45] *Harper v Canada (Attorney General)*, [2004] 1 SCR 827at paras 15, 20 [*Harper 2004*]; *Taman v Canada (Attorney General)*, 2015 FC 1155 at para 41.
[46] *Reasons for Decision, supra* at para. 27.
[47] Moise Affidavit, *supra* at paras 19-21; Willson Affidavit, *supra* at para 11; Padovani Affidavit, *supra* at paras 16-17; Myers Affidavit, *supra* at paras 22, 27.
[48] Myers Affidavit, *supra* at paras 8-9, 11-12, 22, 24; Achampong Affidavit, *supra* at paras 13-21
[49] Moise Affidavit, *supra* at para 20.

campaign material referenced above.[50] This was all the result of careful planning and was an integral component of the expressive activity involved in any election campaign.[51]

27. Bill 5 has interfered with all of this protected expressive activity.[52] Bill 5 not only increased the size of wards but altered their boundaries such that neighbourhoods were excluded from new wards or divided between them. Bill 5 rendered moot canvassing and outreach to community groups and electors in neighbourhoods that no longer belong to the newly imposed ward. Campaign literature and other materials were rendered unusable.[53]

28. Candidates were required to commence new campaigns on virtually no notice in areas where they may well have no connections or established support (including volunteers), and craft messages to address new and different issues and appeal to new and different voters.[54] The mid-campaign change in ward boundaries for which candidates were neither prepared nor resourced interfered with their ability to communicate their political message to relevant voters.[55]

29. From a campaign finance perspective, the nullification of prior speech imposed substantial burdens on future expression as well. Campaign funds expended for materials that were no longer usable nevertheless counted against candidates' spending limits for the remainder of the campaign, even while the territory where they must communicate expanded

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[50] Valverde Affidavit, *supra* at paras 15-16, 19-23; Padovani Affidavit, *supra* at para 15.
[51] Moise Affidavit, *supra* at para 18; Siemiatycki Affidavit, *supra* at paras 19-21, 26; Padovani Affidavit, *supra* at para 14; Aderonmu Affidavit, *supra* at para 6.
[52] Moise Affidavit, *supra* at para 28.
[53] Khosla Affidavit, *supra* at paras 35; Moise Affidavit, *supra* at para 28; Padovani Affidavit, *supra* at para 22; Aderonmu Affidavit, *supra* at para 14; Myers Affidavit, *supra* at paras 24 and 27; Affidavit of Lily Cheng ["Cheng Affidavit"] at paras 18, 28; Affidavit of Dyanoosh Youssefi ["Youssefi Affidavit"]at para 33. Examples of candidate campaign websites and literature can be found at Exhibits H-I of the Carbone Affidavit.
[54] Moise Affidavit, *supra* at para 24; Willson Affidavit, *supra* at para 15; Beall Affidavit, *supra* at paras 22, 24; Padovani Affidavit, *supra* at paras 15-17; Myers Affidavit, *supra* at paras 26-27.
[55] Valverde Affidavit, *supra* at para 41; Padovani Affidavit, *supra* at para 16; Myers Affidavit, *supra* at para 26; Lewis-Thurab Affidavit, *supra* at para 17; Beall Affidavit, supra at paras. 20, 22, 24; Willson Affidavit, *supra* at paras 12-15.

dramatically.[56] This limited and constrained the capacity of candidates to effectively communicate, and was analogous to, and indeed substantially more burdensome than the restrictions on donations and expenditures that were found to violate s. 2(b) in *Harper*[57] and *Libman.*[58]

30. Moreover, many candidates indicated that they were not able to raise sufficient funds for effective political expression in the abbreviated time remaining, particularly given the fact that funds have already been raised and expended on materials that were no longer usable:

> …the pool of donors is limited as are the amounts they are willing to contribute. To go back to my donors and ask them for more money, on the basis that our prior efforts (on which their funds were spent) have been rendered pointless and there is now an entirely different area where I would be running, particularly where I would be running against incumbents at a significant disadvantage, would be very difficult. At this stage of the campaign period, I do not think I could credibly raise additional and sufficient funds for an effective campaign…[59]

31. In the electoral context, s. 2(b) does not simply operate to permit candidates and their supporters to express views. Electoral expression is a special type of political expression, largely defined by the rules of the election in which it operates. Time (e.g. campaigning periods), geography (e.g. ward boundaries) and rules (e.g. voting methods) all operate to structure how and to what ends candidates engage in electoral expression. Ultimately, 2(b) protects "the right to participate in political discourse", which is "is a right to <u>effective</u> participation".[60] Changing the

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[56] Cheng Affidavit, *supra* at para 26.
[57] *Harper 2004, supra.*
[58] *Libman, supra.*
[59] Moise Affidavit, *supra* at para 28.
[60] *Harper, supra* at para. 15 (emphasis in original). While the Attorney-General may argue there is no right that one's expression be effective, in the electoral context, the Supreme Court has clearly recognized that s. 2(b) protects against legislation which diminishes the effectiveness of an individual's expressive electoral participation. Moreover, even if this case involved the Applicants asserting a positive obligation on government to protect expression, the *Baier* test would be met, since if there is to be an election, there must be clear ground rules and

very parameters in which electoral expression exists strikes at the heart of this core expressive activity.

32. The Application judge therefore had a firm basis to conclude that the mid-election change of the rules revealed a clear violation of s. 2(b).[61] He accepted – as he was entitled to – that the evidence before him unequivocally demonstrated that "candidates' efforts to convey their political message about the issues in their particular ward was severely frustrated and disrupted" and that "Bill 5 substantially interfered with the candidate's ability to effectively communicate his or her political message to the relevant voters."[62] Moreover, these were findings of fact which could only be set aside on the overriding and palpable error standard of review.

iv) Freedom of Association

33. While Justice Belobaba did not make any findings concerning the Applicants' s. 2(d) challenge to Bill 5, given the underlying purposes of freedom of association, it is abundantly clear that the various activities engaged in by the individual candidates and organizations described in the Applicants' materials were constitutionally protected associational activities.

34. In *Mounted Police Association of Ontario* ("*MPAO*"), the Supreme Court articulated a comprehensive approach to the purpose and scope of s. 2(d), emphasizing its link to a vibrant democratic society.[63] In particular, the Court recognized that freedom of association is intended to "empower… groups whose members' individual voices may be all too easily drowned out."[64] Even before *MPAO*, courts recognized that in the context of elections, freedom of association is also particularly important for the exercise of other fundamental freedoms, such as freedom of

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electoral boundaries in place in advance of the commencement of the election campaign, and an obligation not to alter those rules and boundaries in the middle of the campaign: *Baier v. Alberta*, [2007] 2 SCR 673.
[61] *Reasons for Decision, supra* at paras. 27-38.
[62] *Reasons for Decision, supra* at para. 30.
[63] *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 49 [*MPAO*].
[64] *Ibid* at para 55.

expression.[65] Freedom of association includes participation in political campaigns, including groups' attempts to inform voters and promote their legitimate interests,[66] and participation by individuals in political campaigns, through donations of their time and funds.[67]

35. Various groups and organizations have formed and undertaken associational as well as expressive activity in relation to the 2018 election. Those associational activities, aimed, *inter alia*, at electing women, visible minority and LBGTQ+ candidates, and were entirely premised on and shaped by the election rules and boundaries established well in advance of the 2018 campaign.[68] As a result of Bill 5, candidates who had been supported by various groups were forced to withdraw or be pitted against one another, negating the ability of the groups to continue to support the candidates with whom they had chosen to associate pre-Bill 5.

36. In *MPAO*, the Supreme Court concluded that "a process that substantially interferes with a meaningful process of collective bargaining by reducing employee's negotiating power"[69] is inconsistent with s. 2(d). One need only substitute "campaigning" for collective bargaining, "women, racialized and LGBTQ+ candidates" for employees, and organization for "negotiating," to recognize the adverse impact of Bill 115 on s. 2(d) protected associational activity.

iii) Equality Rights

37. While Justice Belobaba did not make any findings concerning the Applicants' s. 15 challenge to Bill 5, the evidence before the Application Judge also demonstrated that Bill 5 perpetuated and exacerbated barriers to meaningful participation in local democracy, thereby

[65] *Reference Re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313 at 391, *per* Le Dain J.; *Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner)*, [1990] 2 SCR 367 at 398-9.
[66] *Canada (Attorney General) v Somerville,* 1996 ABCA 217 at para 29 ["*Somerville*"].
[67] *Somerville, supra* at para. 26.
[68] Khosla Affidavit, *supra* at paras 32-33; Siemiatycki Affidavit, *supra* at paras 54-57; Willson Affidavit, *supra* at paras 7-9, 13; Myers Affidavit, *supra* at paras 18-19; Lewis-Thurab Affidavit, *supra* at paras 7-10.
[69] *MPAO, supra* at para 71, see also para 80.

infringing s. 15(1). In *Alliance du personnel professionnel*, the Supreme Court recently confirmed the two-stage test for establishing a s. 15(1) breach:

a. Does the impugned law, on its face or in its impact, create a distinction based on enumerated or analogous grounds?

b. If so, does the law impose "burdens or [deny] a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating...disadvantage"?[70]

38. The Supreme Court has emphasized that substantive equality is an "animating norm"[71] of s. 15(1). As the Court stated in Quebec AG v. A : "The root of s. 15 is our awareness that certain groups have been historically discriminated against, and that the perpetuation of such discrimination should be curtailed. If the state conduct widens the gap between the historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory."[72]

39. Bill 5 had a disproportionate impact on candidates from financially disadvantaged communities, who have more limited access to financial resources, by requiring them to pay for new materials mid-campaign.[73] The redrawing of ward boundaries, and the corresponding need to connect to an expanded electorate in an abbreviated timeline, had a disproportionate impact on women who are often primary caregivers, and so less able to pursue these activities.[74]

40. Bill 5 disrupted the strategic planning, coordination and campaign efforts undertaken in reliance on the existing ward structure. Based on "commonality of experience, conditions, and

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[70] *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17, at para 25. Although a s. 15 claimant previously had to identify a 'mirror comparator group' and demonstrate prejudice and stereotyping, the Supreme Court's s. 15 jurisprudence has evolved away from categorical requirements towards a more robust and contextual analysis: *ibid* at para 27.
[71] *Withler v. Canada (Attorney General)*, 2011 SCC 12, at para 2.
[72] *Quebec (Attorney General) v A*, 2013 SCC 5, at para 332.
[73] Moise Affidavit *supra* para 28; Aderonmu Affidavit, *supra* para 14; Khosla Affidavit, *supra* paras. 23, 41-42; Siemiatycki Affidavit, *supra* para 33
[74] Khosla Affidavit, *supra* at para 23.

aspirations," communities of interest develop objectives regarding municipal responsibilities.[75] Inclusion of marginalized communities increases when they form a "critical mass" within a ward,[76] something difficult to do given the distribution of Toronto's communities.[77] Toronto is significantly less racially segregated than other municipalities,[78] and so larger wards dilute the critical mass necessary to obtain the groups' goals.[79]

41. These impacts compound the existing systemic barriers confronted by women, racialized and LGBTQ+ candidates.[80] Their underrepresentation on City Council[81] means that the needs and interests of these communities are not meaningfully reflected in City policies and priorities, or equitably addressed through the provision of City programs and services.[82]

42. In summary, by radically decreasing the number of wards, redrawing their boundaries and changing the rules mid-election, Bill 5 erected significant additional barriers to the ability of the women, racialized and LGBTQ+ candidates to campaign for and access public office on an equitable and non-discriminatory basis. The effects of Bill 5 thus offend s. 15(1) by widening the gap between members of the claimant groups and the rest of society.[83]

iv) Section 1

43. The Attorney General is also not able to show that it is very likely to succeed on a s. 1 defence of the legislation. The Application Judge properly rejected claims of voter parity being

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[75] Siemiatycki Affidavit, *supra* at paras 8 and 15; Davidson Affidavit, *supra* at paras 56-57.
[76] Siemiatycki Affidavit, *supra* at para.11.
[77] Valverde Affidavit, *supra* at para 33.
[78] Valverde Affidavit, *supra* at paras 33 and 35.
[79] Valverde Affidavit, *supra* at paras 33-35; Siemiatycki Affidavit, *supra* at paras. 39-47.
[80] Khosla Affidavit, *supra* at paras 20-23; Siemiatycki Affidavit, *supra* at para 37
[81] Siemiatycki Affidavit, *supra* at paras 6 and 10; Davidson Affidavit, *supra* at para 60; Lewis-Thurab Affidavit, supra at paras 12-13
[82] Khosla Affidavit *supra* at paras 13-15; Padovani Affidavit, *supra* at para 4
[83] *Quebec (Attorney General) v A*, 2013 SCC 5 at para 332.

an animating objective of the legislation, and correctly recognized the complete failure of the government to adduce any evidence capable of making out its proportionality claim.

44. The Attorney General cites a *Hansard* passage to argue that Bill 5 had three objectives: voter parity, improving efficiency, and saving money.[84] But, as the Application Judge correctly noted, voter parity was never seriously articulated as a governmental objective at all.[85] The reference to voter parity in *Hansard* was not a reference to the government's objectives, but rather the recitation of the views of a minority of current members of City Council. In the statements made by the government since the decision below was released, there has been no mention of voter parity, only efficiency and costs savings.[86]

45. The Application Judge was also clearly right to take into account the absence of any evidence demonstrating dysfunction at City Council, let alone that any such dysfunction had anything to do with the number of councillors on Council.[87]

46. As to the cost savings claim now being made on appeal, it is notable that the Moving Party explicitly disavowed any reliance on this justification in the Court below.[88] Even if cost savings could be a pressing and substantial objective, it is difficult to see how, in light of that position, the Moving Party could now seek to Bill 5 on that basis, particularly in the absence of real evidence demonstrating a cost savings.

47. Questions of pressing and substantial objectives aside, the Moving Party cannot demonstrate a high probability of success on the proportionality prong of *Oakes*, particularly minimal impairment. The Application Judge rightly noted that there was no apparent attempt to

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[84] Moving Party Factum, para. 7.
[85] *Reasons for Decision, supra* at paras. 67-72.
[86] *Mandryk Affidavit, supra* at paras. 8, 10.
[87] *Reasons for Decision, supra* at para. 71.
[88] *Reasons for Decision, supra* at para. 70.

consult or consider alternative options to achieve its ends,[89] a matter that the Supreme Court has held is significant in the s. 1 analysis.[90] Worse, the decision appeared to fly in the face of the conclusions reached by the TWBR, a truly consultative, evidence-based and deliberative process.[91]

48. Justifying an infringement of a constitutionally protected right – particularly one so central to democracy as political speech – ought to be no easy task for a government. There is little reason to believe that the Attorney General could move this court to uphold Bill 5 on any of its articulated bases.

v) Conclusion on Strong Prima Face Case

49. The basis for the Application Judge's findings of fact and conclusion of law were well grounded in the Record and the jurisprudence. There exist further compelling bases on which to uphold the decision below. In light of the standard of review, the state of the Record, and the compelling legal analysis undertaken by the Application Judge, the Moving Party simply cannot discharge its threshold burden to demonstrate its appeal raises a strong *prima face* case.

B. THE MOVING PARTY WILL NOT SUFFER IRREPARABLE HARM IF A STAY IS NOT GRANTED

i) No Presumption of Irreparable Harm to the Public Interest Applies

50. The Moving Party submits, as Attorneys General often do in *Charter* cases, that there is a nearly irrefutable presumption of irreparable harm to the public interest in not permitting a

[89] *Reasons for Decision, supra* at para. 69.
[90] *Health Services and Support Facilities Subsector Bargaining Assn. v. British Columba*, [2007] 2 SCR 391 at para. 157.
[91] *Reasons for Decision, supra* at para. 76.

statute to continue in effect pending appeal.[92] This is not the law, and the Moving Parties cannot point to anything that could concretely ground their claim of irreparable harm.

51. In *Frank* – an elections rights case – Sharpe J.A. categorically rejected the Attorney General's argument that "as guardian of the public interest it has something approaching an automatic right to a stay due to a presumption of irreparable harm and that the balance of convenience favours maintaining the "status quo".[93] As noted by Sharpe J.A., such a proposition would be inconsistent with what occurred in *Sauvé*, the prisoner voting litigation, where a stay of a declaration of invalidity was refused pending appeal.[94]

52. Electoral cases such as *Sauvé* and *Frank* establish that there is an onus on the government to demonstrate irreparable harm flowing from the failure to enforce electoral laws held to be unconstitutional by lower courts.

53. Where legislation has been found to be unconstitutional following a hearing at first instance, the Province "do[es] not benefit from an assumption of irreparable harm at stage two."[95] Even if the decision is under appeal, "the public interest in the continued enforcement of the law is enormously diminished."[96] Notwithstanding that the Province is a government authority, it still bears the onus of establishing irreparable harm.

54. Even if its role as a governmental authority did, in the ordinary case, give it a special claim to irreparable harm based on the public interest, this case is different in that it involves the public interest as advanced by two different levels of government. Like the Province of Ontario, the City of Toronto is a democratically elected government with a duty to promote and protect

[92] Moving Party's Factum, para. 19.
[93] *Frank v. Canada (Attorney General)*, 2014 ONCA 485 at para. 14 ["*Frank*"].
[94] *Ibid; Sauvé v. Canada (Chief Electoral Officer)*, [1997] 3 FC 628, aff'd [1997] 3 FC 643 (CA).
[95] *Sauvé, supra* at para. 11.
[96] *Canadian Federation of Students v. Greater Vancouver Transportation Authority*, 2007 BCCA 221 at para 23.

the public interest. To the extent that a presumption might ordinarily apply in favour of the Province's request for a stay (which is denied), there must also be a competing presumption in favour of the public interest represented by an opposing government litigant.

55. The Attorney-General has not cited a single stay or injunction decision that involved competing government authorities in its factum. That omission is telling. Courts have on multiple occasions restrained the implementation of duly enacted legislation to protect the public interest advanced by other government entities pending a constitutional challenge. These include:

a. an injunction preventing the "destruction as soon as feasible" of records in the federal long-gun registry which was specifically provided for in federal legislation, pending a challenge brought by the Government of Quebec concerning the law's constitutional validity;[97]

b. an injunction that prevented the merging of water management boards pursuant to the *Northwest Territories Devolution Act* pending a constitutional challenge brought by the Tłı̨chǫ Government to vindicate Tłı̨chǫ rights under a Northwest Territories – Canada Land Claims Agreement;[98] and

c. an injunction that prevented the implementation of a universal licensing and registration scheme for firearms and ammunition pursuant to the *Firearms Act,* pending a constitutional challenge brought by Nunavut to vindicate Inuit rights guaranteed in the Nunavut Land Claims Agreement.[99]

[97] *Québec (Procureur général) c. Canada (Procureur général)*, 2012 QCCS 1614. The Court found that "[t]he beneficial effects for Quebec of maintaining the registry appear to be greater than the urgent need to apply the new statute decriminalizing the registration of long guns and destroying the registry" (para. 67). The Court also ordered Canada to continue to register long-gun firearms pending the challenge, which was a "necessary incidental" to the preservation of the registry (para. 85).

[98] *Tłı̨chǫ Government v. Canada (Attorney General)*, 2015 NWTSC 9 at para. 100. The Court found that there would be irreparable harm to the public interest represented by the Tłı̨chǫ's claim, and commented that "there is a very real public interest benefit that derives from protecting the *status quo* where it has been demonstrated that there is a serious constitutional issue to be tried and that irreparable harm could result from the breach of a constitutionally protected right."

[99] *NTI v. Canada (Attorney General),* 2003 NUCJ 1. While acknowledging that there was "clearly a significant public interest attached to enforcement of public safety legislation of this kind", the Court reiterated that the federal government does not have a "monopoly" on public interest considerations, and that the alleged infringement of a treaty right, and the collateral damage to Inuit interests it would cause, outweighed the federal government's interest in public safety (para. 51).

56. Ultimately, no governmental authority holds a "monopoly" on public interest considerations.[100] The public interest in protecting the integrity of the electoral process and advancing the constitutional rights of candidates and electors should, in this case, prevail over the professed public interest in enforcing duly enacted legislation, particularly given the Application Judge's findings about the limited public policy basis underlying Bill 5.[101] This is particularly so where, as submitted above, that legislation no longer benefits from any presumption of constitutionality. In this respect, the following passage from Justice Belobaba's reasons is apposite:

> [72] The Supreme Court has stated time and again that "preserving the integrity of the election process is a pressing and substantial concern in a free and democratic society."[102] Passing a law that changes the City's electoral districts in the middle of its election and undermines the overall fairness of the election is antithetical to the core principles of our democracy.

ii) The Moving Party Will Suffer no Irreparable Harm if a Stay is Denied

57. In considering the Province's purported justifications for Bill 5, the Application Judge aptly described the Province's problem as twofold:

> (i) there is no evidence (other than anecdotal evidence) that a 47-seat City Council is in fact "dysfunctional" or that more effective representation can be achieved by moving from a 47-ward to a 25-ward structure; and (ii) even if there was such evidence, there is no evidence of any urgency that required Bill 5 to take effect in the middle of the City's election.[103]

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[100] *Frank, supra* at para. 18; *RJR-MacDonald, supra* at 343; *Bedford v. Canada (Attorney General),* 2010 ONCA 814 (CanLII) at para. 73 ["*Bedford ONCA*"].
[101] *Reasons for Decision, supra* at paras 6 to 7 and 62 to 80
[102] *Figueroa v. Canada (Attorney General)*, [2003] 1 SCR 912, 2003 SCC 37 at para. 72.

[103] *Reasons for Decision, supra* at para. 71.

58. The Application Judge found that "there is simply no evidence that the two objectives in question were so pressing and substantial that Bill 5 had to take effect in the middle of the City's election."[104] He found, based on the evidence, that the legislation was hurriedly enacted "without much thought at all, more out of pique than principle."[105] Given these findings, it is difficult to conceive how irreparable harm to the public interest can be made out on this stay, on the same evidentiary record.

59. The Application Judge was not simply considering the Province's purported justification for enacting Bill 5 in the abstract; he was considering the Province's reasons for enacting it on an urgent basis and applying it to the upcoming election. That is the issue before this Court in the stay motion. What is the mischief or harm asserted by the Province that requires the *immediate* implementation of this legislation, and does that mischief or harm amount to "irreparable harm"? The Application Judge found not only little, if any, evidence that the objectives advanced in support of Bill 5 were important, but also that those objectives would not be advanced by Bill 5. In the face of these findings, it cannot be that the Government has made out a case of irreparable harm if the election were to proceed, as Justice Belobaba ordered, on a 47 ward basis.

60. In any event, even if this Court finds that the Province has shown that returning to the *status quo* of 47 wards would result in irreparable harm to the public interest, any such harm is clearly outweighed by the significant irreparable harm to the public interest that would arise if the infringement of the Applicants' constitutional rights, including undermining the electoral fairness and integrity upon which respect for s. 2(b) electoral expressive activity depends, were allowed to occur.

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[104] *Reasons for Decision, supra* para. 72.
[105] *Reasons for Decision, supra* para. 70.

61. The Attorney-General argues that, even if it was not ultimately successful on the merits of the appeal, the result may not be a 47-ward election, and so the Responding Parties will suffer no irreparable harm. They base that argument on the possibility that this Court would find that it was an error for the Application Judge not to have suspended the declaration of invalidity.[106]

62. However, before the Applications Judge, the Attorney General never requested, in its factum or oral argument that, if the court found Bill 5 to be unconstitutional, any declaration of invalidity ought to be suspended. It could hardly have been an error for the Application Judge to refuse to provide an extraordinary suspension of a declaration of invalidity when the Attorney General did not seek that relief.

63. Even if requested, a suspension would inevitably have been denied. A suspended declaration of invalidity is normally only appropriate when granting immediate s. 52(1) relief would create a danger to the public, threaten the rule of law through the creation of a legal void, or is some cases of under-inclusiveness.[107] None of these circumstances apply: there is no credible claim to any risk of public harm; there is no void and the pre-existing coherent, comprehensive and functional legislative scheme remains in place; and concerns about under inclusive legislation discussed in *Schachter* are simply inapplicable.

64. More fundamentally, granting a suspended declaration of invalidity would be inconsistent with providing a meaningful remedy appropriately responsive to the *Charter* violations found by the Court below. Given that the Application Judge held that the mid-election disruption caused by Bill 5 violated 2(b) and required a return to the pre-existing 47-ward race, granting a

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[106] Moving Party's Factum, para. 22 and 31

[107] *Schachter v. Canada*, [1992] 2 SCR 679 at 715.

suspension would be irrational. It would work to eliminate entirely and for all time the sole remedy that could respond to the violation.

65. The Supreme Court in *Powley*, relying on the suspended declaration jurisprudence,[108] held that an order recognizing s. 35 aboriginal or treaty right should only be suspended "in exceptional circumstances in which a court of general jurisdiction deems that giving immediate effect to an order will undermine the very purpose of that order or otherwise threaten the rule of law".[109] Logically it must follow that a suspension should *not* be granted when doing so would undermine the very purpose of the declaration of invalidity. This is the very situation presented in the instant case. A suspended declaration would deprive the Responding Parties of any remedy at all. Even if it had been argued, it would not have been an error for the Application Judge to refuses to grant it; it is not a remedy that this Court would properly grant on appeal; and it is not a factor that caries any weight in the irreparable harm analysis.

C. THE BALANCE OF CONVENIENCE FAVOURS NOT GRANTING A STAY

66. In the alternative, if this Court finds that the Province has met its onus of demonstrating a strong *prima facie* case <u>and</u> irreparable harm, then the Province must still demonstrate that the balance of convenience favours granting a stay.

67. As this Court has held, it is open to any party to rely upon the considerations of public interest, including the concerns of identifiable groups.[110] The public interest considerations that militate against the granting of a stay include the vindication of constitutional rights, rights that "are the most important and fundamental in our system of law. A plaintiff should not be deprived

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[108] *Reference re Manitoba Language Rights*, [1985] 1 SCR 721.
[109] *R. v. Powley*, [2003] 2 SCR 207 at para. 51.
[110] *Frank, supra* at para. 18; *RJR-MacDonald, supra*, at 343; *Bedford ONCA, supra* at para. 73.

of a constitutional right simply because the courts cannot move quickly enough."[111] This is particularly true with respect to the rights at stake in this case: political expression tied to the most basic democratic institution of all: an election. Once the election passes, the right to freedom of expression in the context of that election, which the Application Judge found to have been violated, will be irrevocably lost .

68. The Province's professed interest in the urgent implementation of Bill 5 must be weighed against the following public interest considerations represented by the candidates and electors whose rights have been found to have been infringed, and by the City of Toronto:

a. The rights of candidates to effectively communicate their political messages to constituents;

b. The rights of electors to express their own political views though voting in a process that is capable of yielding effective political representation;

c. The rights of minority groups, such as women, racialized residents, and members of the LGBTQ+ community to substantive equality in the electoral and political process;

d. The rights of individuals to form groups and associate with one another for the attainment of their political goals, free from substantial interference by the state; and

e. The rights of all Torontonians to an electoral system and a government that live up to the foundational conception of democracy.

Contrary to the Attorney-General's submissions, these interests can hardly be dismissed as being merely private or reliance in nature.

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[111] *Harper v. Canada (Attorney General)*, [2000] 2 SCR 764 at para. 5, *Sharpe, supra* at para. 3.1220.

69. Against these real, manifest and profound harms, there is nothing of substance on the other side of the ledger. The Attorney-General cannot even credibly claim that a stay would preserve a convenient *status quo*.

70. In *RJR-MacDonald*, the Supreme Court held that traditional *status quo* arguments had no real place in constitutional litigation, noting that "[o]ne of the functions of the *Charter* is to provide individuals with a tool to challenge the existing order of things or *status quo.*"[112]

71. Cases in which a stay was granted in order to preserve the orderly administration of law pending an appeal are of no assistance as those circumstances do not present themselves here. For example, in *Bedford*, upon which the Attorney-General relies, notwithstanding the Application Judge's decision striking down three prostitution-related provisions of the *Criminal Code*, this Court granted a stay pending appeal. But in that case, the Attorney General had demonstrated, through evidence, the harms that would occur "if the matter of prostitution were left completely unregulated."[113] In effect, there would be a "legislative void" until Parliament responded to the judgment.[114] The need to preserve the orderly administration of law pending the appeal tilted the balance in favour of a stay.

72. The situation in this proceeding is entirely different. The decision to strike down Bill 5 creates no void. It simply returns the 2018 Toronto City Council election to the clear rules that governed it when it began in May. There is simply no hole or gap that Bill 5 is required to fill;[115] no complex scheme or novel administrative apparatus to construct in response to the decision below.[116] Rather, the circumstances here are identical to those present in *Frank*: following the

[112] *RJR-MacDonald, supra* at 347.
[113] *Frank, supra* at para. 16, citing *Bedford ONCA* at para. 72.
[114] *Bedford ONCA, supra* at paras. 62-65.
[115] *Canada (Citizenship and Immigration) v. Ishaq*, 2015 FCA 212 (CanLII) at para. 21.
[116] *Frank, supra* at para. 27.

decision invalidating the law, the responsible electoral official (in *Frank*, Elections Canada; in this case, the City Clerk) simply took immediate steps to administer the election in accordance with the decision of the court.[117]

73. In reality, if the concept of the *status quo* has any real weight in this case, it is on the side of the Responding Parties. The basis of the Responding Parties Moise et al.'s constitutional challenge – accepted by the Application Judge – was that the impugned legislation unconstitutionally upended the *status quo* in the middle of an ongoing electoral campaign. Granting a stay would not restore the *status quo* pending the appeal, but rather would return Toronto to the "widespread confusion and uncertainty" that was precipitated by the hastily conceived enactment of Bill 5. It would be an odd result to say the least if the balance of convenience favoured a return to an unconstitutionally chaotic state of affairs in the name of preserving the *status quo*.

74. On the other hand, and contrary to the Attorney General's submission in paragraphs 27 to 30 of its factum, the effect of dismissing the motion for a stay would be to restore to the citizens of Toronto an election process and boundaries which (i) resulted, as described in paragraph 5 above, from a lengthy, expert and democratic consultation process; (ii) explicitly rejected the 25 ward electoral districts subsequently unconstitutionally imposed by Bill 5; (iii) had, prior to Bill 5, been in place since the outset of the election campaign, and (iv) whose constitutionality cannot be doubted. Moreover, with respect to the Attorney General's suggestion that the stay it seeks would avoid the need to dismantle or construct a complex legislative scheme or administrative apparatus, the only dismantling involved in the case at bar occurred as a result of the unconstitutional enactment of Bill 5.

[117] *Frank, supra* at para. 28; Mandryk Affidavit, at para 3.

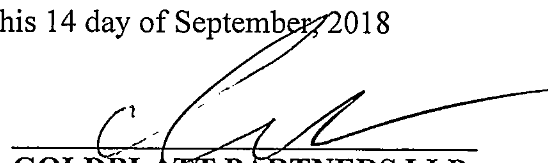
75. The Applicants reserve the right to file a supplementary factum in response to any evidence filed by the City Clerk.

PART IV – ORDER REQUESTED

73 The Responding Parties Moise, Aderonmu and Khosla request that the motion be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DONE at the City of Toronto, in the Province of Ontario, this 14 day of September, 2018



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Schedule "A" – Authorities Cited

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3. *Natale v City of Toronto*, 2018 ONSC 1475
4. *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342
5. *RJR-MacDonald Inc v. Canada (Attorney General)*, [1994] 1 SCR 311
6. *Enbridge Pipelines Inc. v. Williams,* 2017 ONSC 1642
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13. *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927
14. *Libman v. Quebec (AG)*, [1997] 3 SCR 569
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16. *R v Zundel*, [1992] 2 SCR 731
17. *R v Keegstra*, [1990] 3 SCR 697
18. *Harper v Canada (Attorney General)*, 2004 SCC 33, [2004] 1 SCR 827

19. *Taman v Canada (Attorney General)*, 2015 FC 1155

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21. *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1, [2015] 1 SCR 3

22. *Reference Re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313

23. *Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner)*, [1990] 2 SCR 367

24. *Canada (Attorney General) v Somerville,* 1996 ABCA 217

25. *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17

26. *Withler v. Canada (Attorney General)*, 2011 SCC 12, [2011] 1 SCR 396

27. *Quebec (Attorney General) v A*, 2013 SCC 5, [2013] 1 SCR 61

28. *Frank v. Canada (Attorney General)*, 2014 ONCA 485

29. *Sauvé v. Canada (Chief Electoral Officer)*, [1997] 3 FC 628

30. *Sauvé v. Canada (Chief Electoral Officer),* [1997] 3 FC 643 (CA)

31. *Canadian Federation of Students v. Greater Vancouver Transportation Authority*, 2007 BCCA 221

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37. *Schachter v. Canada*, [1992] 2 SCR 679

38. *Reference re Manitoba Language Rights*, [1985] 1 SCR 721

39. *R. v. Powley*, [2003] 2 SCR 207

40. *Harper v. Canada (Attorney General)*, [2000] 2 SCR 764

41. *Canada (Citizenship and Immigration) v. Ishaq*, 2015 FCA 212

Secondary Sources

1. Robert J. Sharpe, *Injunctions and Specific Performance* (Loose-leaf, Rev. No. 26, Nov. 2017) at 2.210, and 3.1220

Schedule "B" – Legislative Provisions

None.

Court of Appeal File No. C65861 (M49615)

ROCCO ACHAMPONG Applicant (Respondent in appeal)	and	**ONTARIO** Respondent (Appellants)	and	**CITY OF TORONTO** Respondent (Respondent in Appeal)	Superior Court File No.: CV-18-00602494-0000
THE CITY OF TORONTO Applicant (Respondent in appeal)	and	**ATTORNEY GENERAL OF ONTARIO** Respondent (Appellant)			Superior Court File No.: CV-18-00603797-0000
CHRIS MOISE *et al.* Applicants (Respondent in appeal)	and	**ATTORNEY GENERAL OF ONTARIO** Respondent (Appellant)	and	**CITY OF TORONTO** Respondent (Respondent in Appeal)	Superior Court File No.: CV-18-00603633-0000

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at TORONTO

FACTUM OF THE RESPONDING PARTIES, CHRIS MOISE et al.
(Motion for Stay Pending Appeal)

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