

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CITY OF TORONTO

Applicant
(Respondent in appeal)

and

ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant)

AND BETWEEN:

ROCCO ACHAMPONG

Applicant
(Respondent in appeal)

and

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

Respondents
(Appellants)

and

CITY OF TORONTO

Respondent
(Respondent in appeal)

(Title of Proceeding Continued on p. 2)

FACTUM OF THE APPELLANTS

AND BETWEEN:

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

Applicants
(Respondents in appeal)

and

ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant)

and

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

Intervenors
(Respondents in appeal)

FACTUM OF THE APPELLANTS

April 5, 2019

ATTORNEY GENERAL OF ONTARIO

Constitutional Law Branch
McMurtry-Scott Building
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9
Fax: 416-326-4015

Robin K Basu (LSO# 32742K)

Tel: 416-326-4476
Email: robin.basu@ontario.ca

Yashoda Ranganathan (LSO# 57236E)

Tel: 416-326-4456
Email: yashoda.ranganathan@ontario.ca

Aud Ranalli (LSO# 72362U)

Tel: 416-326-4473
Email: aud.ranalli@ontario.ca

Of Counsel for the Respondent (Appellant),
The Attorney General of Ontario

TO: **ROCCO K. ACHAMPONG**

Barrister & Solicitor
2500-1 Dundas Street West
Toronto, Ontario, M5G 1Z3

Rocco Achampong
Gavin Magrath
Selwyn Pieters

rocoachampong@gmail.com
gavin@magraths.ca
selwyn@selwynpieters.com

Respondent in appeal/Counsel for the Respondent in appeal,
Rocco K. Achampong

AND TO: **THE CITY OF TORONTO**

City of Toronto Legal Services Metro Hall
55 John Street, 26th Floor
Toronto, Ontario M5V 3C6
Fax: (416) 397-5624

Diana W. Dimmer
Glenn K.L. Chu
Fred Fischer
Philip K. Chan

diana.dimmer@toronto.ca
glenn.chu@toronto.ca
fred.fischer@toronto.ca
philip.k.chan@toronto.ca

Counsel for the Respondent in appeal,
The City of Toronto

AND TO: **GOLDBLATT PARTNERS LLP**

20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2

Howard Goldblatt
Steven M. Barrett
Simon Archer
Geetha Philipupillai

hgoldblatt@goldblattpartners.com
sbarrett@goldblattpartners.com
sarcher@goldblattpartners.com
gphilipupillai@goldblattpartners.com

Counsel for the Respondents in appeal,
Chris Moise, Ish Aderonmu and Prabha Kosla on her own behalf and on behalf of
all members of Women Win TO

AND TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1

Donald K. Eady
Caroline V. (Nini) Jones
Jodi Martin
Emily Home

don.eady@paliareroland.com
nini.jones@paliareroland.com
jodi.martin@paliareroland.com
emily.home@paliareroland.com

Counsel for the Respondents in appeal,
Jennifer Hollet, Lily Cheng, Susan Dexter, Geoff Kettel, and Dyanoosh Youssefi

AND TO: **TORONTO DISTRICT SCHOOL BOARD LEGAL SERVICES**

5050 Yonge Street, 5th Floor
Toronto, ON M2N 5N8

Paul Koven

paul.koven@tdsb.on.ca

Counsel for the Toronto District School Board

TABLE OF CONTENTS

PART I – OVERVIEW	1
PART II – FACTS.....	4
A. Toronto Ward Boundary Review and OMB appeal: 47 vs 25 wards	4
B. The Federal Boundaries Commission established the 25 FEDs in Toronto	9
C. Bill 5 adopts the FEDs in time for the 2018 election	10
D. Implementation of Bill 5 and Litigation	13
E. The 2018 Election under Bill 5.....	14
F. Post-election changes made by Council to address smaller Council size / larger wards.....	15
PART III – ISSUES AND THE LAW.....	16
A. City has no standing to assert a breach of <i>Charter</i> s 2(b).....	16
B. The Application Judge erred in law in finding a s 2(b) <i>Charter</i> breach.....	18
1) No right to mid-campaign <i>status quo</i>	18
2) No s 2(b) right to effective representation or a maximum constituent-councillor ratio.....	21
C. No duty to consult, no breach of <i>Constitution Act 1867</i> or unwritten principles	24
D. The Application Judge erred in finding breach not justified under <i>Charter</i> s 1.	27
E. Error of law in ordering a 47-ward election as remedy	29
PART IV – ORDER REQUESTED.....	30
Schedule A	33
Schedule B.....	36

TABLE OF ABBREVIATIONS USED IN TEXT AND CITATIONS

AB – Joint Appeal Book
 aff – Affidavit
 AG – Attorney General of Ontario
 cr-x – Cross-examination transcript
 exh – Exhibit
 FEDs – Federal Electoral Districts
 MPAC – Municipal Property Assessment Corporation
 MR – Motion Record (Fresh evidence tendered by the Appellant)
 OMB – Ontario Municipal Board
 p – Page
 SMR – Supplementary Motion Record (Fresh evidence tendered by the Appellant)
 t – Tab
 TWBR – Toronto Ward Boundary Review
 v – Volume
 ¶ – Paragraph

PROPOSED FRESH EVIDENCE CITED IN THIS FACTUM

(identified by italic script in the footnotes)

Answers to undertakings provided on transcript #1 of the Cross-examinations of Lily Cheng, Giuliana Carbone and Myer Siemiatycki

Answers to undertakings provided on transcript #2 of the cross-examinations of Megann Willson, Jennifer Hollett, Chiara Padovani, Giuliana Carbone and Dyanooosh Youssefi

Book of documents to be entered in lieu of the cross-examination of Fiona Murray on her Affidavit, affirmed August 22, 2018

Carbone 2nd aff – Affidavit of Guiliana Carbone, Interim City Manager, sworn December 3, 2018, and the exhibits thereto

Carbone cr-x – Transcript of Cross-examination of Giuliana Carbone on her Affidavits sworn August 22, 2018, and December 3, 2018, held on March 5, 2019, and the exhibits thereto

Cheng cr-x – Transcript of Cross-examination of Lily Cheng, on her Affidavit affirmed August 21, 2018, held February 13, 2019, and the exhibits thereto

Davidson cr-x - Cross-examination of Gary Davidson, on his Affidavit affirmed August 27, 2018, held on March 11, 2019, and the exhibits thereto

Dexter cr-x – Transcript of Cross-examination of Susan Dexter, on her Affidavit sworn August 21, 2018, held February 11, 2019, and the exhibits thereto

Fowler aff – Affidavit of Professor Anthony Fowler, sworn October 30, 2018, and the exhibits thereto

Hollett cr-x – Transcript of Cross-examination of Jennifer Hollett, on her Affidavit affirmed August 21, 2018, held February 13, 2019, and the exhibits thereto

Kettel cr-x – Transcript of Cross-examination of Geoffrey Kettel, on his Affidavit sworn August 21, 2018, held February 11, 2019, and the exhibits thereto

Khosla cr-x – Transcript of Cross-examination of Prabha Khosla, on her Affidavit sworn August 18, 2018, held on March 4, 2019, and the exhibits thereto

Moise cr-x – Transcript of Cross-examination of Chris Moise, on his Affidavit sworn August 20, 2018, held February 14, 2019

Padovani cr-x – Transcript of Cross-examination of Chiara Padovani, on her Affidavit sworn August 21, 2018, held on March 1, 2019, and the exhibits thereto

Sancton aff – Affidavit of Professor Andrew Sancton, sworn October 30, 2018, and the exhibits thereto

Siemiatycki cr-x – Transcript of Cross-examination of Myer Siemiatycki, on his Affidavit sworn August 21, 2018, held on March 8, 2019, and the exhibits thereto

Valverde cr-x – Transcript of Cross-examination of Mariana Valverde, on her Affidavit sworn August 20, 2018, held on March 7, 2019, and the exhibits thereto

Willson cr-x – Transcript of Cross-examination of Megann Willson, on her Affidavit sworn August 21, 2018, held February 12, 2019, and the exhibits thereto

Youssefi cr-x – Transcript of Cross-examination of Dyanoosh Youssefi, on her Affidavit affirmed August 22, 2018, held of March 5, 2019, and the exhibits thereto

PART I – OVERVIEW

1. This is an appeal by the Attorney General of Ontario (AG) from the Order of Belobaba J, dated September 10, 2018, that invalidated with immediate effect the provisions of the *Better Local Government Act, 2018* (Bill 5).¹ Bill 5 changed the composition of the City of Toronto’s municipal council, reducing the number of councillors from 47 to 25 (each councillor representing a ward), and making corresponding changes to the ward structure for the 2018 municipal election. The wards under Bill 5 mirror the 25 electoral districts in Toronto for federal and provincial elections (referred to as the FEDs). As a transitional measure Bill 5 also extended the 2018 nomination deadline to September 14, 2018.

2. Belobaba J held that the impugned provisions breached *Charter* s 2(b) and could not be saved under s 1. He ordered that the 2018 municipal election proceed on the basis of 47-wards. On September 19, 2018, a three-judge panel of this Court stayed Belobaba J’s Order, holding that “there is a strong likelihood that [the] application judge erred in law.”²

3. The Toronto election proceeded on the 25-ward model prescribed by Bill 5. Council is thus now composed of 25 councillors, each elected from a ward, plus the mayor, elected at large.

4. Belobaba J’s Order was made in three applications heard together: one by candidate Achampong; a second by candidate Moise, elector Aderonmu and organizer Khosla on her own behalf and on behalf of “Women Win TO”; and a third by the City of Toronto. The applicants were supported by five interveners (candidates and electors) added as parties.

5. The Appellants have now settled with all the Respondents in appeal except the City. The settling Respondents in appeal consent to the appeal being allowed, the Order of Belobaba J being set aside and the applications dismissed, all without costs.

¹ *Better Local Government Act 2018*, S) 2018, c 11 [Bill 5].

² Reasons of the Court of Appeal on the Motion for a Stay at ¶11, AB, v 1, t 8 [ONCA Stay Reasons].

6. On appeal the City is not relying on *Charter* ss 2(d) or 15. Accordingly, this factum does not address the ss 2(d) and 15 arguments argued below and which did not persuade Belobaba J.³

7. The City continues to rely on *Charter* s 2(b). Unlike the situation below where there were individual claimants with s 2(b) rights, there is now an issue as to the standing of the City to assert s 2(b). As a creature of statute exercising governmental authority merely as a delegate of the province, the City cannot use s 2(b) to resist changes to its delegated authority.

8. One of Belobaba J's two findings of s 2(b) breach was premised on the idea that the enactment of Bill 5 after the 2018 election campaign opened on May 1 (the first day candidates could register) interfered with expression during the campaign. The City agrees it does not express itself in an election, apart from conveying procedural information. The City in fact concedes Bill 5 did not restrict its expression. Moreover, it is uncontested that Bill 5 did not prevent any person from conveying information (including campaigning or voting) in the campaign or afterwards.

9. There is no s 2(b) right to campaign or vote in a 47-ward election for a 47-councillor Council, as opposed to a 25-ward election for a 25-councillor Council. No particular ward model or council structure is constitutionally guaranteed or immunized by s 2(b) from legislative change. Even if Bill 5 rendered some prior expression less effective or "wasted" (due to ward changes or an extended nomination deadline), s 2(b) does not guarantee protection of a right to expression that is *effective* in achieving its objective.

10. Belobaba J's second finding of s 2(b) breach was that the reduction in council size would impair ward residents' "effective representation," because councillors would each represent wards with a larger population than under the City's 47-ward model. In so holding, Belobaba J

³ Reasons for Decision of the Honourable Justice Edward Belobaba, dated September 10, 2018 at ¶13, AB, v 1, t 6 [Reasons of Belobaba J].

erroneously imported into s 2(b) the concept of effective representation from *Charter* s 3, which only applies to federal and provincial elections. Moreover, effective representation itself does not prescribe a maximum ratio of constituents to representatives. Belobaba J effectively constitutionalized – under the rubric of s 2(b)’s simple recognition of voting as an expressive activity – the so-called “ombudsman” role of municipal councillors to deal with constituent complaints about City services.⁴ The *Charter* does not constitutionalize this facet of municipal governance.

11. Belobaba J found no justification under *Charter* s 1 for the s 2(b) breach, erroneously disregarding the AG’s argument (supported by Ontario Municipal Board findings, *Hansard* and the data in the record) that the 25-ward FEDs model prescribed by Bill 5 provided significantly better voter parity⁵ for the 2018 election than the City’s 47-ward model, which – being designed to last for three to four elections – aimed for voter parity by 2026 rather than 2018.

12. Belobaba J’s findings on s 1 (as well as on s 2(b)) were also the direct result of a failure of procedural fairness that deprived the AG of a meaningful opportunity to respond to the applicants’ experts or conduct cross-examinations. The AG’s fresh evidence motion seeks to remedy this failure of procedural fairness as set out in the AG’s factum filed on that motion.

13. The AG’s fresh evidence, if admitted, shows that Bill 5 is a meaningful, proportionate measure to address the dysfunction caused by having too many councillors (ungoverned by party discipline) on Council. A smaller council can operate more effectively as a deliberative body, with a lower burden on City staff. The move to a smaller council, with councillors serving larger

⁴ Reasons of Belobaba J at ¶42.

⁵ Voter parity is the prime condition for effective representation (a policy goal for federal, provincial *and* municipal elections but not a constitutional requirement for municipal elections). Parity ideally means each voter’s ballot has the same weight as every other’s. At the municipal level, this favours drawing wards so that each has roughly the same population.

wards, can also help to address the issue of ward-based parochialism.

14. In the Court below, the City argued: (i) breach of an alleged duty to consult the City prior to changing its governance structure; and (ii) breach of the unwritten constitutional principles of rule of law and democracy. Belobaba J correctly treated these arguments as unpersuasive. There is no duty to consult prior to the enactment of a statute. No unwritten constitutional principles were engaged or breached by Bill 5, nor do they provide a basis to invalidate it.

15. Lastly, Belobaba J erred in ordering a 47-ward election for 2018 as the remedy for the s 2(b) breach and in failing to suspend the declaration of invalidity to allow for a legislative response. In any event, on this appeal the City does not seek invalidation of the 2018 election.

PART II – FACTS

A. Toronto Ward Boundary Review and OMB appeal: 47 vs 25 wards

16. Legislation passed in 1997 amalgamated the constituent municipalities of Metropolitan Toronto.⁶ The province divided the new City into 28 wards with a Council of one mayor and 56 councillors, two per ward. Few believed this was an appropriate size for a nonpartisan municipal council. The Minister of Municipal Affairs regarded the council size of 57 as “transitional”.⁷ In 2000, legislation aligned the City’s wards with the 22 FEDs current at that time, but it allowed Council to split each ward, creating 44 wards.⁸

17. The resulting 45-member Council is believed to be the only city council in the democratic world with a membership approaching fifty except those with party-systems or strong-mayors. There has been concern since about the dysfunction of Council, symptomatic of which are

⁶ *City of Toronto Act, 1997*, [SO 1997 c 2 \(Bill 103\)](#) [COTA 1997].

⁷ *Sancton aff at ¶74, MR, v 3, t 4.*

⁸ *Sancton aff at ¶74.*

drawn-out meetings focusing on dozens of local issues rather than broad strategic objectives.⁹

18. The 44-ward model was unchanged for five elections. By 2014, uneven population growth resulted in wards that did not provide voter parity. Some wards approached or exceeded twice the population of others.¹⁰ This was challenged at the Ontario Municipal Board and was of concern to City staff.¹¹ Under the *City of Toronto Act, 2006* (COTA), Council risked having its authority to fix ward boundaries superseded by a decision of the OMB.¹²

19. The City Manager’s recommendation, adopted by Council, was to retain a third party consultant to do a ward boundary review. Council’s Executive Committee voted to have the consultants specifically consider a reduction in the size of Council, but the full Council left the issue to the consultants.¹³

20. In 2014, the consultants began the Toronto Ward Boundary Review (TWBR). They were to develop a recommended option for Council’s consideration. The Terms of Reference directed the consultants “not [to] assume a pre-determined number of wards or specific boundaries,” to “[c]onsider[...] and accommodate[...] Toronto’s projected growth and population shifts for a reasonable period of time” and to “[c]onsider[...] the appropriate number of wards as well as ward boundaries.”¹⁴

⁹ *Sancton aff* at ¶¶70, 81; *Valverde cr-x*, q 400, SMR, v 3, t 12A; “*City Bureaucrats and Village Elders: The Dysfunctional Dance of Local Governance*” in *Everyday Law on the Streets* by Mariana Valverde, SMR, v 3, t 12A1 [Chapter 4 in *Everyday Law on the Streets*].

¹⁰ TWBR, *Ward Population Background Brief* (Toronto, July 2015) at 2054-55, 2073, AB, t 44, exh 1; *Davidson aff* at ¶13, AB, v 4, t 40; City Council decision of June 11-13, 2013 to retain a third party consultant to conduct the TWBR at 1463, AB, v 3, t 39, exh J [City Council Decision of June 11-13, 2013].

¹¹ *Carbone cr-x*, qq 54-61, 100-101, SMR, v 1, t 1A and B; *Answers to undertakings provided on transcript #1 of the cross-examination of Giuliana Carbone*, nos 1-3, SMR, v 4, t 17.

¹² Council Decision of June 11-13, 2013 at 1459; *City of Toronto Act, 2006*, SO 2006, c 11, Sch A, ss [128](#), [129](#) (historical version as of August 13, 2018) [COTA 2006]; *Municipal Act, 2001*, SO 2001, c 25, s [222](#).

¹³ *Carbone cr-x*, qq 44-55, 136-140; City Council decision of June 11-13, 2013 at 1452-54.

¹⁴ City Council Decision of June 11-13, 2013 at 1464-1465; *Carbone cr-x*, qq 44, 143, 146, 151.

21. The consultants' engagement did not specify a target year for voter parity based on the population projections the City provided to them. Rather, they understood their work would be to develop a model to last for "a reasonable period", which they took to mean until 2026 and possibly 2030. They settled on 2026 as the target year for voter parity.¹⁵

22. The consultants rejected the 25-ward FEDs model at the outset and did not include it in the options presented to Council and the public in the consultation phase. The *only* reason provided for rejecting the 25-ward option was that "25 very large wards gained virtually no support during the public process."¹⁶ This conclusion was not based on representative, professionally-conducted public opinion sampling, but on feedback received during the TWBR's sparsely attended public meetings,¹⁷ and an online survey with slightly over 700 responses.¹⁸ The survey results were more ambiguous than the consultants suggested.¹⁹ Consultant Gary Davidson admitted that (unlike respondents in a professionally conducted opinion poll) those who attended the public meetings or participated in the online survey were self-selecting. Further, no measures were taken at the meetings to determine if councillors' staff or supporters attended and participated.²⁰

23. Councillors may have a bias in favour of the status quo or more rather than fewer wards based on their electoral self-interest. This is why boundary reviews need to be at arms-length to Council. Councillors' views were considered due to their "valuable and detailed information

¹⁵ *Carbone cr-x, qq 146-49, 214-22; Davidson cr-x, qq 4-6, SMR, v 2, t 3A; TWBR, Options Report at 2207, AB, v 4, t 44, exh 4 [Options Report].*

¹⁶ *Options Report at 2233-34; TWBR, Round Two Report – Civic Engagement and Public Consultation at 1519, AB, v 3, t 39, exh L [Round Two Report].*

¹⁷ Average attendance of only 13 people per meeting at the 24 meetings: *Sancton aff at ¶44; Davidson cr-x, q 189.*

¹⁸ *Round Two Report at 1517; Davidson cr-x, qq 173-75, 189.*

¹⁹ *Sancton aff at ¶¶45-46; Round Two Report at 1519-20.*

²⁰ *Davidson cr-x, qq 182-84.*

about their wards, especially with respect to boundary issues and communities of interest” but *not* because of their (potentially self-interested) preferences on council size or ward boundary changes.²¹

24. After settling on five options, the consultants presented them for councillors to rank. A majority, unsurprisingly, ranked “Option 1 – *minimal change*” as their first preference. The rankings were given weight by the consultants in their ultimate recommendation.²² As councillors were simply requested to rank their preferences, the TWBR could not critically analyze whether councillors rankings were based on genuine policy reasons or self-interest. The TWBR is criticized in a study by the Institute on Municipal Finance and Governance, and by the AG’s expert Professor Sancton (a scholar of urban governance) who agrees with the study’s conclusion that: “it is uncertain whether the [TWBR] model achieved a sufficiently arm’s-length process” and this “raises the question of whether other ward options – for example, a smaller City Council or wards overlapping with federal districts – were fairly considered.”²³

25. After the TWBR Final Report, the City’s Executive Committee, on motion by Mayor Tory, asked the consultants to examine other options, including “increased consistency with the 25 federal and provincial boundaries.”²⁴ In response, the consultants held four public meetings and produced two reports. The reports contained virtually no new information or analysis regarding the 25-ward option. The consultants claimed that most people who supported the FEDs

²¹ City Council Decision of June 10, 2014 to Approve the TWBR Work Plan at 1472, 1481, AB, v 4, t 39, Exh K [City Council Decision of June 10, 2014]; City Council Decision of June 11-13 at 1459-60; *Carbone cr-x*, qq 194-201; *Valverde cr-x*, qq 695-96, *SMR*, v 3, t 12A; *Davidson cr-x*, qq 226-35, 247.

²² *Round Two Report* at 1517; The consultants did not qualify their request to Council by asking for a ranking based on which model would best represent communities of interest, but merely asked for their preference: *Davidson cr-x* q 240-43.

²³ *Sancton aff* at ¶29; *(Re)creating Boundary Lines: Assessing Toronto’s Ward Boundary Review Process* by Alexandra Flynn at 1616, *MR*, v 3, t 4C.

²⁴ *Sancton aff* at ¶51; Executive Committee Decision Requesting Additional Information at 1576, AB, v 3, t 39, exh M.

option favoured splitting the FEDs to produce 50 wards. They also claimed the FEDs would not achieve “voter parity” *in 2026*.²⁵ This assumed that the 25 wards for 2026 would use the 2012 FEDs rather than the 2022 FEDs based on the 2021 Census.²⁶

26. The City Manager then commissioned a separate poll of Toronto residents by a professional polling firm. The results showed that as many Torontonians (41%) wanted 25 or fewer wards as those (42%) who wanted more than 25.²⁷

27. For 2018, the 47-ward model would achieve poorer voter parity than the FEDs. Only with the changes assumed in the City’s projections (which Mr Davidson admitted were “inexact” and subject to uncertainties²⁸) would the 47-ward model come closer to parity *in 2026*.²⁹ This issue was the focus of controversy at the OMB when the 47-ward model was challenged.

28. The challengers at the OMB argued that expecting a ward model to serve unchanged for several elections was unrealistic. They contended that the TWBR sacrificed voter parity in 2018 and that, instead of focusing on 2026, parity should be achieved as soon as possible.³⁰

29. Although a majority of the OMB dismissed the challenge, there was a strong dissent. The dissent would have divided the City into 25 wards consistent with the FEDs because it would achieve much better voter parity in 2018, with only two wards with a +/- 10% variance and one with a +/- 20% variance. By contrast, under the 47-ward model, 17 wards had variances greater than +/- 10% with two of those 17 having a variance greater than +/- 30%. While the FEDs did not result in “perfect parity” for 2018, it was “far superior” to the 47-ward model. There was no

²⁵ TWBR, *Additional Information Report* at 2281-87, AB, v 4, t 44, exh 7 [*Additional Information Report*]; *Davidson aff* at ¶19.

²⁶ *Additional Information Report* at p 2281-87; *Sancton aff* at ¶¶37-40, 49; *Davidson cr-x*, qq 105-10.

²⁷ *Sancton aff* at ¶59.

²⁸ Eg predictions as to the geographic distribution of economic and population growth, and delays in contemplated developments and densification: *Davidson cr-x*, qq 140-65

²⁹ *Di Ciano v Toronto*, [2017 CanLII 85757](#) (OMB) at ¶¶5, 14, 49 [*OMB Decision*].

³⁰ *OMB Decision* at ¶¶5, 30-31.

case for overriding the principle of voter parity on the basis of communities of interest, physical and natural boundaries or ward history. Those criteria “are duly considered in the FEDs.”³¹ The OMB majority held there were no clear and compelling reasons to interfere with the decision of Council.³² (The question of Council size itself was not within the OMB’s remit.) Leave to appeal to the Divisional Court was refused in March 2018 on the basis that the OMB appropriately exercised deference.³³ With judicial proceedings exhausted, the City confirmed the composition of Council under the new 47-ward model by bylaw on May 24, 2018,³⁴ three weeks after nominations had opened.

B. The Federal Boundaries Commission established the 25 FEDs in Toronto

30. The 25 wards in the FEDs model adopted by Bill 5 were set by the Federal Boundaries Commission for Ontario (the “Commission”). The Commission is an independent body responsible for readjusting Ontario’s federal electoral boundaries. In July 2012, the Commission released a Proposal for the 121 Ontario electoral districts, including the 25 Toronto districts. The Commission held 31 public hearings across the province, including two days in Toronto.³⁵

31. The Commission’s work was guided by: (1) s 15 of the federal *Electoral Boundaries Readjustment Act* which states that the Commission shall be primarily governed by the rule that “the population of each electoral district shall be as close as reasonably possible to the electoral quota for the province;” and (2) s 3 of the *Charter* and the “*Carter*” decision in which the

³¹ *OMB Decision* at ¶¶37-38, 41, 43, 49-50; Updated data from the 2016 Census shows that the TWBR’s projections actually underestimated the degree to which the 47-ward model strays from parity for 2018: ten wards would have a +/- 10% variance, four wards would have +/- 15% variance (which can only be justified under special circumstances), one ward would have a +/- 20% variance, and two wards would have a +/- 30% variance: *Sancton aff* at ¶40.

³² *OMB Decision* at ¶41.

³³ *Natale v Toronto*, [2018 OJ No 1180](#) (Div Ct).

³⁴ *By-Law 598-2018, SMR, v 1, t 4A3*.

³⁵ Federal Electoral Boundaries Commission Report [FEBR] at 2532, 2553, AB, v 5, t 48.

Supreme Court held that s 3 guarantees the right to “effective representation,” the prime condition for which is relative parity of voting power.³⁶ The Commission also takes account of the other *Carter* factors – communities of interest, geography, history and minority representation. The Commission’s work is repeated every 10 years, after the decennial Census.

C. Bill 5 adopts the FEDs in time for the 2018 election

32. The new Government, sworn in June 29, 2018, introduced Bill 5 on July 30, 2018. Bill 5 adopted the 25 FEDs determined by the 2012 Federal Commission as wards for Toronto’s 2018 election, with corresponding changes to the size of Council.

33. At Second Reading, the responsible Minister set out the rationale for Bill 5:

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

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

Third, it would result in a fair vote for residents, which was the very reason Toronto itself undertook a review of its ward boundaries. The Toronto councillors I referred to earlier reminded everyone that the Supreme Court of Canada said that voter parity is a prime condition of effective representation. They gave examples of the current ward system, where there are more than 80,000 residents in one ward and 35,000 in another. They acknowledge that this voter disparity is the result of self-interest, and that the federal and provincial electoral district process is better because it is an independent process which should apply to Toronto as well. ... The wards we are proposing are

³⁶ FEBR at 2532-33, 2554-55; Contrary to the suggestion of Professor Siemiatycki and Consultant Davidson in their affidavits, the Commission does not consider communities of interest differently in setting federal electoral boundaries than they might be considered in setting provincial or municipal boundaries: *Davidson cr-x*, qq 309-13; *Sancton aff* at ¶¶20, 32; *Siemiatycki cr-x*, qq 281- 85, *SMR*, v 3, t 11A and B; *Reference re Provincial Electoral Boundaries (Sask)*, [1991] 2 SCR 158 at 183 [*Carter*].

arrived at through an independent process.³⁷

34. The legislative intention was to have Bill 5 in place for the 2018 election.³⁸ Otherwise, contrary to its policy preferences, the legislature would need to wait until after the election to either truncate the newly-elected Council's term, or wait until the City's 2022 election to realize the policy of voter parity and a smaller Council.

35. Bill 5 does not include a "rolling" incorporation of the FEDs as determined in the future to apply in elections beyond 2018. However, an update to incorporate the new FEDs established in 2022 after the 2021 Census is an easy method of keeping the wards based on the FEDs up to date with Toronto's changing population distribution, ensuring continued voter parity through a reliable, consultative and arm's-length process at no cost to the City or province.³⁹

36. The contention that the FEDs developed by the Commission are unsuitable for adoption for Toronto's municipal elections because, for example, the Commission considers communities of interest only "for federal purposes", is completely rebutted by a review of the Commission's work, the evidence of Professor Sancton (a past Commission member) and the admissions made by the applicants' experts on cross-examination.⁴⁰

37. Some councillors told the TWBR that more populous wards under the 25-ward FEDs would make it hard to fulfill their "ombudsman" role. Three of them in particular objected to any increase in ward size even with an increase in resources.⁴¹

38. Professor Valverde, an urban studies expert on Toronto councillor behavior, who lauded this ombudsman role in her affidavit below, admitted in her cross-examination that her

³⁷ *Hansard*, August 2, 2018 at 2782-83, AB, v 5, t 50.

³⁸ *Hansard*, August 2, 2018 at 2781.

³⁹ *Sancton aff* at ¶¶12-13, 30-32, 38.

⁴⁰ FEBR at 2554-55; *Sancton aff* at ¶¶ 20, 32; *Siemiatycki cr-x*, qq 281-85; *Davidson cr-x*, qq 309-13.

⁴¹ TWBR, *Round One Report* at 2150, AB, v 4, t 44, exh 3.

substantial body of empirical work demonstrates a significant governance dysfunction, acute in Toronto, arising from this very role. Rather than focusing on City-wide issues, councillors devote themselves to the particular interests and complaints of residents and businesses in their wards, parochial “ward-healing” that misallocates City resources and gives rise to issues of equitable access across wards.⁴² Professor Sancton strongly shares this concern and believes a smaller Council with larger wards can help to reduce this problem.⁴³

39. Further, in Professor Sancton’s opinion, a smaller Council will improve its effectiveness and efficiency as a deliberative body and lessen the burden on City staff who, in the absence of a partisan or strong-mayor system, must cater to individual councillors, not only *qua* ombudsman but also at Council meetings dominated by ward-specific items.⁴⁴

40. Professor Sancton described a parallel situation in Winnipeg, which briefly had a council of 50 members (plus a mayor) following amalgamation in the 1970s. This was widely viewed as unwieldy. Winnipeg’s council was progressively cut to 15 aiming to “reduc[e] parochialism and encouraging Council to take a broader more city-wide approach to planning Winnipeg’s future; streamlining and speeding up the decision-making process; and fostering a more cohesive, smaller group to manage City Hall”.⁴⁵ No party filed reply expert evidence to Professor Sancton or cross-examined him.

41. Meanwhile, Professor Valverde, in contrast to her affidavit, admitted in cross-examination that the reduction in Council size is not in and of itself problematic: “[I]t is not that it is 25. That is not why I am against Bill 5. It is not because of the number of councillors.” Her

⁴² *Valverde cr-x*, qq 50-56, 112, 257-58, 353, 429-32, 442, 488-94, 500, 724-28; *Chapter 4 in Everyday Law on the Streets*; *Sancton aff* at ¶¶99-102.

⁴³ *Sancton aff* at ¶¶11, 61, 69-96, 103.

⁴⁴ *Sancton aff* at ¶¶ 101-06.

⁴⁵ *Sancton aff* at ¶¶ 71-73.

main complaint was the lack of consultation and a comprehensive review of City governance prior to the legislative changes.⁴⁶

D. Implementation of Bill 5 and Litigation

42. To ensure the 2018 election could occur as scheduled, Bill 5 extended the nomination period to September 14 and the Ministry of Municipal Affairs and Housing (the “Ministry”), Elections Ontario and MPAC assisted the City Clerk on implementation.⁴⁷

43. Bill 5 received Royal Assent on August 14, 2018. Quick passage and cooperative action by the City Clerk, City staff, and the Ministry helped minimize to a mere two weeks the period of uncertainty as to the rules for the upcoming election.⁴⁸

44. As of August 14, the City’s website was updated with detailed information on the transition to 25-wards⁴⁹ answering any alleged confusion about the new rules.⁵⁰

45. As of August 17, the City Clerk reported to Council that she was confident she could administer the 2018 municipal election on a 25-ward basis. The Clerk considered the risk to the 2018 election “in the event a challenge to Bill 5 is successful in the courts.” With respect to reverting to a 47-ward election, the Clerk stated:

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

⁴⁶ *Valverde cr-x, qq 570-75.*

⁴⁷ Ontario also filed [O Reg 407/18](#) and [O Reg 408/18](#) on August 15, 2018 clarifying the rules for the 2018 election.

⁴⁸ Ontario also filed [O Reg 407/18](#) and [O Reg 408/18](#) on August 15, 2018 clarifying the rules for the 2018 election.

⁴⁹ *Aff of Adam Kanji* (affirmed August 27, 2018) at ¶¶11, 14, AB, v 5, t 47 [Kanji aff].

⁵⁰ For example, campaign spending limits were based on the number of voters (electors) in each ward: *Municipal Elections Act, 1996*, SO 1996, c 32, s [88.20 \(6\)](#) [MEA] along with O Reg 101/97, s [5](#) (spending limit). With larger wards, spending limits are correspondingly increased: MEA, s [88.9.1\(1\)](#) (self-funding limit). Both the spending and self-funding limits are based on the number of electors in the ward. Note that campaign contributions can come from anyone in Ontario (subject to s. [88.8](#) of the MEA) and are not limited to electors in the ward in which the candidate is running.

administer an election while meeting the principles of the [*Municipal Elections Act*].⁵¹

46. On August 20, in answer to questions from councillors, the Clerk and her Deputy confirmed their readiness for a 25-ward election and that “it would be impossible to prepare for both election models going forward.” The Clerk expressed concern that, if she were required to revert to 47-wards, it could result in a controverted election.⁵²

47. By August 22, the three applications had been launched. They were heard together on August 31. On September 10, Belobaba J invalidated the impugned provisions and ordered a 47-ward election. Belobaba J’s Order was stayed by this Court on September 19, 2018.

E. The 2018 Election under Bill 5

48. The election proceeded under Bill 5. Contrary to the notion that it could disfavor visible minorities, the proportionate representation of historically underrepresented groups did not decrease in the election, but increased from 11 to 16 percent. Thirty-two percent of the councillors are women whereas in the four previous elections the proportion was 23 to 34 percent. While previous councils had only one openly LGBTQ person among 44 members, Council now has one among 25.⁵³

49. Of the affiants who were candidates in the 47-ward election and whose evidence remains in the record,⁵⁴ only Mr Moise and Ms Hollett decided not to run in the 25-ward election. Mr Moise and Ms Hollett (both registered in Ward 13 in the 47-ward model) decided not to run against Kristyn Wong-Tam whom they wanted to see re-elected. Ms Hollett chose to campaign for Ms Wong-Tam and other progressive candidates. Mr Moise ran and was re-elected as school

⁵¹ Report for Information: The Impact of the *Better Local Government Act, 2018* (Bill 5) on Toronto’s 2018 Municipal Election at 2438, AB, vol 5, t 47, exh A.

⁵² Kanji aff at ¶7; Student-Prepared Transcript at 697, AB, v 2, t 37.

⁵³ *Fowler aff at ¶48, MR, v 1, t 3; Siemiatycki cr-x, qq 417-41.*

⁵⁴ Cheryl Lewis-Thurab did not appear for her cross-examination and her affidavit should be struck out.

trustee in TDSB Ward 10. He campaigned for Ms Wong-Tam and Mike Layton as councillors and they supported his campaign. He was elected with 18,244 votes and by a wide margin.⁵⁵

50. Although not elected, Ms Padovani, Ms Youssefi, Ms Cheng and Ms Willson all continued to campaign and express themselves in the 2018 municipal election. Bill 5 did not hamper their ability to do so.

- Ms Padovani views her campaign in Ward 5 in the 25-ward system as a success. She had 20% of the vote and finished 200 votes behind the two incumbents. She said: “If there is one thing a campaign like mine showed a lot of people: Yeah a young woman, a social worker from our community can actually mobilize over 5,000 people to vote for her.” She raised about \$55,000 of the ward campaign limit of \$68,000.⁵⁶
- Ms Youssefi came in third in Ward 8 with 5,253 votes (2,000 behind an incumbent, who herself finished second 6,000 votes behind the winner, a former MPP). She raised about \$42,000 of her ward campaign limit of \$80,000.⁵⁷
- Ms Willson continued in Ward 13 against Ms Wong-Tam (her mentor) and former MPP George Smitherman. She wanted to raise issues important to her. She had 411 votes.⁵⁸
- Ms Cheng came in second in Ward 18 with 5,149 votes, about 2,000 votes behind incumbent John Filion, who had retired and encouraged Ms Cheng to run, but later decided to run himself. The Toronto Star endorsed her. She raised over \$50,000 of the \$60,000 limit.⁵⁹

F. Post-election changes made by Council to address smaller Council size / larger wards

51. On December 4, 2018, Council met to discuss how it could effectively operate with 26 members. After considering a joint report from the City Manager and Clerk providing recommendations regarding Council’s ability to remain “effective and sustainable,” Council approved: a doubling of each councillor’s staffing budget; the establishment of a Special

⁵⁵ *Moise cr-x, qq 131-32, 143-47, 156-60, SMR, v 2, t 8A and B; Hollett cr-x, qq 187-92, 197-99, 201, SMR, v 1, t 5A and B; 2018 Clerk’s Declaration of Results, SMR, v 4, t 13B9; Carbone cr-x, q 463.*

⁵⁶ *Padovani cr-x, qq 130-32, 229, 260-62, SMR, v 3, t 10A and B; 2018 Clerk’s Declaration of Results.*

⁵⁷ *Youssefi cr-x, qq 137-38, 143, 248-50, SMR v 4, t 14 A and B.*

⁵⁸ *Willson cr-x, qq 142, 149, SMR, v 4, t 13A and B; Khosla cr-x, q 159, SMR, v 2, t 7A and B.*

⁵⁹ *Cheng cr-x, qq 407-08, 419-20, 469-72, SMR, v 1, t 2A and B; Toronto Star Editorial Board, These are the Council Members Toronto Needs (Oct 16, 2018), SMR, v 1, t 2B16.*

Committee on Governance to review Council’s governance structure and recommend further changes; a reduction in the number of Council member appointments to boards, committees and external bodies to “better manage demands on Council Members’ time for meetings”; and an amendment of the public appointments process for City boards, committees and tribunals to reduce the time councillors spend conducting interviews for these bodies.⁶⁰

PART III – ISSUES AND THE LAW

A. City has no standing to assert a breach of *Charter* s 2(b)

52. The City cannot assert a breach of its own *Charter* s 2(b) rights. Municipalities are statutorily-created *governmental* entities which do not hold *Charter* rights.⁶¹

53. The purpose of the *Charter* is to protect individuals from state actors, not to protect state actors from each other.⁶² Further, as municipalities are creatures of the province and only have the powers bestowed on them by statute, it cannot be that s 2(b) can act as a shield against actions of the province to alter their structure, function or mandate.⁶³ Otherwise, even bodies created by the City under its statutory powers of delegation could raise *against the City* s 2(b) rights to protect those bodies from changes Council wishes to make. This would undermine the power to withdraw or amend a delegation, an indisputable corollary to the power to delegate.⁶⁴

54. In any event, the City’s 2018 Interim General Manager conceded that the City’s freedom

⁶⁰ *Carbone cr-x*, qq 424-27, 431-36; *Recalibrating City Council’s Governance System for 26 Members*, SMR, v 1, t 1B2; *City Council Consideration of December 4, 2018*, SMR, v 1, t 1B3.

⁶¹ See *Sask. (IPC) v University of Sask.*, [2017 SKQB 140](#) at ¶38, rev’d on other grounds [2018 SKCA 34](#) at ¶86; *Weinstein v BC (Min. of Education)*, [20 DLR \(4th\) 609](#) at ¶¶ 42-47 (BC Sup Ct) [*Weinstein*].

⁶² *Hunter v Southam*, [\[1984\] 2 SCR 145](#) at 156; *Cosgrove v Canadian Judicial Council*, [\[2005\] FCJ No 1748](#) (Fed Ct), rev’d on other grounds [\[2007\] FCJ No 352](#) (FCA), leave ref’d [\[2007\] SCCA No 242](#).

⁶³ *Weinstein* at ¶¶ 43-47; *Canada (Canadian Wheat Board) v Canada (AG)*, [2009 FCA 214](#) at ¶59; *Williams v Mayor & City Council of Baltimore* (1933), [289 US 36](#) at ¶ 40 (USSC); *Ontario English Catholic Teachers Assn v Ontario (AG)*, [\[2001\] 1 SCR 470](#) at ¶58 [*OECTA*].

⁶⁴ *Reference re Liquor License Act of 1877*, [\[1883\] JCJ No 2](#) at ¶37 (PC) (QL) [*Hodge*]; *Reference re Pan-Canadian Securities Regulation*, [2018 SCC 48](#) at ¶¶ 54, 56, 58, 74 [*Securities Reference*].

to express itself was not curtailed in any way by Bill 5.⁶⁵ The City merely informs the public and candidates regarding the rules of an election and does not campaign or vote.⁶⁶

55. The City alleged interference in “campaigning for public office and voting,”⁶⁷ which are expressive acts of individuals. The City has no standing to assert claims on their behalf.

56. None of the four exceptions where litigants can raise the *Charter* rights of others are asserted by the City or applicable: (1) the *Big M* exception;⁶⁸ (2) the *Canadian Egg Marketing* (“*CEMA*”) exception;⁶⁹ (3) public interest standing; and (4) residuary discretion.

57. The *Big M* exception permits defendants in a prosecution to challenge the law grounding the prosecution by raising *Charter* rights of others.⁷⁰ *CEMA* extended *Big M* to permit persons to raise *Charter* rights of others when they are defending civil proceedings by the state or a state organ pursuant to a regulatory scheme.⁷¹ The City faces no prosecution or civil proceeding.

58. Public interest standing allows claimants to raise the rights of others where those directly affected are, in all the circumstances and “in light of the practical realities”, not as well placed to bring a challenge.⁷² Here, candidates and electors with a *direct* interest in how Bill 5 impacted their *Charter* s 2(b) rights advanced their claims below, before settling.⁷³ The Supreme Court states that where “those with a more direct and personal stake in the matter have deliberately refrained from suing, this may argue against exercising discretion in favour of standing.”⁷⁴

⁶⁵ *Carbone cr-x*, qq 310-11.

⁶⁶ *Carbone cr-x*, qq 304-09.

⁶⁷ City of Toronto’s Notice of Application dated August 22, 2018, AB, v 1, t 17.

⁶⁸ *R v Big M Drug Mart*, [1985] 1 SCR 295 at 314 [*Big M*]; see also *Irwin Toy Ltd. v. Quebec (AG)*, [1989] 1 SCR 927 at 1004 [*Irwin Toy*].

⁶⁹ *Canadian Egg Marketing Agency v Richardson*, [1998] 3 SCR 157 [*CEMA*].

⁷⁰ *Big M* at 314.

⁷¹ *CEMA* at ¶¶34, 44, 46.

⁷² *Downtown Eastside Sex Workers v. Canada (AG)*, [2012] 2 SCR 524 at ¶51 [*Downtown Eastside*].

⁷³ *Downtown Eastside* at ¶37.

⁷⁴ *Downtown Eastside* at ¶51.

59. This Court should not exercise its residuary discretion to grant standing to the City to pursue s 2(b) claims that parties with clear standing have chosen to settle. The City’s lack of standing is not “arguable”,⁷⁵ nor a “fairly disputable point of procedure.”⁷⁶ The AG did not concede the City’s standing to raise s 2(b): the point was irrelevant below given the presence of the other claimants and the City’s additional reliance on non-*Charter* grounds.

B. The Application Judge erred in law in finding a s 2(b) *Charter* breach

60. Belobaba J erred in law in holding that s 2(b) was breached by: (1) the timing of Bill 5; and (2) the change to the number of City councillors and wards.

1) No right to mid-campaign *status quo*

61. Bill 5 does not regulate activity that conveys or attempts to convey meaning.⁷⁷ It regulates municipal governance, and, in particular ward boundaries and Council composition. These are not activities which convey or attempt to convey a meaning or message. Bill 5 does not regulate voting, campaigning or political expression. Citizens can run, campaign, vote and communicate with candidates and councillors on any matter. The candidates and electors who filed evidence below continued to engage in political expression untrammelled by Bill 5.⁷⁸

62. Section 2(b) does not include protection for the effectiveness of one’s expression. The Supreme Court majority in *Baier* stated: “As Bastarache J. noted in *Delisle* at para. 41, diminished effectiveness in the conveyance of a message does not mean that s. 2(b) is violated. There must be substantial interference with the fundamental freedom. School employees may

⁷⁵ *Smith v Ontario (AG)*, [1924] SCR 331 at 338 [Smith]; *Professional Institute of the Public Service of Canada v Northwest Territories*, [1990] 2 SCR 367 at 400 [PIPSC].

⁷⁶ *Smith* at 338; *PIPSC* at 400.

⁷⁷ On the test for breach of s 2(b) see *Irwin Toy* at 971; *Baier v Alberta*, 2007 SCC 31 at ¶19 [Baier]; *Montréal (City) v 2952-1366 Québec Inc.*, [2005] 3 SCR 141 at ¶56.

⁷⁸ *Hollett cr-x*, qq 191-92, 196-99; *Cheng cr-x*, qq 329-78; *Youssefi cr-x*, qq 148-64, 171-218; *Moise cr-x*, qq 135, 142-48; *Willson cr-x*, qq 58-70, 80-84, 88-117; *Answers to Undertakings of Megann Willson (Transcript #2)*, no 1, SMR, v 4, t 18.

express themselves in many ways other than through running for election as, and serving as, a school trustee.”⁷⁹

63. The majority in *Baier* rejected the dissenting reasoning of Fish J, who described the claim there in essentially the same terms as the applicants below and Belobaba J. Fish J’s analysis was that the claim was grounded in a fundamental, constitutionally-protected freedom to express oneself meaningfully on matters related to education. Seeking and holding office as a school trustee was, he held, a uniquely effective means of expressing one’s views on education policy. He said that while “diminished effectiveness” in conveying a message may not always engage s 2(b), the difference between writing a letter to a trustee and serving as trustee was not just of degree.⁸⁰ He reasoned that the state had created a “process grounded in the democratic election of school board trustees.” Excluding school employees from running, the state “substantially interfered” with freedom of expression by denying “them access to the unique platform upon which debate on local education policy is meant mainly and effectively to proceed:”

Representative democracy is fundamental to our system of government. Where a legislature establishes a universal and democratic system of local governance, and then effectively prohibits the participation in that system of a particular group of otherwise qualified citizens, the state must be required to justify that prohibition.⁸¹

64. This reasoning is similar to Belobaba J’s holding that the mid-election change of ward boundaries breached s 2(b). Such an approach was rejected by the majority in *Baier*, and in the Supreme Court’s earlier decisions in *Haig* and *NWAC*.⁸²

65. In *Baier*, the majority reiterated that claims of this nature (positive rights claims) must meet a three-step test which will apply only in exceptional circumstances, requiring proof that:

⁷⁹ *Baier* at ¶48.

⁸⁰ *Baier* at ¶¶107-09.

⁸¹ *Baier* at ¶¶109-10.

⁸² *Baier* at ¶60; *Haig v Canada*, [1993] 2 SCR 995 at 1035, 1039 [*Haig*]; *Native Women’s Assn v Canada*, [1994] 3 SCR 627 at ¶¶38, 43, 49, 52, 53, 73-74 [*NWAC*].

- 1) the claimants are excluded from a particular statutory regime enabling expression and their claim that the legislation is under-inclusive is grounded in a fundamental Charter freedom rather than the desire to access the particular statutory regime;
- 2) exclusion from the statutory regime substantially interferes with the claimant’s freedom of expression or has the purpose of infringing s 2(b); and
- 3) the state is responsible for the claimant’s inability to exercise the freedom.⁸³

66. Belobaba J did not apply this test, which must be met for there to be any obligation on the legislature to ensure access to a particular platform for expression. There was no finding that the three elements of the test were satisfied. Using similar reasoning as Fish J’s dissent, Belobaba J simply skipped to a finding of “substantial interference.”⁸⁴

67. Belobaba J held that Bill 5 diluted or made irrelevant the expressive political conduct of candidates and their supporters that had occurred prior to the passage of the Act. However, as noted, s 2(b) does not protect a right to the effectiveness or relevance of political expression.⁸⁵

There is no duty on the state to refrain from rendering someone’s speech less persuasive or effective. Government often enters the “marketplace of ideas” protected by s 2(b) to offer its own messaging that renders less effective the speech of others (e.g., tobacco health warnings). This also occurs with political speech, when the government rebuts criticism of its policies. This does not render the freedom of the speakers opposed to the government’s messaging less “meaningful” under s 2(b), though it may make their speech less effective.

68. Government actions “mid-campaign” may mean that candidates need to make extra effort or may even undermine their messages (e.g., if the government cancels a program that a

⁸³ *Baier* at ¶¶27, 30.

⁸⁴ Reasons of Belobaba J at ¶37.

⁸⁵ *Longley et al v Canada* (2007), [88 OR \(3d\) 408](#) at ¶110 (CA); *Baier* at ¶48; ONCA Stay Reasons at ¶¶16-17.

candidate advocates expanding). Policy positions taken by government can make some expression seem futile. This does not render freedom of expression less “meaningful.” Section 2(b) protects meaningful *freedom* of expression, not meaningful *expression*.

69. Thus, while larger wards under Bill 5 may mean that candidates who wanted to be successful in 2018 needed to redouble their political expressive activity and other efforts to increase their chances of success, this does not infringe freedom of expression.

70. Contrary to the binding jurisprudence, Belobaba J constitutionalized what is, in substance, a particular platform for expression – a 47-ward election in 2018 with nominations opening May 1 and closing July 27 (as prescribed by the 2016 amendments to the *MEA*). Notably, the municipal elections in 2010 and 2014 were governed by rules that prescribed the nomination opening as the first business day after January 1 and the deadline as the second Friday of the September prior to the election. The elections in 2003 and 2006 prescribed a nomination deadline that was 45 days prior to voting day.⁸⁶ As this Court noted in its stay decision, the closing date for the 2010 and 2014 elections is the same as under Bill 5. There is no suggestion that a mid-September nomination deadline for the previous municipal elections somehow impaired the expressive rights of candidates, organizers or voters in those elections.

2) No s 2(b) right to effective representation or a maximum constituent-councillor ratio

71. A right to effective representation is protected under *Charter* s 3, which is expressly limited to federal and provincial elections. Section 2(b) cannot be used to make s 3 apply to municipalities. Nor does s 3 determine the content of s 2(b).⁸⁷ The Supreme Court has repeatedly insisted on the primacy of the text of the Constitution.

⁸⁶ *MEA*, ss [31](#), [33](#) (historical version between Jan 1 2010 and June 8 2016); *MEA*, ss [5](#), [31](#) (historical version between Nov 26, 2002 and Dec 14, 2009).

⁸⁷ *Haig* at 1035, 1039-40; ONCA Stay Reasons at ¶17.

72. Section 2(b) does not guarantee a particular constituent to representative ratio. Even the concept of “effective representation” under *Charter* s 3 does not include such a requirement.⁸⁸

Belobaba J erred in expanding the idea of “effective representation” to include a maximum ratio.

73. Belobaba J stated “there is no principled reason why in an appropriate case the ‘effective representation’ value cannot inform other related *Charter* provisions such as voter’s right to freedom of expression under s 2(b).”⁸⁹ This was an error. Where there is no ambiguity on the contours of a *Charter* right, *Charter* values cannot be used to amend it.⁹⁰

74. The decision in *East York* relied upon Belobaba J does not support his decision. Speaking for this Court, Abella JA (as she then was) upheld the holdings of Borins J (as he then was) which dismissed a claim that councillors in post-amalgamation Toronto could not effectively represent their constituents due to an increased constituent-councillor ratio. Abella JA noted the lack of evidence on point, but also found no “*jurisprudential...support*” for the claim.⁹¹

75. As *Charter* s 3 does not apply to municipal elections, neither it nor anything else in the *Constitution Act, 1982* alters the province’s power under s 92(8) of the *Constitution Act, 1867* over municipalities, or grants municipalities or municipal elections constitutional status.⁹²

76. In any event, the contention that Bill 5 violates the principle of effective representation is contrary to the evidence. Even if s 3 were applicable, there is no basis for the assertion that Bill 5’s 25-ward model undermines effective representation. The prime condition for effective representation is parity of voting power.⁹³ The FEDs adopted by Bill 5 achieves better voter

⁸⁸ *Carter* at 179-189; *East York (Borough) v Ontario (AG)*, [1997] OJ No 3064 at ¶20 (Gen Div) [*East York GD*]; *East York Borough v Ontario (AG)* (1997), 153 DLR (4th) 299 at ¶3 (ONCA) [*East York CA*].

⁸⁹ Reasons of Belobaba J at ¶46.

⁹⁰ *British Columbia v Imperial Tobacco*, 2005 SCC 49 at ¶65 [*Imperial Tobacco*].

⁹¹ *East York CA* at ¶¶4-5.

⁹² *Haig* at 1031, 1033; *East York GD* at ¶18; See also *Baier* at ¶39.

⁹³ *Carter* at ¶¶50-55.

parity for 2018 than the 47-ward model.⁹⁴

77. While other factors can be considered with parity in seeking optimal effective representation (geography, community history, communities of interest and minority representation)⁹⁵ these are taken into account by the Commission designing the FEDs.⁹⁶

78. The ratio of constituents to councillors is now equal to that at the federal and provincial levels. To hold that this ratio does not provide effective representation would mean that either: (a) the ratio of constituents to MPs/MPPs also does not provide effective representation and violates s 2(b) or s 3; or (b) municipal government has a constitutional status, derived from s 2(b), that requires more or better representation than the provincial or federal legislatures. This is absurd for a subordinate, governmental delegate that otherwise enjoys no constitutional status. In any event, performing a local “service-delivery” function, the provinces and municipalities are similar in many ways.⁹⁷ There is nothing unique in municipalities to require a lower constituent to councillor ratio for constitutional or municipal governance purposes.⁹⁸

79. In any event, the evidence in this case on the constituent to councillor ratio in the 25-ward model related to apprehension that councillors would not be able to respond to individual constituent concerns about City services (e.g., potholes, road repair, snow clearing, bylaw enforcement, etc.).⁹⁹ The City’s own evidence on cross-examination was that where City service-delivery is concerned, the first point of access is intended to be the City’s public service (counter-based service at civic centers across the City, as well as the City’s 311 hotline and web-

⁹⁴ *OMB Decision* at ¶¶37-38, 41; *Sancton aff* at ¶¶40-41; *Siemiatycki cr-x*, qq 166, 181-95.

⁹⁵ *Carter* at ¶54.

⁹⁶ FEBR at 2532-33; *Sancton aff* at ¶20, 33, 35.

⁹⁷ *Sancton aff* at ¶104; *Valverde cr-x*, qq 285-327; *Carbone cr-x*, qq 321-41; *Dexter cr-x*, qq 180-98, *SMR*, v 1, t 4A and B; *Kettel cr-x*, qq 179-98, *SMR*, v 2, t 6A and B.

⁹⁸ *Sancton aff* at ¶104; *Valverde cr-x*, qq 285-327.

⁹⁹ *Hollett cr-x*, qq 38-39; *Cheng, cr-x* qq 144; *Dexter cr-x*, q 47; *Kettel cr-x*, qq 16-26.

based services), rather than councillors.¹⁰⁰ The evidence (from both the AG’s expert and the applicants’ Professor Valverde) is that from a public policy perspective it is preferable for councillors *not* to be mired in resolving parochial constituent complaints, but rather to be focused on setting broader policy for the City.¹⁰¹

80. It would overshoot the purpose of s 2(b) to read into the idea that voting is expressive, a requirement that voting be made “effective” by mandating a size of municipal council that guarantees councillors will be able to cater *qua* “ombudsman” to individual constituent demands.

C. No duty to consult, no breach of *Constitution Act 1867* or unwritten principles

81. The legislature, unlike a court, owes no duty of procedural fairness or to consult.¹⁰²

Procedure in the legislature is not subject to judicial review: courts assess the content of legislation once enacted. There is no obligation on government to consult before it introduces legislation for consideration and enactment.¹⁰³ The legislature itself has no duty to consult or follow due process, except its own rules, on which it is the sole arbiter.

82. Section 1 of the *City of Toronto Act, 2006* (COTA), which speaks to the desirability of consultation between the City and the province, does not preclude the legislature from enacting Bill 5. The Toronto-Ontario Cooperation and Consultation Agreement provides for consultation but states in s 14 that breach gives rise to no remedy.¹⁰⁴ When governments enter into agreements, even contracts, they do not bind the legislature.¹⁰⁵

83. Nothing in COTA as it existed before Bill 5, or the Toronto-Ontario Agreement, limits

¹⁰⁰ *Carbone cr-x*, qq 324-30.

¹⁰¹ *Valverde cr-x*, qq 429-32, 442; Chapter 4 in *Everyday Law on the Streets*; *Sancton aff* at ¶¶101-04.

¹⁰² *Reference re Canada Assistance Plan (BC)*, [1991] 2 SCR 525 at ¶60 [CAP Reference] (QL); *Authorson v Canada (AG)*, 2003 SCC 39 at ¶¶37-39 [Authorson]; *Ontario (AG) v Fraser*, [2011] 2 SCR 3 at ¶¶47, 85; *Mikisew Cree First Nation v Canada*, 2018 SCC 40 at ¶¶2, 32, 34-37 [Mikisew].

¹⁰³ *Mikisew* at ¶¶2, 32, 34-37; *East York GD* at ¶11.

¹⁰⁴ COTA 2006, s 1; Toronto-Ontario Cooperation and Consultation Agreement, AB, v 3, t 39, exh E.

¹⁰⁵ *CAP Reference* at ¶76; *Securities Reference* at ¶¶48, 53, 60.

the ability of the legislature to enact Bill 5 without advance consultation. There is no inconsistency between s 1 of COTA and the Agreement, on one hand, and Bill 5 or the manner of its enactment, on the other. In any event, a subsequent enactment inconsistent with an earlier one is deemed to impliedly repeal the earlier enactment to the extent of inconsistency.¹⁰⁶

84. Parliament is not capable of binding itself (except as to manner and form requirements it expressly prescribes for itself and which it can amend). Otherwise, a past parliament could bind a newly elected or a future parliament, thereby undermining representative democracy.¹⁰⁷

85. Section 92(8) of the *Constitution Act, 1867* gives the provincial legislature exclusive jurisdiction to make laws in relation to “Municipal Institutions in the Province.” This provision gives legislatures the right to “create a legal body for the management of municipal affairs.”¹⁰⁸ As stated in *East York*, any ambiguity about whether a constitutional norm restricted a province from making changes to a municipal institution without its consent was resolved by the Privy Council in the 1896 *Ontario Liquor License Case*. No case has diluted that authority.¹⁰⁹

86. The *Constitution Act, 1867* envisages municipalities as creatures of the province with no independent authority. It is not for the courts to create a third order of government within this constitutional architecture.¹¹⁰

87. Ontario municipalities have consistently been understood to be subject to reform by the province. The province has expanded Toronto through annexations, changed its governance, reduced the number of municipalities within Metropolitan Toronto, amalgamated

¹⁰⁶ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis) at ¶11.64 (QL); Reasons of Belobaba J at ¶17.

¹⁰⁷ *CAP Reference* at ¶¶ 36, 79; Reasons of Belobaba J at ¶¶17-18.

¹⁰⁸ *Ontario Liquor License Case (Re)*, [1896] AC 348 at ¶16 (PC).

¹⁰⁹ *East York CA* at ¶13; *Ontario Liquor License Case (Re)* at ¶16; *R v Greenbaum*, [1993] 1 SCR 674 at 687-689; *Shell Canada v Vancouver*, [1994] 1 SCR 231 at 273.

¹¹⁰ *Baier* at ¶39.

Toronto with other municipalities and repeatedly altered ward boundaries and Council size.¹¹¹

88. Arguments for a “constitutional principle of municipal autonomy” or a “constitutional convention” requiring municipal consent before a municipal restructuring have been consistently rejected.¹¹² Arguments for an unwritten constitutional principle or convention protecting municipalities from provincial intrusion cannot be imported through the *Charter* or otherwise.¹¹³

89. The legislature has the power to delegate to municipalities any authority it possesses. Municipalities can therefore exercise any s 92 power delegated to them, such as the power to change their ward boundaries, delegated to Toronto in 2006 by COTA. But the province’s authority to delegate always implies the authority to revoke or amend the delegation *at any time*.¹¹⁴ To impose timing constraints in this regard (e.g., that a revocation of delegated power cannot be made during an election campaign) would undermine parliamentary supremacy.

90. The argument that the principles of “democracy” and “rule of law” have changed this state of affairs is unsustainable. The supremacy of the provincial legislature is itself an expression of the principles of democracy and the rule of law. It is the legislature, not any particular municipal council, which is the relevant body under the Constitution that gives effect to the principle of democracy and the rule of law. The enactment of law by the legislature *reflects* democracy and the rule of law; it does not undermine it.¹¹⁵

91. In any event, unwritten constitutional principles are not an independent basis to strike

¹¹¹ *East York GD* at ¶¶1, 2, 7; *Siemiatycki cr-x*, qq 286, 297-300; *Valverde cr-x*, q 14.

¹¹² *Lynch v Canada N.W. Land Co*, [1891] 19 SCR 204 at 209; *East York GD* at ¶¶ 14-15.

¹¹³ See *Reference re Bill 30, An Act to Amend the Education Act (Ont)*, [1987] 1 SCR 1148.

¹¹⁴ *Hodge* at ¶37; *Reference re Regulations in Relation to Chemicals*, [1943] SCR 1 at 18 per Rinfret J, and at 26 per Davis J [*Chemicals Reference*]; *R v Furtney*, [1991] 3 SCR 89 at 104; *Re Gray*, [1918] 57 SCR 150 at 157.

¹¹⁵ *Imperial Tobacco* at ¶¶ 66-67.

down statutes.¹¹⁶ They may be helpful in resolving ambiguity in the constitutional text,¹¹⁷ but where there is no ambiguity, they cannot be used to amend it.¹¹⁸

D. The Application Judge erred in finding breach not justified under *Charter* s 1

92. Belobaba J erred in law and made palpable and overriding errors of fact regarding s 1. He held that the AG failed, at the pressing and substantial stage, to provide “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.”¹¹⁹ The Supreme Court has noted that it is wrong to ask “whether the evidence proved a pressing and substantial reason to impose limits [on *Charter* rights]. ... [T]he proper question ... is whether the [AG] has asserted a pressing and substantial objective.”¹²⁰

93. The AG asserted the pressing and substantial objectives of improving Council efficiency and effectiveness and achieving voter parity for 2018.¹²¹ If evidence is demanded, both the record below and, even moreso the AG’s fresh evidence, amply support these objectives.

94. Belobaba J erred in holding that Bill 5 was not minimally impairing of any s 2(b) *Charter* infringement. Key to Belobaba J’s holding on minimal impairment was his finding that the 47-

¹¹⁶ *Re Quebec Secession*, [1998] 2 SCR 217 at ¶53 (QL); *Imperial Tobacco* at ¶¶ 59-60, 66-67, 76; *Norton McMullen Consulting Inc v Boreham*, 2015 ONSC 5862, aff’d 2016 ONCA 778 [Boreham]; *Campisi v Ontario*, 2017 ONSC 2884 at ¶55, aff’d 2018 ONCA 869; the principle of respect for minorities has been used to invalidate executive action, not legislation: *Lalonde v Ontario*, [2001] 208 DLR (4th) 577 at ¶123 (Ont CA).

¹¹⁷ Unwritten constitutional principles have been used to fill “true gaps” in the constitutional text only in the judicial compensation context: see *Ref re Remuneration of Judges of the Prov Court of PEI*; *Ref re Independence and Impartiality of Judges of the Prov Court of PEI*, [1997] 3 SCR 3.

¹¹⁸ *British Columbia (AG) v Christie*, 2007 SCC 21 at ¶¶24-27; *Imperial Tobacco* at ¶65.

¹¹⁹ Reasons of Belobaba J at ¶71.

¹²⁰ *Harper v Canada (AG)*, 2004 SCC 33 at ¶25.

¹²¹ While saving costs (the third objective) cannot justify an infringement of a *Charter* right, it is sufficient that at least one of the objectives of legislation relates to a pressing and substantial concern. *Edmonton Journal v Alberta (AG)*, [1989] 2 SCR 1326 at 1342-45; *McKinney v University of Guelph*, [1990] 3 SCR 229 at 281, 302.

ward model was an acceptable, more minimally impairing alternative. However, the 47-ward model would not have achieved the legislature's objectives.

95. Minimal impairment does not require the legislature to adopt the absolutely least intrusive means *if it is not of equal effectiveness*.¹²² As the Supreme Court states: "Equal effectiveness is a dimension of the analysis that should not be under-emphasized, as it relates directly to Parliament's ability to pursue its legitimate objectives effectively."¹²³

96. Belobaba J erroneously speculated that simply imposing time limits on debate in a 47-member Council would achieve the legislature's objective of improving Council efficiency and effectiveness.¹²⁴ However, the long meetings are merely a symptom of a larger problem of individual councillors focusing disproportionately on local issues that could better be addressed by City staff¹²⁵ at the expense of attending to broader City governance concerns.¹²⁶ Increasing the size of Council from 44 to 47, time limits or not, only exacerbates the problem.¹²⁷ By contrast, the legislature's policy objective is met by reducing Council size.

97. Moreover, the purported overburdening of councillors in their ombudsman role that Belobaba J identified as a constitutional defect with the 25-ward model can be addressed without the 47-ward model. The City did so after the election, by increasing the resources available to councillors and reducing their workload. Meanwhile, contrary to Belobaba J's emphasis on the primacy of the ombudsman role, the expert evidence identifies it as a source of dysfunction.¹²⁸

98. Belobaba J suggests that a less intrusive approach to achieving voter parity would have

¹²² *Sauvé v Canada*, [2002 SCC 68](#) at ¶160 [*Sauvé*]; *RJR-MacDonald v Canada*, [\[1995\] 3 SCR 199](#) at ¶160; *Canada v JTI-MacDonald*, [2007 SCC 30](#) at ¶¶42-4; *R v Chaulk*, [\[1990\] 3 SCR 1303](#) at 1341-3.

¹²³ *Sauvé* at ¶163.

¹²⁴ Reasons of Belobaba J at ¶75.

¹²⁵ *Sancton aff* at ¶¶ 103-04.

¹²⁶ *Sancton aff* at ¶¶ 102-04.

¹²⁷ *Sancton aff* at ¶97.

¹²⁸ *Valverde cr-x qq*, 260-64, 410-20, 429-44, 488-500, 516; Chapter 4 in *Everyday Law on the Streets*.

been for the legislature to perform a redrawing of a few problematic over- or under-populated wards in the 47-ward model rather than adopting the FEDs. This does nothing to achieve a smaller, less dysfunctional Council. Further, it is unclear whether Belobaba J would have also expected the legislature to have reproduced the work of the federal Commission (considering geography, history, communities of interest, etc.), or the work of the TWBR, in recrafting the 47-ward model to achieve better parity for 2018 rather than simply adopting the FEDs. Belobaba J's suggestion of legislative tinkering to address specific parity concerns is unrealistic.

99. The City adopted a model that sought parity in 2026 to avoid frequent ward boundary reviews. Adopting the FEDs is a superior alternative that involves a truly independent, decennially-updated process, relying on actual Census data, at no cost to the province or City.¹²⁹

100. Belobaba J also erred in holding that an equally effective alternative was to delay adopting Bill 5 until *after* the City's 2018 election.¹³⁰ Waiting would not achieve the legislature's objectives of improving voter parity for 2018 and having a smaller, more effective Council right away. Delaying would have required a choice between two less effective options: either waiting four years until the next election before the legislature's policy goals could be achieved or, more disruptive, uprooting an elected council midterm (after October 22, 2018) and imposing changes thereafter.

E. Error of law in ordering a 47-ward election as remedy

101. Belobaba J overstepped what was necessary as a remedy.¹³¹ The s 2(b) breaches he found related first, to the timing of Bill 5 (resulting in "wasted" expressive efforts) and second, to the

¹²⁹ *Sancton aff* at ¶38.

¹³⁰ Reasons of Belobaba J at ¶75.

¹³¹ *Schacter v Canada*, [1992] 2 SCR 679 at ¶31 (QL); *Catholic Children's Aid Society of Hamilton v GH*, 2016 ONSC 6287 at ¶¶ 102-03.

constituent-councillor ratio. To remedy such breaches it was not necessary to order a 47-ward election.

102. Belobaba J failed to suspend his ruling to allow the legislature to respond with legislation, which would have been more appropriate than ordering a 47-ward election for 2018. A suspension would have given the legislature a chance to respond with a measure that achieves as much of its legislative policy as the *Charter* permits.¹³²

PART IV – ORDER REQUESTED

103. The AG requests an Order allowing the appeal, setting aside the Order of Belobaba J dated September 10, 2018, and dismissing the applications below, with costs against the City of Toronto.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5TH DAY OF APRIL, 2019


Robin K Basu


Yashoda Ranganathan


Aud Ranalli

¹³² Kent Roach, *Constitutional Remedies in Canada*, 2nd ed (Toronto: Thomson Reuters, 2017)(Looseleaf updated 2017) at ¶14.1530 (ProView); *Schachter* at ¶¶78-81, 85; *R v Guignard*, [2002] 1 SCR 472 at ¶32; *Federation of Law Societies v Canada(AG)*, 2015 SCC 7 at ¶65.

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

CITY OF TORONTO

Applicant
(Respondent in appeal)

- and -

ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant)

A N D B E T W E E N:

ROCCO ACHAMPONG

Applicant
(Respondent in appeal)

- and -

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

Respondents
(Appellants)

- and -

CITY OF TORONTO

Respondent
(Respondent in appeal)

(Title of Proceeding Continued on p. 2)

CERTIFICATE OF TIME

AND BETWEEN:

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

Applicants
(Respondents in appeal)

- and -

ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant)

- and -

**JENNIFER HOLLET, LILY CHENG, SUSAN DEXTER,
GEOFFREY KETTEL and DYANOOSH YOUSSEFI**

Intervenors
(Respondents in appeal)

CERTIFICATE OF TIME

I, Yashoda Ranganathan, counsel for the Appellants, certify:

- 1) An order under subrule 61.09(2) is not required; and
- 2) The Attorney General of Ontario estimates that three (3) hours will be required for its oral argument.

April 5, 2019

Yashoda Ranganathan

ATTORNEY GENERAL OF ONTARIO

Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9
Fax : (416) 326-4015

Counsel for the Appellants

SCHEDULE A

1. *Toronto et al v Ontario et al*, [2018 ONSC 5151](#)
2. *Toronto (City) v Ontario (AG)*, [2018 ONCA 761](#)
3. *Di Ciano v Toronto*, [2017 CanLII 85757](#) (OMB)
4. *Natale v Toronto (City)*, [2018 OJ No 1180](#) (Div Ct)
5. *Reference re Provincial Electoral Boundaries (Sask)*, [\[1991\] 2 SCR 158](#)
6. *Sask.(IPC) v University of Sask.*, [2017 SKQB 140](#), rev'd on other grounds [2018 SKCA 34](#)
7. *Weinstein v BC (Min of Education)*, [20 DLR \(4th\) 609](#) (BC Sup Ct)
8. *Hunter v Southam*, [\[1984\] 2 SCR 145](#)
9. *Cosgrove v Canadian Judicial Council*, [\[2005\] FCJ No 1748](#) (Fed Ct), rev'd on other grounds [\[2007\] FCJ No 352](#) (FCA), leave ref'd [\[2007\] SCCA No 242](#)
10. *Canada (Canadian Wheat Board) v Canada (AG)*, [2009 FCA 214](#)
11. *Williams v Mayor & City Council of Baltimore* (1933), [289 US 36](#) (USSC)
12. *Ontario English Catholic Teachers Assn v Ontario (AG)*, [\[2001\] 1 SCR 470](#)
13. *Reference re Liquor License Act of 1877*, [\[1883\] JCI No 2](#) (PC)
14. *Reference re Pan-Canadian Securities Regulation*, [2018 SCC 48](#)
15. *R v Big M Drug Mart*, [\[1985\] 1 SCR 295](#)
16. *Irwin Toy Ltd. v Quebec (AG)*, [\[1989\] 1 SCR 927](#)
17. *Canadian Egg Marketing Agency v Richardson*, [\[1998\] 3 SCR 157](#)
18. *Downtown Eastside Sex Workers v Canada (AG)*, [\[2012\] 2 SCR 524](#)
19. *Smith v Ontario (AG)*, [\[1924\] SCR 331](#) at 338
20. *Professional Institute of the Public Service of Canada v Northwest Territories*, [\[1990\] 2 SCR 367](#)
21. *Baier v Alberta*, [2007 SCC 31](#)
22. *Montréal (City) v 2952-1366 Québec Inc.*, [\[2005\] 3 SCR 141](#)

23. *Haig v Canada*, [\[1993\] 2 SCR 995](#)
24. *Native Women's Assn v Canada*, [\[1994\] 3 SCR 627](#)
25. *Longley et al. v Canada* (2007), [88 OR \(3d\) 408](#) at ¶110 (CA)
26. *East York (Borough) v Ontario (AG)*, [\[1997\] OJ No 3064](#) at ¶20 (Gen Div)
27. *East York (Borough) v Ontario (AG)* (1997), [153 DLR \(4th\) 299](#) (Ont CA)
28. *British Columbia v Imperial Tobacco*, [2005 SCC 49](#)
29. *Reference re Canada Assistance Plan (BC)*, [\[1991\] 2 SCR 525](#)
30. *Authorson v Canada (AG)*, [2003 SCC 39](#)
31. *Ontario (AG) v Fraser*, [\[2011\] 2 SCR 3](#)
32. *Mikisew Cree First Nation v Canada*, [2018 SCC 40](#)
33. Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis)
34. *Ontario Liquor License Case (Re)*, [\[1896\] AC 348](#)
35. *R. v Greenbaum*, [\[1993\] 1 SCR 674](#)
36. *Shell Canada v Vancouver*, [\[1994\] 1 SCR 231](#)
37. *Lynch v Canada N.W. Land Co.*, [\[1891\] 19 SCR 204](#)
38. *Reference re Bill 30, An Act to Amend the Education Act (Ont)*, [\[1987\] 1 SCR 1148](#)
39. *Reference re Regulations in Relation to Chemicals*, [\[1943\] SCR 1](#)
40. *R. v Furtney*, [\[1991\] 3 SCR 89](#)
41. *Re Gray*, [\[1918\] 57 SCR 150](#)
42. *Re Quebec Secession*, [\[1998\] 2 SCR 217](#)
43. *Norton McMullen Consulting Inc. v Boreham*, [2015 ONSC 5862](#), aff'd [2016 ONCA 778](#)
44. *Lalonde v Ontario*, [\[2001\] 208 DLR \(4th\) 577](#) (CA)
45. *Campisi v Ontario*, [2017 ONSC 2884](#), aff'd [2018 ONCA 869](#)
46. *Ref re Remuneration of Judges of the Prov Court of PEI; Ref re Independence and Impartiality of Judges of the Prov Court of PEI*, [\[1997\] 3 SCR 3](#)

47. *British Columbia (AG) v Christie*, [2007 SCC 21](#)
48. *Harper v Canada (AG)*, [2004 SCC 33](#)
49. *Edmonton Journal v Alberta (AG)*, [\[1989\] 2 SCR 1326](#)
50. *McKinney v University of Guelph*, [\[1990\] 3 SCR 229](#)
51. *Sauvé v Canada*, [2002 SCC 68](#)
52. *RJR-MacDonald Inc. v Canada*, [\[1995\] 3 SCR 199](#)
53. *Canada v JTI-MacDonald*, [2007 SCC 30](#)
54. *R. v Chaulk*, [\[1990\] 3 SCR 1303](#)
55. *Schacter v Canada*, [\[1992\] 2 SCR 679](#)
56. *Catholic Children's Aid Society of Hamilton v GH*, [2016 ONSC 6287](#)
57. Kent Roach, *Constitutional Remedies of Canada*, 2nd ed (Toronto: Thomson Reuters, 2017)
58. *R. v Guignard*, [\[2002\] 1 SCR 472](#)
59. *Federation of Law Societies v Canada(AG)*, [2015 SCC 7](#)

SCHEDULE B

<i>Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 (UK), 1982 c 11</i>	36
<i>Better Local Government Act, 2018, S.O. 2018, c. 11</i>	37
<i>City of Toronto Act, 1997, SO 1997 c 2 (“Bill 103”) [Historical version assented to April 21, 1997]</i>	40
<i>City of Toronto Act, 2006, SO 2006, c. 11, Schedule A [Version as of August 13, 2018]</i> 41	
<i>Electoral Boundaries Readjustment Act, RSC 1985, c. E-3</i>	45
<i>Fewer Municipal Politicians Act, 1999, SO 1999 c 14 Sch 4</i>	46
<i>Municipal Act, 2001, SO 2001, c 25</i>	46
<i>Municipal Elections Act, 1996, SO 1996, c. 32, Sch [Historical version between Dec 19, 1996 and November 25, 2002]</i>	48
<i>Municipal Elections Act, 1996, SO 1996, c. 32, Sch [Historical version between November 26, 2002 and Dec 31, 2009]</i>	49
<i>Municipal Elections Act, 1996, SO 1996, c. 32, Sch [Historical version between January 1, 2010 and June 8, 2016]</i>	50
<i>Municipal Elections Act, 1996, SO 1996, c. 32, Sch [Current version]</i>	51
<i>O. Reg. 101/97</i>	59

<p><i>Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982 (UK), 1982 c 11</i></p>

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. Everyone has the following fundamental freedoms:

...

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

...

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

15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

Better Local Government Act, 2018, [S.O. 2018, c. 11](#)

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

1 Paragraph 3 of section 2 of the *City of Toronto Act, 2006* is repealed and the following substituted:

3. Determine the appropriate structure for governing the City other than with respect to the composition of city council and the division of the City into wards.

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

3 Paragraph 1 of subsection 8 (2) of the Act is repealed and the following substituted:

1. Governance structure of the City and its local boards (restricted definition) other than with respect to the composition of city council and the division of the City into wards.

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

Application

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

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

Division of wards after 2018 regular election

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

Same

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

Conduct of 2018 regular election

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

Regulations

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

Retroactivity

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

Conflicts

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

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

By-law not passed

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

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

Application

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

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

City council following 2018 regular election

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

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

Rules re composition of city council

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

1. The members of city council shall be elected in accordance with the *Municipal Elections Act, 1996*.
2. The head of council shall be elected by general vote.

3. One member of council shall be elected for each of the wards determined under section 128.

Conduct of 2018 regular election

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

Regulations

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

Retroactivity

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

Conflicts

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

Same

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

Rules re previously passed by-law changing city council

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

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

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

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

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

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

Commencement

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

**SCHEDULE 3
MUNICIPAL ELECTIONS ACT, 1996**

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

2018 regular election, City of Toronto

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

Exception, head of council

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

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

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

Notifying the clerk re office on the council

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

<i>City of Toronto Act, 1997</i> , SO 1997 c 2 (“Bill 103”) [Historical version assented to April 21, 1997]

Incorporation

2. (1) On January 1, 1998, the inhabitants of the urban area are constituted as a body corporate under the name of “City of Toronto” in English and “cité de Toronto” in French. 1997, c. 2, s. 2 (1).

City and local municipality

(2) The body corporate is a city and a local municipality for all purposes. 1997, c. 2, s. 2
[...]

Council

3. (1) The council of the new city is composed of,
(a) the mayor, elected by general vote; and

(b) 56 other members, two of whom shall be elected for each ward.

[...]

New city in place of old municipalities

(4) The new city stands in the place of the old municipalities for all purposes. 1997, c. 2, s. 2 (4).

Wards

5. (1) The urban area is divided into 28 wards as described in the Schedule.

Changes to wards

(2) The wards may be changed or dissolved in accordance with the *Municipal Act*.

City of Toronto Act, 2006, [SO 2006, c. 11](#), Schedule A [Version as of August 13, 2018]

PART I INTERPRETATION

Governing principles

1. (1) The City of Toronto exists for the purpose of providing good government with respect to matters within its jurisdiction, and the city council is a democratically elected government which is responsible and accountable.

Relationship with the Province

(2) The Province of Ontario endorses the principle that it is in the best interests of the Province and the City to work together in a relationship based on mutual respect, consultation and co-operation.

Consultation

(3) For the purposes of maintaining such a relationship, it is in the best interests of the Province and the City to engage in ongoing consultations with each other about matters of mutual interest and to do so in accordance with an agreement between the Province and the City.

Agreements with the federal government

(4) The Province acknowledges that the City has the authority to enter into agreements with the Crown in right of Canada with respect to matters within the City's jurisdiction.

S.O. 2006, c. 11, Sched. A, s. 1, in force January 1, 2007 (O. Gaz. 2007 p. 44).

Changes to wards

128 (1) Without limiting sections 7 and 8, those sections authorize the City to divide or redivide the City into wards or to dissolve the existing wards. 2006, c. 11, Sched. A, s. 128 (1).

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. 2006, c. 11, Sched. A, s. 128 (2).

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). 2006, c. 11, Sched. A, s. 128 (3).

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. 2006, c. 11, Sched. A, s. 128 (4); 2017, c. 23, Sched. 5, s. 12 (1).

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. 2006, c. 11, Sched. A, s. 128 (5); 2017, c. 23, Sched. 5, s. 12 (2).

Other material

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

Tribunal decision

(7) The Tribunal shall hear the appeal and may, despite any Act, make an order affirming, amending or repealing the by-law. 2006, c. 11, Sched. A, s. 128 (7); 2017, c. 23, Sched. 5, s. 12 (4).

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. 2006, c. 11, Sched. A, s. 128 (8); 2017, c. 23, Sched. 5, s. 12 (5).

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. 2006, c. 11, Sched. A, s. 128 (9).

Notice to assessment corporation

(10) When a by-law described in this section is passed, the clerk of the City shall notify the assessment corporation,

- (a) before January 1 in the year of the first regular election after the by-law is passed, if clause (8) (a) applies;
- (b) before January 1 in the year of the second regular election after the by-law is passed, if clause (8) (b) applies. 2009, c. 33, Sched. 21, s. 4 (6).

Petition re wards

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

Number of electors required

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

Definition

(3) In this section,

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

Failure to act

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

Order

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

Coming into force

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

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

Election

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

Deemed by-law

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

COMMENCEMENT AND PREPARATION OF REPORT

Rules

15. (1) In preparing its report, each commission for a province shall, subject to subsection (2), be governed by the following rules:

- (a) the division of the province into electoral districts and the description of the boundaries thereof shall proceed on the basis that the population of each electoral district in the province as a result thereof shall, as close as reasonably possible, correspond to the electoral quota for the province, that is to say, the quotient obtained by dividing the population of the province as ascertained by the census by the number of members of the House of Commons to be assigned to the province as calculated by the Chief Electoral Officer under subsection 14(1); and
- (b) the commission shall consider the following in determining reasonable electoral district boundaries:
 - (i) the community of interest or community of identity in or the historical pattern of an electoral district in the province, and
 - (ii) a manageable geographic size for districts in sparsely populated, rural or northern regions of the province.

Departure from rules

(2) The commission may depart from the application of the rule set out in paragraph (1)(a) in any case where the commission considers it necessary or desirable to depart therefrom

- (a) in order to respect the community of interest or community of identity in or the historical pattern of an electoral district in the province, or
- (b) in order to maintain a manageable geographic size for districts in sparsely populated, rural or northern regions of the province,

but, in departing from the application of the rule set out in paragraph (1)(a), the commission shall make every effort to ensure that, except in circumstances viewed by the commission as being extraordinary, the population of each electoral district in the province remains within twenty-five per cent more or twenty-five per cent less of the electoral quota for the province.

Fewer Municipal Politicians Act, 1999, SO 1999 c 14 Sch 4

1. Size of council

1. (1) Clause 3 (1) (b) of the City of Toronto Act, 1997, as re-enacted by the Statutes of Ontario, 1998, chapter 11, section 1, is repealed and the following substituted:

(b) 44 other members, or such other number as may be prescribed by regulation, to be elected in accordance with subsection (1.1).

(2) Subsection 3 (1.1) of the Act, as enacted by the Statutes of Ontario, 1998, chapter 11, section 1 is repealed and the following substituted:

(1.1) One member of the council, or such other number as may be prescribed by regulation, shall be elected for each ward.

2. Number of wards

(5) Subsection 5 (1) of the Act is repealed and the following substituted:

(1) The urban area is divided into 44 wards, or such other number as may be prescribed by regulation, and the boundaries of the wards are as prescribed by regulation.

3. Authority to change wards

(6) Subsection 5 (2) of the Act is repealed and the following substituted:

(2) The wards cannot be changed or dissolved by a by-law or an order made under section 13, 13.1 or 13.2 of the Municipal Act. (3) A by-law or an order changing or dissolving the wards is void, whether it is made before or after this subsection comes into force.

Municipal Act, 2001, [SO 2001, c 25](#)

Establishment of wards

222 (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to divide or redivide the municipality into wards or to dissolve the existing wards. 2006, c. 32, Sched. A, s. 96 (1).

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 223, any provision of any other Act or a regulation made under any other Act, the by-law prevails. 2006, c. 32, Sched. A, s. 96 (1).

Notice

(3) Within 15 days after a by-law described in subsection (1) is passed, the municipality 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). 2006, c. 32, Sched. A, s. 96 (1).

Appeal

(4) Within 45 days after a by-law described in subsection (1) 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 municipality setting out the objections to the by-law and the reasons in support of the objections. 2006, c. 32, Sched. A, s. 96 (1); 2017, c. 23, Sched. 5, s. 49 (1).

Notices forwarded to Board

(5) Within 15 days after the last day for filing a notice of appeal under subsection (4), the municipality shall forward any notices of appeal to the Tribunal. 2001, c. 25, s. 222 (5); 2017, c. 23, Sched. 5, s. 49 (2).

Other material

(6) The municipality shall provide any other information or material that the Tribunal requires in connection with the appeal. 2001, c. 25, s. 222 (6); 2017, c. 23, Sched. 5, s. 49 (3).

Tribunal decision

(7) The Tribunal shall hear the appeal and may, despite any Act, make an order affirming, amending or repealing the by-law. 2001, c. 25, s. 222 (7); 2017, c. 23, Sched. 5, s. 49 (4).

Coming into force of by-law

(8) A by-law of a municipality described in this section comes into force on the day the new council of the municipality 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. 2001, c. 25, s. 222 (8); 2006, c. 32, Sched. A, s. 96 (2); 2017, c. 23, Sched. 5, s. 49 (5).

Election

(9) Despite subsection (8), where a by-law comes into force on the day the new council of a municipality is organized following a regular election, that election shall be conducted as if the by-law was already in force. 2001, c. 25, s. 222 (9).

Notice to assessment corporation

(9.1) When a by-law described in this section is passed, the clerk of the municipality shall notify the assessment corporation,

- (a) before January 1 in the year of the first regular election after the by-law is passed, if clause (8) (a) applies;
- (b) before January 1 in the year of the second regular election after the by-law is passed, if clause (8) (b) applies. 2009, c. 33, Sched. 21, s. 6 (10).

(10) Repealed: 2017, c. 10, Sched. 1, s. 17.

Municipal Elections Act, 1996, SO 1996, c. 32, Sch [Historical version between Dec 19, 1996 and November 25, 2002]

Voting day

5. Voting day in a regular election is the second Monday in November, subject to section 10. 1996, c. 32, Sched., s. 5.

Saturdays and holidays

10.(1) A time limited by this Act that would otherwise expire on a Saturday or holiday shall be deemed to expire on the next day that is neither a Saturday nor a holiday. 1996, c. 32, Sched., s. 10 (1).

Exception

(2) When voting day is determined under subsection (1), the days fixed for other procedures in the election are unaffected. 1996, c. 32, Sched., s. 10 (2).

Nomination day

31. Nomination day for a regular election is Friday, the 31st day before voting day.

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. 1996, c. 32, Sched., s. 33 (1).

Formal requirements

- (2) The nomination shall,
- (a) be in the prescribed form;
 - (b) be accompanied by a consent to the nomination and a declaration of qualification, both in the prescribed form, signed by the person being nominated; and
 - (c) be accompanied by the prescribed nomination filing fee. 1996, c. 32, Sched., s. 33 (2);

Exception, nomination filing fee

- (3) If the person was previously nominated for an office on the same council or local board in the same election and paid the nomination filing fee at that time,
- (a) clause (2) (c) does not apply; and
 - (b) for the purposes of section 34 (refund) and paragraph 9 of subsection 67 (2) (expenses), the fee paid at the time of the earlier nomination shall be deemed to have been paid in connection with the later one. 1996, c. 32, Sched., s. 33 (3).

Time for filing

- (4) The nomination may be filed,
- (a) on any day 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 5 p.m. 1996, c. 32, Sched., s. 33 (4).

Exception for additional nominations

- (5) If the number of nominations filed for an office and certified under section 35 is less than the number of persons to be elected to the office, additional nominations may be filed between 9 a.m. and 5 p.m. on the Wednesday following nomination day. 1996, c. 32, Sched., s. 33 (5).

Municipal Elections Act, 1996, [SO 1996, c. 32, Sch](#) [Historical version between November 26, 2002 and Dec 31, 2009]

Voting day

5. Voting day in a regular election is the second Monday in November, subject to section 10. 1996, c. 32, Sched., s. 5.

Saturdays and holidays

10.(1) A time limited by this Act that would otherwise expire on a Saturday or holiday shall be deemed to expire on the next day that is neither a Saturday nor a holiday. 1996, c. 32, Sched., s. 10 (1).

Exception

(2) When voting day is determined under subsection (1), the days fixed for other procedures in the election are unaffected. 1996, c. 32, Sched., s. 10 (2).

Nomination day

31. Nomination day for a regular election is Friday, the 45th day before voting day. 2002, c. 17, Sched. D, s. 10.

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. 1996, c. 32, Sched., s. 33 (1).

Formal requirements

(2) The nomination shall,

(a) be in the prescribed form;

(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. 1996, c. 32, Sched., s. 33 (2); 2002, c. 17, Sched. D, s. 11.

Exception, nomination filing fee

(3) If the person was previously nominated for an office on the same council or local board in the same election and paid the nomination filing fee at that time,

(a) clause (2) (c) does not apply; and

(b) for the purposes of section 34 (refund) and paragraph 9 of subsection 67 (2) (expenses), the fee paid at the time of the earlier nomination shall be deemed to have been paid in connection with the later one. 1996, c. 32, Sched., s. 33 (3).

Time for filing

(4) The nomination may be filed,

(a) on any day 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 5 p.m. 1996, c. 32, Sched., s. 33 (4).

Exception for additional nominations

(5) If the number of nominations filed for an office and certified under section 35 is less than the number of persons to be elected to the office, additional nominations may be filed between 9 a.m. and 5 p.m. on the Wednesday following nomination day. 1996, c. 32, Sched., s. 33 (5)

Municipal Elections Act, 1996, [SO 1996, c. 32, Sch](#) [Historical version between January 1, 2010 and June 8, 2016]

Nomination day

31. Nomination day for a regular election is the second Friday in September in the year of the election. 2002, c. 17, Sched. D, s. 10; 2009, c. 33, Sched. 21, s. 8 (14).

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. 1996, c. 32, Sched., s. 33 (1).

Formal requirements

- (2) The nomination shall,
- (a) be in the prescribed form;
 - (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. 1996, c. 32, Sched., s. 33 (2); 2002, c. 17, Sched. D, s. 11.

Exception, nomination filing fee

(3) If the person was previously nominated for an office on the same council or local board in the same election and paid the nomination filing fee at that time,

- (a) clause (2) (c) does not apply; and
- (b) for the purposes of section 34 (refund) and paragraph 9 of subsection 67 (2) (expenses), the fee paid at the time of the earlier nomination shall be deemed to have been paid in connection with the later one. 1996, c. 32, Sched., s. 33 (3).

Time for filing

- (4) The nomination may be filed,
- (a) on any day 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. 1996, c. 32, Sched., s. 33 (4); 2009, c. 33, Sched. 21, s. 8 (15).

Exception for additional nominations

(5) If the number of nominations filed for an office and certified under section 35 is less than the number of persons to be elected to the office, additional nominations may be filed between 9 a.m. and 2 p.m. on the Wednesday following nomination day. 1996, c. 32, Sched., s. 33 (5); 2009, c. 33, Sched. 21, s. 8 (16).

Municipal Elections Act, 1996, [SO 1996, c. 32, Sch](#) [Current version]

Nomination day

31 Nomination day for a regular election is the fourth Friday in July in the year of the election. 2016, c. 15, s. 22.

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. 1996, c. 32, Sched., s. 33 (1).

Endorsement of nominations for council

(1.1) 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. 2016, c. 15, s. 23 (1); 2017, c. 10, Sched. 4, s. 8 (4).

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. 2016, c. 15, s. 23 (1).

Same

(1.3) The clerk is entitled to rely upon the information filed by the candidate under clause (2) (a.1), and a nomination certified by the clerk under section 35 is conclusive evidence that all conditions precedent under subsection (1.1) have been complied with. 2016, c. 15, s. 23 (1).

Exception, number of electors

(1.4) Subsection (1.1) does not apply to a nomination in a municipality in which the number of electors who were eligible to vote in the previous regular election in the municipality is less than the prescribed number. 2017, c. 10, Sched. 4, s. 8 (5).

Same

(1.5) For the purposes of subsection (1.4), the number of electors who were eligible to vote shall be the number determined from the voters' list from the previous regular election as it existed at the close of voting on voting day. 2017, c. 10, Sched. 4, s. 8 (5).

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. 1996, c. 32, Sched., s. 33 (2); 2002, c. 17, Sched. D, s. 11; 2016, c. 15, s. 23 (2); 2017, c. 10, Sched. 4, s. 8 (6).

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). 2016, c. 15, s. 23 (3).

Exception, nomination filing fee

(3) If the person was previously nominated for an office on the same council or local board in the same election and paid the nomination filing fee at that time, clause (2) (c) does not apply in connection with any subsequent campaign under paragraph 1 of subsection 88.24 (3). 2016, c. 15, s. 23 (4).

Time for filing

(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. 1996, c. 32, Sched., s. 33 (4); 2009, c. 33, Sched. 21, s. 8 (15); 2016, c. 15, s. 23 (5).

Same

(4.1) Despite clause (4) (b), if a person is present at the clerk's office on nomination day at 2 p.m. and has not yet filed a nomination, he or she may file the nomination as soon as possible after 2 p.m. 2016, c. 15, s. 23 (6).

Exception for additional nominations

(5) If the number of nominations filed for an office and certified under section 35 is less than the number of persons to be elected to the office, additional nominations may be filed between 9 a.m. and 2 p.m. on the Wednesday following nomination day. 1996, c. 32, Sched., s. 33 (5); 2009, c. 33, Sched. 21, s. 8 (16).

Contributions to candidates

88.8 (1) A contribution shall not be made to or accepted by a person or an individual acting under the person's direction unless the person is a candidate. 2016, c. 15, s. 51.

Only during election campaign

(2) A contribution shall not be made to or accepted by a candidate or an individual acting under the candidate's direction outside the candidate's election campaign period described in section 88.24. 2016, c. 15, s. 51.

Who may contribute

(3) Only the following persons may make contributions:

1. An individual who is normally resident in Ontario.
2. Subject to subsection (5), the candidate and his or her spouse. 2016, c. 15, s. 51.

Who cannot contribute

(4) For greater certainty, and without limiting the generality of subsection (3), the following persons and entities shall not make a contribution:

1. A federal political party registered under the *Canada Elections Act* (Canada) or any federal constituency association or registered candidate at a federal election endorsed by that party.
2. A provincial political party, constituency association, registered candidate or leadership contestant registered under the *Election Finances Act*.
3. A corporation that carries on business in Ontario.
4. A trade union that holds bargaining rights for employees in Ontario.
5. The Crown in right of Canada or Ontario, a municipality or a local board. 2016, c. 15, s. 51.

Non-resident candidate, spouse

(5) If not normally resident in Ontario, a candidate and his or her spouse may make contributions only to the candidate's election campaign. 2016, c. 15, s. 51.

Who may accept contribution

(6) A contribution may be accepted only by a candidate or an individual acting under the candidate's direction. 2016, c. 15, s. 51.

Contributors

(7) A contribution may be accepted only from a person or entity that is entitled to make a contribution. 2016, c. 15, s. 51.

Contributions exceeding \$25

(8) A contribution of money that exceeds \$25 shall not be contributed in the form of cash and shall be contributed in a manner that associates the contributor's name and account with the payment or by a money order signed by the contributor. 2016, c. 15, s. 51.

Exception re making information public

(9) For greater certainty, if a municipality or local board makes information available to the public on a website or in another electronic format, the provision of the information does not constitute a contribution to a candidate. 2016, c. 15, s. 51.

Same

(10) Without limiting the generality of subsection (9), the information referred to in that subsection includes the following:

1. The phone number and email address provided by the candidate in the nomination filed under section 33.
2. A hyperlink to the candidate's website. 2016, c. 15, s. 51.

Maximum contributions to a candidate's own election campaign

88.9.1 (1) A candidate for an office on a council and his or her spouse shall not make contributions to the candidate's own election campaign that, combined, exceed an amount equal to the lesser of,

(a) the amount calculated by adding,

- (i) in the case of a candidate for the office of head of council of a municipality, \$7,500 plus 20 cents for each elector entitled to vote for the office, or
- (ii) in the case of a candidate for an office on a council of a municipality other than the office of head of council, \$5,000 plus 20 cents for each elector entitled to vote for the office; and

(b) \$25,000. 2017, c. 10, Sched. 4, s. 8 (10).

Number of electors, regular election

(2) For the purposes of subsection (1), for a regular election the number of electors is the greater of the following:

1. The number determined from the voters' list from the previous regular election, as it existed on September 15 in the year of the previous election, adjusted for changes made under sections 24 and 25 that were approved as of that day.
2. The number 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 that are approved as of that day. 2017, c. 10, Sched. 4, s. 8 (10).

Same, by-election

(3) For the purposes of subsection (1), for a by-election the number of electors is the greater of the following:

1. The number determined from the voters' list from the previous regular election, as it existed on September 15 in the year of the previous election, adjusted for changes made under sections 24 and 25 that were approved as of that day.
2. The number 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). 2017, c. 10, Sched. 4, s. 8 (10).

Certificate of maximum amounts

(4) The clerk shall calculate the maximum amounts permitted by subsection (1) for each office for which nominations were filed with him or her and, subject to subsection (5), give a certificate of the applicable maximum amounts to each candidate,

- (a) in the case of a regular election, on or before September 25; and
- (b) in the case of a by-election, within 10 days after the clerk makes the corrections under subparagraph 4 iii of subsection 65 (4). 2017, c. 10, Sched. 4, s. 8 (10).

Exception

(5) If the applicable maximum amount for a candidate under subsection (1) is \$25,000, the clerk is not required to give a certificate of the applicable maximum amount to that candidate under subsection (4). 2017, c. 10, Sched. 4, s. 8 (10).

Calculation final

(6) The clerk's calculation is final. 2017, c. 10, Sched. 4, s. 8 (10).

Transition

(7) For the 2018 regular election and for any by-election that takes place after this section comes into force and before that regular election, the maximum amount determined under subsection (1) shall be determined as if paragraph 1 of subsection (2) read as follows:

1. The number determined from the voters' list from the previous election, as it existed on nomination day of the previous election, adjusted for applications under sections 24 and 25 that were approved as of that day. 2017, c. 10, Sched. 4, s. 8 (10).

Non-application of s. 88.34

(8) Section 88.34 does not apply to contributions made by a candidate for an office on a council or his or her spouse to the candidate's own election campaign. 2017, c. 10, Sched. 4, s. 8 (11).

Candidates' expenses

88.20 (1) An expense shall not be incurred by or under the direction of a person unless he or she is a candidate. 2016, c. 15, s. 58.

Only during campaign period

(2) An expense shall not be incurred by or under the direction of a candidate outside his or her election campaign period. 2016, c. 15, s. 58.

Exception, auditor's report

(3) Despite subsection (2), a candidate whose election campaign period ends as described in paragraph 2, 3 or 4 of subsection 88.24 (1) may incur expenses related to the preparation of an auditor's report under section 88.25 after the campaign period has ended. 2016, c. 15, s. 58.

Same

(4) For greater certainty, the expenses described in subsection (3) constitute expenses for the purposes of paragraph 3 of subsection 88.19 (3). 2016, c. 15, s. 58.

Who may incur expense

(5) An expense may only be incurred by a candidate or an individual acting under the candidate's direction. 2016, c. 15, s. 58.

Maximum amount

(6) During the period that begins on the day a candidate is nominated under section 33 and ends on voting day, his or her expenses shall not exceed an amount calculated in accordance with the prescribed formula. 2016, c. 15, s. 58.

Prescribed formula

(7) The formula prescribed for the purpose of subsection (6) must be written so that the amount calculated under it varies based on the number of electors entitled to vote for the office for which the candidate is nominated. 2016, c. 15, s. 58.

Exception

(8) Subsection (6) does not apply in respect of expenses described in paragraphs 3 and 5 to 9 of subsection 88.19 (3). 2016, c. 15, s. 58.

Maximum amount for parties, etc., after voting day

(9) The expenses of a candidate that are described in paragraph 6 of subsection 88.19 (3) shall not exceed an amount calculated in accordance with the prescribed formula. 2016, c. 15, s. 58.

Same

(10) The formula that is prescribed for the purposes of subsection (9) must be written so that the amount calculated under it varies based on the maximum amount determined under subsection (6) for the office for which the candidate is nominated. 2016, c. 15, s. 58.

Number of electors, regular election

(11) For the purposes of subsection (7), for a regular election the number of electors is the greater of the following:

1. The number determined from the voters' list from the previous regular election, as it existed on September 15 in the year of the previous election, adjusted for changes made under sections 24 and 25 that were approved as of that day.
2. The number 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 that are approved as of that day. 2016, c. 15, s. 58.

Same, by-election

(12) For the purposes of subsection (7), for a by-election the number of electors is the greater of the following:

1. The number determined from the voters' list from the previous regular election, as it existed on September 15 in the year of the previous election, adjusted for changes made under sections 24 and 25 that were approved as of that day.
2. The number 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). 2016, c. 15, s. 58.

Certificate of maximum amounts

(13) The clerk shall calculate the maximum amounts permitted by subsections (6) and (9) for each office for which nominations were filed with him or her and give a certificate of the applicable maximum amounts to each candidate,

- (a) in the case of a regular election, on or before September 25; and
- (b) in the case of a by-election, within 10 days after the clerk makes the corrections under subparagraph 4 iii of subsection 65 (4). 2016, c. 15, s. 58.

Calculations final

(14) The clerk's calculations are final. 2016, c. 15, s. 58.

Transition

(15) For the 2018 regular election and for any by-election that takes place after this section comes into force and before that regular election, the maximum amount determined under subsection (6) shall be determined as if paragraph 1 of subsection (11) read as follows:

1. The number determined from the voters' list from the previous election, as it existed on nomination day of the previous election, adjusted for applications under sections 24 and 25 that were approved as of that day. 2016, c. 15, s. 58.

[O. Reg. 101/97](#)

5. The following formulas are prescribed for the purpose of subsection 88.20 (6) of the Act (maximum amount):

- 1. In the case of a candidate for the office of head of council of a municipality, the amount shall be calculated by adding together \$7,500 plus 85 cents for each elector entitled to vote for the office.
- 2. In the case of a candidate for another office, the amount shall be calculated by adding together \$5,000 plus 85 cents for each elector entitled to vote for the office.
- 3. REVOKED: O. Reg. 326/16, s. 3 (2), effective September 30, 2016 (O. Gaz. October 15, 2016).

ROCCO ACHAMPONG
Applicant (Respondent in Appeal)

and ONTARIO *et al.*
Respondents (Appellants)

and CITY OF TORONTO
Respondent (Respondent in Appeal)

THE CITY OF TORONTO
Applicant (Respondent in Appeal)

and ATTORNEY GENERAL OF ONTARIO
Respondent (Appellant)

CHRIS MOISE *et al.*
applicants (Respondents in Appeal)

and ATTORNEY GENERAL OF ONTARIO
Respondent (Appellant)

and CITY OF TORONTO
Respondent (Respondent in Appeal)

COURT OF APPEAL FOR ONTARIO

FACTUM OF THE APPELLANTS

ATTORNEY GENERAL OF ONTARIO

Constitutional Law Branch
McMurtry-Scott Building
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9
Fax: (416) 326-4015

Robin K. Basu (LSO# 32742K)
Tel: (416) 326-4476
E: robin.basu@ontario.ca

Yashoda Ranganathan (LSO# 57236E)
Tel: (416) 326-4456
E: yashoda.ranganathan@ontario.ca

Aud Ranalli (LSO# 72362U)
Tel: (416) 326-4473
E: aud.ranalli@ontario.ca

Of counsel for the Appellants