Court of Appeal File No. C65861

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CITY OF TORONTO

Applicant (Respondent in appeal)

- and -

ATTORNEY GENERAL OF ONTARIO

Respondent (Appellant)

- and -

TORONTO DISTRICT SCHOOL BOARD

Intervenor (Respondent in appeal)

- and -

CANADIAN CONSTITUTION FOUNDATION, CANADIAN TAXPAYERS FEDERATION, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, FEDERATION OF CANADIAN MUNICIPALITIES

Intervenors

REPLY FACTUM OF RESPONDENT IN APPEAL, CITY OF TORONTO

May 31, 2019

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PART I – OVERVIEW

1. This factum replies to the submissions made by the intervenors Canadian Taxpayers Federation (the "CTF") and Canadian Constitution Foundation (the "CCF") in their facta.

2. Generally, the approach advocated by these entities is one of deference, caution and strict formalistic reliance on the written text of the Constitution. The City of Toronto (the "City") submits this Court should reject this approach in this case.

3. First, as noted by the intervenor Federation of Canadian Municipalities (the "FCM"), the living tree principle emphasizes the need for ongoing constitutional development and evolution such that narrow, technical approaches to constitutional interpretation should be avoided.

4. Second, this Court should not be concerned with the "floodgates" argument. This is a unique and extreme case. The Province's actions of qualitatively interfering in an existing election for the Toronto municipal Council, the sixth largest government in Canada, is unprecedented.

5. The fact that there is no case directly on point is also not surprising considering the unprecedented nature of Bill 5. This, however, should not be viewed as an obstacle for this Court. In the City's submission, there is sufficient support in both the written and unwritten principles of our Constitution to find the impugned provisions unconstitutional.

6. It should not be controversial for our courts and Canadian citizens to expect that basic principles of democracy will apply to a political legislative government such as the City of Toronto Council, which represents close to three million people and has the power to make laws

governing those citizens. Along with this should be a minimum expectation that the City's elections will be democratic and free from interference.

PART II – THE FACTS

7. The City relies on the facts stated in its principal factum dated May 6, 2019.

PART III – THE LAW

A. UNWRITTEN CONSTITUTIONAL PRINCIPLES

1) Their Use to Strike down Legislation

8. At paragraph 15 of its factum, the CTF cites ten cases which it states demonstrate that courts have "consistently rejected attempts to use unwritten constitutional principles to invalidate legislation".

9. With the exception of two cases, *Campisi v. Ontario*[1] and *J. Cote & Son Excavating Ltd. v. Burnaby (City)*,[2] discussed below, none of these cases postdates the Supreme Court of Canada's decision in *British Columbia (Attorney General) v. Christie*,[3] which it is submitted, has clarified the law.

10. In *Christie*, the Court was asked to consider the constitutionality of a tax of legal services. In doing so, it had to determine whether the rule of law embraced the principle of a general access to legal services. The Court was not interpreting any specific section of the

[1] *Campisi v. Ontario*, 2017 ONSC 2884 [*Campisi*].
[2] *J. Cote & Son Excavating Ltd. v. Burnaby (City)*, 2019 BCCA 168 [*Cote*].
[3] *British Columbia (Attorney General) v. Christie*, 2007 SCC 21 [*Christie*].

Constitution Act, 1867 or the *Constitution Act, 1982* as the basis for striking down the taxing provisions. Nonetheless, the Court had no concerns about the propriety of doing so. Although it ultimately found that the rule of law did not encompass a general right to have a lawyer, and therefore the Act in question was constitutional, it did not do so by stating that use of an unwritten constitutional principle could not strike down legislation or that it was going through the analysis of the rule of law in the alternative. In fact, the Court found the reverse was true.

11. The Supreme Court specifically stated that "[i]t is clear from a review of these principles that general access to legal services is not a currently recognized aspect of the rule of law. However, in *Imperial Tobacco*, this Court left open the possibility that the rule of law may include additional principles. It is *therefore necessary* to determine whether general access to legal services in relation to court and tribunal proceedings dealing with rights and obligations is a fundamental aspect of the rule of law" (emphasis added).[4]

12. The CTF confuses two concepts.

a) the use of unwritten constitutional principles to strike down legislation in the jurisprudence; and

b) the ***successful*** use of unwritten constitutional principles to strike down legislation in the jurisprudence.

13. The City submits that the jurisprudence is clear that unwritten constitutional principles can be used to independently strike down legislation. Whether they can be successfully used in any given case is dependent on the facts of that case. Conversely, the fact that an attempt at using unwritten constitutional principles to strike down legislation was unsuccessful does not mean

[4] *Christie*, at ¶ 21.

that an attempt is not permitted. Clearly, not every *Charter* challenge is successful, but it does not follow that *Charter* challenges are therefore not permitted. It is submitted there is no restriction as suggested by the CTF and this Honourable Court must consider whether this is a case where the unwritten constitutional principles can be used successfully.

14. Accordingly, the cases cited by the CTF, none of which is from the Supreme Court of Canada, have been overtaken by the reasoning in *Christie*.

i) Campisi

15. While it is true that Justice Belobaba in *Campisi* said, in *obiter*, that unwritten constitutional principles "do not provide an independent basis for striking down statutes",[5] he did not do so in this case. Justice Belobaba, in the court below, specifically declined to rule on this point. He found that, while he was "inclined to agree with the Province that none of these additional submissions [including on unwritten constitutional principles] can prevail on the facts herein", he made "no actual finding in this regard".[6]

16. Furthermore, at paragraph 16 of his decision in *Toronto*, Justice Belobaba states "that any such legislation must comply with the Charter (and, arguably, *any applicable unwritten constitutional norms and principles*)" (emphasis added).

17. As such, he also did not rule out such a use.

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[5] *Campisi*, at ¶ 55.
[6] *Toronto (City) v. Ontario (Attorney General)*, 2018 ONSC 5151 [*Toronto*], at ¶ 13.

ii) Cote

18. This case does not stand for the proposition that unwritten constitutional principles cannot be used to invalidate legislation.

19. First, the CTF is correct to note that this case did not involve an attack on legislation.

20. Second, the Court in *Cote* was only dealing with a specific aspect of the rule of law. It stated, at paragraph 22, "[t]he jurisprudence establishes the rule of law does not provide an independent, stand-alone *protection of access to the civil courts*". The entire discussion at paragraphs 22 to 30 of the decision was about the provenance of the concept of access to justice in the rule of law. The Court concluded, at paragraph 31, that it was tied to s. 96 of the *Constitution Act, 1867*.[7]

21. While the City submits that *Cote* was wrong in concluding that access to justice concerns could only be raised with respect to s. 96 and not the rule of law alone (*Christie* did not mention s. 96 at all), such a conclusion does not mean that unwritten constitutional principles can never be used to strike down legislation.

iii) Understanding Imperial Tobacco

22. The content of the unwritten principle of the "rule of law" is not closed. Its simplest formulation is that it embraces three principles:

a) the law is supreme over officials of the government as well as private individuals;

b) there must be an actual order of positive laws; and

[7] *Cote*, at ¶ 31.

c) state officials' actions must be legally founded.[8]

23. This formulation of the rule of law (the "Rule of Law *Simpliciter*") is taken from both *Reference re: Manitoba Language Rights*[9] and *Reference re: Secession of Quebec*.[10]

24. In paragraphs 59 and 60 of *Imperial Tobacco*, the Supreme Court indicates that "*[s]o understood*, it is difficult to conceive of how the rule of law could be used as a basis for invalidating legislation such as the Act based on its content"[11] (emphasis added) and that "the government action constrained by the rule of law *as understood* in [*Manitoba Language Rights*] and [*Quebec Secession Reference*] is, by definition, usually that of the executive and judicial branches. Actions of the legislative branch are constrained too, but only in the sense that they must comply with legislated requirements as to manner and form"[12] (emphasis added).

25. It is clear that, when the Court made these statements, it was only referring to the Rule of Law *Simpliciter*. It is therefore understandable that such a formulation of the rule of law is content neutral and affects the executive branch (which will implement the law) and the judicial branch (which will interpret the law) of government. The only way the legislative branch would be implicated is by form and manner restrictions because those would then be part of the positive law that the government act of legislating would be restrained by.

26. The fact that these paragraphs refer to the Rule of Law *Simpliciter* is made even clearer when the Court then goes on to discuss other "conceptions of the rule of law" that were raised

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[8] *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 [*Imperial Tobacco*], at ¶ 58.
[9] *Reference re: Manitoba Language Rights*, [1985] S.C.J. No. 36 [*Manitoba Language Rights*].
[10] *Reference re: Secession of Quebec*, [1998] S.C.J. No. 61 [*Quebec Secession Reference*].
[11] *Imperial Tobacco*, at ¶ 59.
[12] *Imperial Tobacco*, at ¶ 60.

(i.e. that legislation must be prospective, general in character, not confer special privileges on government, and ensure a fair civil trial). Those conceptions of the rule of law were found not to have constitutional protection and thus the challenge ultimately failed.[13] Again, nowhere does the Court say that the rule of law (or unwritten constitutional principles generally) can never be used to strike down legislation. It only held that the Rule of Law *Simpliciter* and these other conceptions of the rule of law did not lead to the Act's invalidity.

27. As indicated above, this point was clarified in *Christie* when the Court acknowledged that there could be other aspects of the rule of law that could be used to strike down legislation.

2) The Strength of Unwritten Constitutional Principles

28. Unwritten Constitutional Principles have in fact been used quite forcefully in the constitutional context. They are far from being weak and incapable of normative force other than as an aid to interpretation, as suggested by the CTF.

29. For example, at paragraph 12 of its factum, the CTF quotes from McLachlin, J. (as she then was) in *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of the Assembly)* about concerns of too freely importing unwritten concepts into a constitutional regime that has culminated in a written constitution.[14]

30. In that very case, Justice McLachlin ultimately finds that the "House of Assembly of Nova Scotia has the constitutional power to exclude strangers from its chamber on the basis of

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[13] *Imperial Tobacco*, at ¶ 63-68.
[14] *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] S.C.J. No. 2 [*New Brunswick Broadcasting*], at ¶ 112.

the preamble to the Constitution, historical tradition, and the pragmatic principle that the legislatures must be presumed to possess such constitutional powers as are necessary for their proper functioning".[15] These powers fall "within the group of principles constitutionalized by virtue of [the preamble to the *Constitution Act, 1867*]. The principles constitutionalized in this manner were seen to be *unwritten and unexpressed*" (emphasis added).[16]

31. Indeed, those unwritten powers were given such constitutional force in *New Brunswick Broadcasting* that they could successfully defend against a *Charter* challenge because "one part of the Constitution cannot abrogate another part of the Constitution".[17]

3) Judicial Independence

32. At paragraph 18 of its factum, the CTF suggests that the unwritten constitutional principle of judicial independence is operationalized by s. 11(d) of the *Charter* and s. 96 of the *Constitution Act, 1867*.

33. This is not correct and is clearly discussed by the unanimous Supreme Court in *Ell v. Alberta*.[18] There, the Court specifically indicates that s. 11(d) of the Charter and ss. 96 to 100 of the *Constitution Act, 1867* did not apply to the justices of the peace respondents.[19] Indeed, the Court found that the principle of judicial independence "extends beyond the limited scope of [these] provisions".[20]

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[15] *New Brunswick Broadcasting*, at ¶ 109.
[16] *New Brunswick Broadcasting*, at ¶ 113.
[17] *New Brunswick Broadcasting*, at ¶ 144.
[18] *Ell v. Alberta*, 2003 SCC 35 [*Ell*].
[19] *Ell*, at ¶ 18.
[20] *Ell*, at ¶ 18.

34. Although the question referred to the Court in *Ell* may have included s. 11(d) of the Charter, the Court specifically found, given the nature of the role of the justices of the peace in question, that the section was not engaged.[21]

35. The preamble to the *Constitution Act, 1867*,[22] on the other hand, can be used as the gateway to the unwritten constitutional principles.[23]

4) Democracy

36. Principles of democracy are reflected in the written text of the Constitution, but this does not necessarily mean the written text is an exhaustive enunciation of democratic principles.

37. Support is found in s. 1 of the *Charter* which uses the words "a free and democratic society". In the landmark decision of *R. v. Oakes*, former Chief Justice Dickson emphasized that "Canadian society is to be free and democratic":

> A second contextual element of interpretation of s. 1 is provided by the words "free and democratic society". Inclusion of these words as the final standard of justification for limits on rights and freedoms refers the Court to the very purpose for which the Charter was originally entrenched in the Constitution: Canadian society is to be free and democratic. The Court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society. The underlying values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the Charter and the ultimate standard against which a limit on a right or freedom must be shown, despite its effect, to be reasonable and demonstrably justified.[24]

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[21] *Ell*, at ¶ 18, 54.
[22] Preamble to the *Constitution Act, 1867*, City Reply Factum, Sch "B".
[23] See, for example, *Quebec Secession Reference* at ¶ 51, and *New Brunswick Broadcasting*, at ¶ 116.
[24] *R. v. Oakes*, [1986] S.C.J. No. 7, at ¶ 64.

38. Contrary to the submissions of the CTF, the City has not asked that s. 3 of the *Charter* apply to it. Rather, the City suggests that s. 3 jurisprudence can be looked at when determining the content of the unwritten constitutional principle of democracy.

39. As acknowledged in *Reference Re Provincial Electoral Boundaries (Sask)*,[25] the inclusion of s. 3 in the *Charter* did not invent or give birth to a right not previously enjoyed.[26]

40. In this case, the Province has granted the City a democratic election to select its council members. The City is a government with the power to enact laws of general application that will apply to all those within its jurisdiction. It provides the functions of government. The City's residents are represented by their Councillors, consistent with our representative democratic system.

41. Indeed, the City is a sophisticated democratic government that represents a large population and provides significant services to its residents and others.

42. As a result, in this context there are certain minimum requirements flowing from the principle of democracy that apply to the Toronto election. These include that:

a) the election should be fair and free from interference;

b) the qualitative structure of the election should not be changed and interfered with in the middle of the election; and

c) the citizens of Toronto have a right to effective representation.

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[25] *Reference Re Provincial Electoral Boundaries (Sask)*, [1991] S.C.J. No. 46 [*Carter*].
[26] *Carter*, at ¶ 87.

43. The City is a very different entity that any of the ones referred to in paragraph 30 of the CTF's factum. The elections of Toronto's Councillors cannot be compared to the elections of condominium boards or the Board of Trustees of the Art Gallery of Ontario. There is clearly a qualitative difference between these kinds of boards and a sophisticated municipal government such as Toronto City Council that provides public services of a broad nature, has taxing powers and enacts laws that govern close to three million people.

44. There is nothing in the text of the Constitution that is contrary to, or in conflict with, the submissions made by the City. Rather, the written and unwritten principles reflective of democracy support the City's position that there are certain minimum expectations that apply to a democratic election.

45. The CTF refers to the principle of Parliamentary Sovereignty at paragraph 25 of its factum and referred to the Supreme Court of Canada's decision in *Babcock v. Canada (Attorney General)*.[27] In that case, the Court found that the legislation was not in fact contrary to the unwritten constitutional principles that were relied upon to seek to invalidate it: the rule of law, the independence of the judiciary, and the separation of powers. Justice McLachlin explained it this way: "Although the unwritten constitutional principles *are capable of limiting government actions*, I find that they do not do so in this case"[28] (emphasis added). The government action referred to here is obviously legislative action as the entire discussion was about whether the unwritten principles could be used to strike down the law in question.

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[27] *Babcock v. Canada (Attorney General)*, 2002 SCC 57 [*Babcock*].
[28] *Babcock*, at ¶ 54.

46. The discussion about Parliamentary Sovereignty was in the context of determining whether the specific law did indeed run counter to the unwritten principles advanced in that case.

47. It cannot be the case that Parliamentary Sovereignty will always trump as then no constitutional challenge could ever be successful and McLachlin, J. would not have made the statement that she made referenced above. The Supreme Court has been clear that Canada is a system of *constitutional*, not *Parliamentary* supremacy.[29]

5) Section 52 of the Constitution

48. It is submitted that the issue, raised by the intervenor CCF, of whether s. 52(1) applies to strike down legislation based on unwritten constitutional principles is not an issue that courts are concerned with. It is obvious that a law that is inconsistent with the Constitution should not be allowed to stand. None of the courts in *Ell*, *Christie*, *Babcock* or *Polewsky v. Home Hardware Stores Ltd.*[30] makes mention of this issue at all or suggests that there is no point in analyzing unwritten constitutional principles to strike down the legislation at issue in those cases because s. 52(1) would not apply anyway.

49. Furthermore, the cases cited by the CCF in paragraph 38 of its factum, *Imperial Tobacco* and *Campisi*, have been discussed above, and the paragraphs cited do not stand for the proposition that a law cannot be struck as being inconsistent with an unwritten constitutional principle.

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[29] *Quebec Secession Reference*, at ¶ 72.
[30] *Polewsky v. Home Hardware Stores Ltd.*, [2003] O.J. No. 2908 (Div Ct), leave to appeal granted [2004] O.J. No. 954. It appears that the Province did not pursue the appeal and instead amended the *Small Claims Court Rules*.

50. Alternatively, resort could be had to the preamble of the *Constitution Act, 1867*.[31]

B. SECTION 2(b) OF THE *CHARTER*

1) Approach to s. 2(b) Analysis

51. The CCF suggests that this Honourable Court should adopt a different approach to s. 2(b) analysis.

52. It provides no jurisprudential support for such a position.

53. In fact, the Ontario Court of Appeal, in *McAteer v. Canada (Attorney General)*[32] confirmed that the test laid down by the Supreme Court of Canada in *Irwin Toy*[33] remains the test in s. 2(b) cases (where the location of the expression is not an issue, such as in this case). This is the test that Justice Belobaba correctly followed.

2) Scope of Charter Rights

54. Unlike what the CCF states in paragraph 32 of its factum, this is not a case of expanding the scope of one *Charter* right by another. The City does not seek to have s. 3 apply to municipalities. The City acknowledges that s. 3 does not apply to it. It is not demanding that a right to vote be accorded to residents of all municipalities.

55. Furthermore, this is not a case where the interpretation of the scope of s. 2(b) given by Justice Belobaba was in conflict with an express provision of the *Charter*. Section 3 does not say

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[31] Preamble to the *Constitution Act, 1867*, City Reply Factum, Sch "B".
[32] *McAteer v. Canada (Attorney General)*, 2014 ONCA 578.
[33] *Irwin Toy Ltd. v. Québec (Attorney General)*, [1989] 1 S.C.R. 927 [*Irwin Toy*].

that residents of municipalities are forbidden from receiving the right to vote in a municipal election.

56. The interpretation provided by Justice Belobaba to the scope of s. 2(b) is necessarily contextualized, given the nature of the expression involved. He was alive to the interests that freedom of expression was meant to protect and that voting was one of the most important forms of expression.

57. The CTF correctly notes that *Charter* protections can overlap. It cites *R. v. K.M.* and *R. v. Rodgers* in paragraph 33 of its factum to suggest that "specificity should prevail over generality where such overlap exists". This is not what those cases found. Rather, the courts held that it was *unnecessary* to analyze the constitutional issue under both s. 7 and s. 8 because the analysis under s. 8 would make "any s. 7 analysis redundant".[34] Specifically, the majority of the Supreme Court in *Rodgers* found that both s. 7 and s. 8 were triggered. The implication is of course that the exact same analysis under s. 7 could have been made.

58. Here, there is no such redundancy.

59. At paragraph 34 of its factum, CCF refers to the *Harper*[35] and *Thomson Newspapers*[36] cases for the proposition that one *Charter* right could not expand another. Neither case said this. Rather, both cases dealt with how to reconcile competing rights and how, therefore, to give full effect to one *Charter* right when it potentially came into conflict with another.

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[34] *R. v. Rodgers*, 2006 SCC 15, at ¶ 23; *R. v. K.M.*, 2011 ONCA 252, at ¶ 72-73.
[35] *Harper v. Canada (Attorney General)*, 2004 SCC 33 [*Harper*].
[36] *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] S.C.J. No. 44 [*Thomson Newspapers*].

60. In *Thomson Newspapers*, the potential conflict was between freedom of expression and the right to vote. The law in question dealt with a blackout period close to the election for the publication of the results of election opinion polls. In the end, the Court chose not to discuss the limits of s. 3 in this context because it had already found a breach under s. 2(b) and there was insufficient evidence as to the "relationship between the kind of information banned and the integrity of the election process".[37] In other words, it may be that, in order to protect the integrity of the election process under s. 3, some limits on the publication of election poll results were necessary, whereas freedom of expression would arguably require no such limits.

61. In *Harper*, the law in question involved, *inter alia*, advertising spending limits and the ban on election advertising on polling day. The tension was once again between freedom of expression, which arguably should allow for unlimited third party election advertising, and the s. 3 right to meaningfully participate in the electoral process, which included the citizen's right to vote in an informed manner, which might be undermined by unlimited third party election advertising. Because the rights potentially conflicted, it was important for the Court to establish a proper limit to each right so as to allow the other right to properly function. This time, the Court resolved the conflict by finding that, while equality in political discourse was necessary under s. 3, it did not guarantee a citizen's right to unlimited information. In other words, some form of spending limits were necessary. To constitute an infringement, however, spending limits would have to restrict information in such a way as to undermine the right of citizens to meaningfully

[37] *Thomson Newspapers*, at ¶ 84.

participate in the political process and to be effectively represented.[38] Here, the spending limits in question did not do so and so s. 3 was not infringed.

62. Similarly, the advertising ban on polling day was also found not to infringe s. 3 because the ban did not have an adverse impact on the information available to voters,[39] even though it obviously infringed s. 2(b).

63. As the majority explained in *R. v. Mills*,[40] citing Lamer, C.J. in *Dagenais*, "[w]hen the protected rights of two individuals come into conflict ... Charter principles require a balance to be achieved that fully respects the importance of both sets of rights".[41] It "illustrates the importance of interpreting rights in a contextual manner – not because they are of intermittent importance but because they often inform, and are informed by, other similarly deserving rights or values at play in particular circumstances".[42]

64. So, even in cases where there are conflicting *Charter* rights, which this case is not, the Courts are able to look at one *Charter* right to inform the content of another and a contextual analysis is necessary. But because rights are competing, the exercise is done with a view of finding the limit of one *Charter* right so as to minimize its conflict with the other.

65. In this case, there is no conflict or potential conflict between *Charter* rights. Rather than an interpretation that conflicted with s. 3 of the *Charter*, Justice Belobaba interpreted the

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[38] *Harper*, at ¶ 72-73.
[39] *Harper*, at ¶ 130.
[40] *R. v. Mills*, [1999] S.C.J. No. 68 [*Mills*].
[41] *Mills*, at ¶ 61.
[42] *Ibid*.

expression in *this case* in a manner that was consistent with the jurisprudence on s. 3 "so that the Constitution operates as an internally consistent harmonious whole".[43]

PART IV – ORDER SOUGHT

66. The City seeks the same relief set out in its principal factum dated May 6, 2019.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this Thirty-first day of May, 2019.

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Of counsel for the City of Toronto

[43] *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, at ¶ 25.

SCHEDULE "A" – LIST OF AUTHORITIES

1 *Campisi v. Ontario*, 2017 ONSC 2884

2 *J. Cote & Son Excavating Ltd. v. Burnaby (City)*, 2019 BCCA 168

3 *British Columbia (Attorney General) v. Christie*, 2007 SCC 21

4 *Toronto (City) v. Ontario (Attorney General)*, 2018 ONSC 5151

5 *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49

6 *Reference re: Manitoba Language Rights*, [1985] S.C.J. No. 36

7 *Reference re: Secession of Quebec*, [1998] S.C.J. No. 61

8 *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] S.C.J. No. 2

9 *Ell v. Alberta*, 2003 SCC 35

10 *R. v. Oakes*, [1986] S.C.J. No. 7

11 *Reference Re Provincial Electoral Boundaries (Sask)*, [1991] S.C.J. No. 46

12 *Babcock v. Canada (Attorney General)*, 2002 SCC 57

13 *Polewsky v. Home Hardware Stores Ltd.*, [2003] O.J. No. 2908 (Div Ct)

14 *McAteer v. Canada (Attorney General)*, 2014 ONCA 578

15 *Irwin Toy Ltd. v. Québec (Attorney General)*, [1989] 1 S.C.R. 927

16 *R. v. Rodgers*, 2006 SCC 15

17 *R. v. K.M.*, 2011 ONCA 252

18 *Harper v. Canada (Attorney General)*, 2004 SCC 33

19 *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] S.C.J. No. 44

20 *R. v. Mills*, [1999] S.C.J. No. 68

21 *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59

SCHEDULE "B" – RELEVANT STATUTES

1. *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3

(Preamble)

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith

(29th March 1867)

Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America:

[. . .]

Court of Appeal File No. C65861

CITY OF TORONTO Applicant (Respondent in appeal)	and	ATTORNEY GENERAL OF ONTARIO Respondent (Appellant)			Superior Court File No. CV-18-00603797-00
ROCCO ACHAMPONG Applicant (Respondent in appeal)	and	ONTARIO Respondents (Appellants)	and	CITY OF TORONTO Respondent (Respondent in appeal)	Superior Court File No. CV-18-00602494-00
CHRIS MOISE et al. Applicants (Respondents in appeal)	and	ATTORNEY GENERAL OF ONTARIO Respondent (Appellant)	and	CITY OF TORONTO Respondent (Respondent in appeal)	Superior Court File No. CV-18-00603633-00

COURT OF APPEAL FOR ONTARIO
Proceeding Commenced at Toronto

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