

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

**CHRIS MOISE and ISH ADERONMU and PRABHA KHOSLA on her own behalf and on
behalf of all members of WOMEN WIN TORONTO**

Applicants

- and -

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

Respondents

APPLICATION under Rule 14.05(3)(g.1) of the *Rules of Civil Procedure*, RRO 1990, Reg 194

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PART I OVERVIEW

1. The enactment, without any prior notice or consultation, of the *Better Local Government Act, 2018*¹ (“Bill 5”) in the middle of the municipal election campaign in the City of Toronto (the “City”), not only represents a drastic, unfair and unprecedented change to the previously established “rules of the game” for electing representatives for Canada’s largest municipal government, but also substantially interferes with constitutionally protected expressive, associational and equality rights and freedoms.
2. By precipitously altering the rules of the game, Bill 5 infringes the fundamental rights and freedoms of candidates, groups and organizations with a participative interest in the election campaign and its results, as well as the rights and freedoms of electors, contrary to the *Canadian Charter of Rights and Freedoms* (the “Charter”). As set out below, Bill 5 substantially interferes with and reduces meaningful and constitutionally protected expressive and associational participation in an ongoing democratic process, and does so in a manner which has a disproportionate and discriminatory impact on racialized, women and LGBT candidates. Indeed, while the breach of each of ss. 2(b), 2(d) and 15 is demonstrable individually, in the context of Bill 5, these unjustified infringements inform each other and are interconnected and interrelated.
3. In the Applicants’ submission, where the 2018 Toronto municipal boundaries were finally established and the campaign commenced well in advance of the enactment of Bill 5, it is a violation of ss. 2(b), 2(d) and 15 of the *Charter*, as informed by the fundamental constitutional principles of democracy, respect for minorities and the rule of law, for legislation to change boundaries and reduce the number of wards from 47 to 25 – with consequential impacts on campaign finance rules – and compress and amend the timelines for election campaigns.

¹ SO 2018, c 11.

4. In short, the Applicants' submissions can be summarized as follows:
 - a) meaningful expressive and associational election-related activity can only take place in the context of a fair election, i.e. one in which the rules and boundaries are known well in advance, so that individual and groups can plan, decide whether and where to run for office, who to support, how to organize, raise funds, solicit volunteers, develop communications and literature, and engage in myriad other election-related associational and expressive activities;
 - b) it is not possible to have a fair election, respectful of and compliant with the constitutionally protected expressive and associational activity embedded in municipal elections, if the election rules and boundaries are changed in the middle of an election;
 - c) by making these changes, the effect of Bill 5, as the evidence demonstrates, undermines expressive and associational activity and does so in a manner that has a disproportionately discriminatory effect on disadvantaged groups protected by s 15.

PART II FACTS

A. The Applicants

5. Chris Moise is a candidate for City Council in Ward 25.² He identifies as a Black openly gay man and chose to register to run in Ward 25 because it was an open race, with no incumbent, and included the Gay Village constituency.³ Moise assembled a campaign team, left his job, hired a manager for the business he owns, sold his home and relocated within the ward boundaries.⁴ Since the commencement of the campaign period, he has engaged in extensive outreach and canvassing based on the Ward 25 boundaries.⁵ Moise's decision to run in the 2018 election, and his campaign planning and activities, were all undertaken in reliance on the ward

² All references to ward numbers are to the ward numbers that were in place immediately prior to Bill 5, unless otherwise indicated.

³ Application Record of Chris Moise, Ish Aderonmu, and Prabha Khosla, on her own behalf and on behalf of all members of Women Win TO ["Moise Application Record"], Tab 3, Affidavit of Chris Moise sworn August 20, 2018 ["Moise Affidavit"] at paras 2, 13-15.

⁴ *Ibid* at paras 17-18.

⁵ *Ibid* at paras 19-21.

boundaries that were established well in advance of and prior to the enactment of Bill 5.

6. Ish Aderonmu is an elector in the 2018 municipal election. He is an active volunteer in the campaign of Waleed Khogali, who registered to run in Ward 23. Aderonmu actively participated in Khogali's election planning committee, and engaged in canvassing in Ward 23.⁶

7. Prabha Khosla is an elector in the 2018 municipal election who has worked to end the exclusion of girls' and women's voices from municipal politics in Toronto.⁷ In 2004 she founded the Toronto Women's Call to Action, and in 2017 became involved in Women Win TO ("WWTO").⁸ WWTO has worked to equip women to run successful campaigns for City Council, and several of its participants are candidates in the 2018 Toronto municipal election.⁹

B. Toronto City Council

8. Toronto is governed by a City Council that oversees a wide range of municipal services and votes on virtually every aspect of City governance.¹⁰ The members of City Council are currently not nearly as diverse as the population of Toronto at large, with women, racialized and LGBT communities all significantly underrepresented.¹¹

9. Prior to August 15, 2018, Toronto City Council had the authority to determine its own

⁶ Moise Application Record, Tab 4, Affidavit of Ish Aderonmu sworn August 20, 2018 ["Aderonmu Affidavit"] at paras 4, 6-7, 14.

⁷ Moise Application Record, Tab 5, Affidavit of Prabha Khosla sworn August 18, 2018 ["Khosla Affidavit"] at paras 1-2, 9.

⁸ *Ibid* at paras 8, 19.

⁹ *Ibid* at paras 30-34; Moise Application Record, Tab 11, Affidavit of Megann Willson sworn August 21, 2018 ["Willson Affidavit"] at paras 7-8, 11; Moise Application Record, Tab 12, Affidavit of Chiara Padovani sworn August 21, 2018 ["Padovani Affidavit"] at paras 1, 12-13; Moise Application Record, Tab 14, Affidavit of Cheryl Lewis-Thurab sworn August 21, 2018 ["Lewis-Thurab Affidavit"] at paras 1, 6-10.

¹⁰ Moise Application Record, Tab 8, Affidavit of Mariana Valverde sworn August 20, 2018 ["Valverde Affidavit"] at paras 7-16, 19-23.

¹¹ Moise Application Record, Tab 6, Affidavit of Myer Siemiatycki sworn August 21, 2018 ["Siemiatycki Affidavit"] at paras 6-7, 10; Khosla Affidavit, *supra* at para 10; Aderonmu Affidavit, *supra* at para 8; Moise Affidavit, *supra* at para 30; Lewis-Thurab Affidavit, *supra* at paras 12-13.

ward boundaries and the composition of City Council.¹² Since 2000, the City has been divided into 44 wards with a single Councillor elected in each ward. In 2013 Council retained an independent team of consultants to conduct the Toronto Ward Boundary Review.¹³ This process considered numerous ward boundary options, including mirroring the electoral districts used for provincial and federal elections (25 wards), an option which was soundly rejected.¹⁴ With By-Law 464-2017, in November 2016, City Council increased the number of wards from 44 to 47.¹⁵ This option not only best ensured voter parity as the population of various parts of the City changed, but also took into account the locations of various communities of interest – including racialized and LGBT communities – and made efforts to adjust boundaries so that these groups were not artificially divided amongst multiple wards.¹⁶ The by-laws implementing the 47-ward structure were largely upheld following appeals in 2017 to the Ontario Municipal Board.¹⁷

C. The 2018 Municipal Election and Bill 5

10. Pursuant to the provisions of the *Municipal Election Act* then in force,¹⁸ the 2018 municipal election was scheduled for October 22, 2018. The official 2018 campaign period began on May 1, 2018, and registrations closed on July 27, 2018. In total, 292 active candidates registered to run for City Councillor across the 47 wards.¹⁹ The field of candidates for the 2018

¹² *City of Toronto Act*, SO 2006, c 11, Sched A, ss 127-128.

¹³ Siemiatycki Affidavit, *supra* at para 12

¹⁴ Siemiatycki Affidavit, *supra* at para 17 and Exhibit “B”.

¹⁵ Siemiatycki Affidavit, *supra* at paras 19-20; Affidavit of Giuliana Carbone sworn August 22, 2018, City of Toronto Application Record, Tab 4 (“Carbone Affidavit”) Exhibits “O” and “P”

¹⁶ Siemiatycki Affidavit, *supra* at para 14.

¹⁷ With the exception of a minor change in one ward boundary. Leave to appeal the decision of the Board (now known as the Local Planning Appeal Tribunal), *Di Ciano v Toronto (City)*, 2017 CanLII 85757 (ON LPAT), was denied by the Divisional Court: *Natale v City of Toronto*, 2018 ONSC 1475.

¹⁸ *Municipal Elections Act 1996*, SO 1996, c 32, Sched, s 5.

¹⁹ City of Toronto Application Record, Tab 3, Affidavit of Fiona Murray affirmed August 22, 2018 (“Murray Affidavit”), paras 6 and 16

election was diverse, including a significant number of women, racialized and LGBT persons.²⁰

11. On July 30, 2018, halfway through the campaign period, the Minister of Municipal Affairs and Housing introduced Bill 5, which made significant amendments to the *City of Toronto Act*, the *Municipal Act*,²¹ and the *Municipal Elections Act* that fundamentally altered the already in-progress electoral campaign. In particular, Bill 5, which received Royal Assent on August 14, 2018, imposed the provincial/federal electoral district model that had been soundly rejected by both the Ward Boundary Review and by Toronto's elected City Councillors. It also reopened and extended the nomination period until September 14, 2018.²² Candidates for City Council were notified they were required to re-register in one of the 25 new wards.²³

PART III THE LAW

A. Bill 5 Violates Section 2(b)'s Guarantee of Freedom of Expression

12. Section 2(b) of the *Charter* protects against legislation that interferes with expressive activity. In a s. 2(b) claim, the Court asks two questions: first, whether the activity in question falls within the scope of freedom of expression, and secondly, whether the purpose or effect of the legislation is to interfere with that expression.²⁴ On the first question, Courts have favoured a very broad interpretation of expression. Any activity that seeks to convey meaning is *prima facie* protected by s. 2(b),²⁵ subject only to very limited exceptions, such as actual violence.²⁶

²⁰ Siemiatycki Affidavit, *supra* at para 29.

²¹ SO 2001, c 25.

²² Siemiatycki Affidavit, *supra* at para 32; Moise Application Record, Tab 11, Affidavit of Megann Willson sworn August 21, 2018 ["Willson Affidavit"] at para 17

²³ Aderonmu Affidavit, *supra*, at para 14

²⁴ *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 978.

²⁵ *Ibid* at 970; *R v Zundel*, [1992] 2 SCR 731 at 753.

²⁶ *Montréal (City) v 2952-1366 Québec Inc.*, 2005 SCC 62 at paras 56, 60.

13. The myriad activities that surround municipal elections are paradigmatic expressive acts. The Supreme Court has consistently recognized that freedom of expression is of crucial importance in a democratic society²⁷ and that the political process lies at the very core of the values that s. 2(b) guarantees.²⁸ As Dickson C.J. explained, “the connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy.”²⁹ Indeed, the Supreme Court has commented that it is “difficult to imagine a guaranteed right more important to a democratic society.”³⁰

14. Thus, standing for office, seeking to represent a particular constituency, speaking with electors, holding rallies, soliciting donations, and asking for support are not merely expressive acts, but expression that lies at the core of s. 2(b). Equally so, participating in political discourse, expressing one’s own concerns to candidates, providing financial or other support for those running for office, and casting a ballot are fundamental expressive acts that undeniably fall within the protections of s. 2(b) of the *Charter*.³¹

15. The fundamental issue in this case is whether Bill 5, in either its purpose or in its effects, interferes with these expressive activities. Viewed realistically, and in both the legal and factual context, the only tenable conclusion is that it does. At the very least, as set out below, the effect of Bill 5 is to restrict fundamental political expressive activity at the heart of the core values underlying freedom of expression, namely, participating in social and political decision making;

²⁷ *Libman v. Quebec (AG)*, [1997] 3 SCR 569 [*Libman*] at para 28, and cases cited therein.

²⁸ *Edmonton Journal v Alberta (Attorney General)*, [1989] 2 SCR 1326 at 1355-56; *Zundel, supra* at 752-53

²⁹ *R v Keegstra*, [1990] 3 SCR 697 at 763-64.

³⁰ *Edmonton Journal, supra*, at 1336 per Cory J.

³¹ *Harper v Canada (Attorney General)*, 2004 SCC 33 at paras 15, 20; *Taman v Canada (Attorney General)*, 2015 FC 1155 at para 41.

promoting, seeking, and attaining truth; and fostering individual self-fulfillment.³²

16. The legal context includes the observation that the scope and application of s. 2(b) must be informed by both written and unwritten portions of the Constitution. With respect to written provisions, s. 2(b) is informed by other *Charter* rights, including s. 2(d) (association),³³ s. 3 (voting rights),³⁴ and s. 15 (equality).³⁵ This context is significant because, as described in more detail below, Bill 5 implicates all of these interests through its impact on the expressive rights of both candidates and electors.³⁶ It interferes with the expressive capabilities of groups; undermines the expressive value directed towards electoral ends; and impairs the ability of some groups to express themselves more significantly than others.

17. The legal context also extends to unwritten portions of the constitution, most critically the principles of democracy, constitutionalism and the rule of law, and respect for minorities. These principles “assist in the interpretation of the text and the delineation of spheres of jurisdiction, the scope of rights and obligations, and the role of our political institutions.”³⁷ Moreover, the Supreme Court has applied these principles, when read together with other (written) sections of the Constitution, to determine the validity of legislative acts.³⁸

18. The factual context in which Bill 5 was passed is equally critical. Bill 5 did not merely amend how municipal elections in Toronto would be handled in the future. Rather, it changed the

³² *Irwin Toy, supra* at 976.

³³ *Libman, supra* at para 37, *Canada (Attorney General) v Somerville*, 1996 ABCA 217 at para 27.

³⁴ *Harper, supra* at para 13.

³⁵ *Haig v Canada (Chief Electoral Officer)*, [1993] 2 SCR 995 at 1041-42.

³⁶ See, eg, *Moise Affidavit, supra* at paras 24, 28-30; *Siemiatycki Affidavit, supra* at paras 25, 32-36, 49-52; *Khosla Affidavit, supra* at paras 35-45; *Affidavit of Chiara Padovani, Applicant's Record, Tab 12* at paras 17, 19-23; *Affidavit of Jamaal Myers, Applicant's Record, Tab 13* at paras 24-29.

³⁷ *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 52.

³⁸ *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, [2014] 3 SCR 3.

rules of the game midway, thereby disrupting settled expectations, imposing new and varied requirements on candidates and their supporters, and restricting, impairing and actually eliminating the ability of individuals to meaningfully participate in the political process.³⁹

19. Such a sudden change to an ongoing election is fundamentally at odds with both the written and unwritten aspects of the constitution. For example, and as explained in more detail below, to the extent that such a change has a greater impact on the abilities of some communities – such as sexual or ethnic minorities – to meaningfully engage in expressive conduct through effective political activities, the legislation not only has a s. 2(b) impact, but also implicates equality rights under s. 15 and the unwritten principle of respect for minorities.

20. Similarly, such a change is fundamentally in conflict with the rule of law. One of the primary virtues of the rule of law is that it permits members of society to know the rules to which they must adhere, and to govern themselves accordingly.⁴⁰ Combined with the principle of democracy, the rule of law guarantees “an orderly framework within which people may make political decisions”.⁴¹ Bill 5 undermined the ability of all Torontonians to benefit from such ordered deliberation.

21. Meaningful expression in any election process requires that the rules for running for office and campaigning through expressive actions aimed at electors – including electoral boundaries and spending limits – be set out in advance. Unforeseen changes, like those brought

³⁹ Willson Affidavit, *supra* at paras 12-20; Padovani Affidavit, *supra* at paras 14-18; Lewis-Thurab Affidavit, *supra* at paras 16-19; Myers Affidavit, *supra* at paras 11, 14, 24-27, 29-30; Moise Application Record, Tab 10, Affidavit of Moya Beall sworn August 21, 2018 [“Beall Affidavit”] at para 29; Application Record of Rocco Achampong, Tab 5, Affidavit of Rocco Achampong, sworn August 22, 2018 at paras 1, 3, 13-16, 18-23 and Exhibit “B”.

⁴⁰ See eg Joseph Raz, “The Rule of Law and its Virtue” in *The Authority of Law: Essays on Law and Morality* (Oxford: Oxford University, 1979) 210 at 214.

⁴¹ *Secession Reference*, *supra* at para 78

in by Bill 5, deny electors and candidates alike the ability to plan their expressive activities, thereby substantially interfering with – and indeed rendering useless or impossible – both existing and future political expression.

22. These features fundamentally distinguish this case from election cases like *Haig* and *Baier*,⁴² neither of which dealt with changing electoral rules mid-election. The Applicants recognize that s. 2(b) has been largely – though not exclusively – conceptualized as a negative rather than a positive entitlement. As L’Heureux-Dubé J. explained in *Haig*, “The traditional view, in colloquial terms, is that the freedom of expression contained in s. 2(b) prohibits gags, but does not compel the distribution of megaphones.”⁴³ However, once the state has entered the field and provided an electoral process, it may not suddenly change the rules of how speakers are permitted to campaign mid-election.⁴⁴ This not a claim of under-inclusion and exclusion from any particular platform, but rather a claim for protection from government interference with the ongoing use of the platform that all participants in the political process – candidates and electors alike – have accepted and relied on.

23. To the extent the Respondent Attorney-General relies on *Haig* and *Baier* to argue that the applicants are merely seeking access to a platform for expression which the legislature is under no obligation to provide, the Applicants respond as follows:

- a) in *Haig* and *Baier*, the Applicants claim was that they had been under-inclusively denied access to a platform or forum made available to others. The Supreme Court held that

⁴² *Baier v Alberta*, 2007 SCC 31.

⁴³ *Haig*, *supra* at 1035.

⁴⁴ Notably, in contrast to the non-binding referendum at issue in *Haig*, municipal elections are far more than a mere device for gathering opinions; they determine effective representation at the primary level of government for electors. The results are binding, and will determine matters of local governance for four years.

where the government creates such a means, it is generally entitled to determine which speakers are allowed to participate, and that a speaker excluded from such means does not have a s. 2(b) right to participate unless she or he meets the criteria for imposing a positive obligation on government set out in *Baier*. However, to the extent that voting for municipal government can even be reduced to being a mere platform, the substance of the complaint in this case is that Bill 5 has the effect of interfering with constitutionally protected expressive activity in relation to a platform made available to candidates and electors (including the Applicants), and indeed one that has always been made available to them. There is a fundamental difference between seeking to impose a constitutional obligation on government to provide individuals with access to a particular platform for expression, on the one hand, and protecting the underlying freedom of expression of those who are otherwise free to participate in expression on that platform, on the other hand.⁴⁵ Indeed, as the Supreme Court's decision in *Libman* establishes, where a democratic platform is provided (in that case a referendum), expressive activity in connection with that platform is protected against legislative interference under the traditional *Irwin Toy* analysis⁴⁶;

- b) in any event, in its 2010 decision in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*,⁴⁷ which post-dates both *Haig* and *Baier*, and which involved a claim that s. 2(b) placed a positive obligation on government to provide access to certain

⁴⁵ See the discussion in *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component* [2009] 2 S.C.R. 295, at 31 at paras 26 to 36; See also *Baier*, *supra* at para 42.

⁴⁶ *Libman*, *supra* at paras 28 to -37

⁴⁷ *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, [2010] 1 S.C.R. 815; see also the discussion in *Ontario (Attorney General) v Fraser*, [2011] 2 SCR 3 at paras 46 and, 69 to -70.

information and records, the Supreme Court expressly declined to apply the *Baier* analysis, and instead proceeded on the basis of the *Irwin Toy* approach and methodology. Moreover, in applying *Irwin Toy* to the claim in that case for positive government action, the Court looked to whether, in the particular context of that case, positive Government action was required in order to make the expressive activity meaningful. In the context of the 2018 municipal election, even if conceived of as a positive obligation, there is at minimum an obligation on government to establish clear ground rules in advance to ensure that meaningful expressive activity is not substantially impeded;

- c) even if the Applicants' complaint could be characterized as a claim that government is obligated to take positive action, the Applicants have established a breach of s. 2(b). As described in detail below, (i) the Applicant's claim is grounded in s. 2(b); (ii) the effect of Bill 5 in altering election boundaries and rules is to substantially interfere with, if not make it impossible for, the Applicants and others to engage in that expressive activity; and (iii) government is clearly responsible for that interference. As a result, even if the *Haig* and *Baier* approach is applied, the Applicants meet the requirements for establishing a positive obligation on government to set clear ground rules and electoral boundaries in advance of the 2018 municipal election, and an obligation not to fundamentally alter those rules and boundaries in the middle of that election campaign.

24. It is critical not to lose sight of either the legal or factual context. What is at stake in this proceeding is not simply the ability of various participants to convey some sort of meaning. It is the right to convey meaning within the democratic process; the right to convey meaning relevant to a discussion of the issues and problems impacting various communities of interest; and the right to use expression as the legitimate means by which to influence electoral outcomes.

25. The Applicants do not dispute that the province has the power to legislate municipal election boundaries. However, by altering those boundaries after an election has already begun, where political expression was undertaken in reliance on the settled expectations of the participants, the Government has directly interfered with the ability of the Applicants and others to meaningfully express themselves. Bill 5's interference with political expression is manifested in at least four ways described below. It nullifies the expressive value of past activities of both candidates and electors, and it interferes with the ability of both candidates and electors to effectively engage in expressive activities in the context of the ongoing political process.

i) Nullification of Prior Expression: Candidates

26. Once the electoral campaign for Toronto City Council began, numerous candidates for office began to express themselves in earnest.⁴⁸ Importantly, they did not simply engage in political expression in the abstract. They engaged in expression directed towards a particular goal: election to a particular public office in a particular constituency. This expression took many forms, including the development and distribution of campaign materials to inform voters *in particular wards* of their positions on issues affecting those voters and wards.⁴⁹ As a result of Bill 5, campaign literature and other materials, including websites and t-shirts, is now unusable.⁵⁰

27. In their campaigns, candidates and their volunteers canvassed to reach the thousands of

⁴⁸ Moise Affidavit, *supra* at paras 19-21; Willson Affidavit, *supra* at para 11; Padovani Affidavit, *supra* at paras 16-17; Myers Affidavit, *supra* at paras 22, 27.

⁴⁹ Myers Affidavit, *supra* at paras 8-9, 11-12, 22, 24; Achampong Affidavit, *supra* at paras 13-21

⁵⁰ Khosla Affidavit, *supra* at paras 35; Moise Affidavit, *supra* at para 28; Padovani Affidavit, *supra* at para 22; Aderonmu Affidavit, *supra* at para 14; Myers Affidavit, *supra* at paras 24 and 27; Record of the Intervenors, Hollett *et al.* ["Hollett Intervention Record"], Tab B, Affidavit of Lily Cheng sworn August 21, 2018 ["Cheng Affidavit"] at paras 18, 28; Hollett Intervention Record, Tab E, Affidavit of Dyanoosh Youssefi sworn August 22, 2018 at para 33. Examples of candidate campaign websites and literature can be found at Exhibits H-I of the Carbone Affidavit, City of Toronto Application Record.

individual electors in their wards,⁵¹ attended community events, spoke to groups in their wards, and disseminated the campaign material referenced above.⁵² This is the result of careful planning that pre-dates the formal campaign period but is nevertheless an integral part of the expressive activity involved in an election campaign.⁵³ Bill 5 has interfered with all of this protected expressive activity.⁵⁴ Bill 5 has not only increased the size of wards but altered their boundaries such that neighbourhoods are now excluded from new wards or divided between them. As a result, Bill 5 has rendered moot canvassing and outreach to community groups and electors in neighbourhoods that no longer belong to the newly imposed ward.

28. For example, in Applicant Moise's case, the new Ward 13 imposed by Bill 5 does not include territory in the north-west region of his previous ward, including the area where he lives. Campaigning and expenditures by him as well as his volunteers in those areas have been effectively nullified.⁵⁵ His expressive efforts targeting his own neighbourhood, which he hoped to represent, have been stripped of their intended substance and value due to the effects of Bill 5.

ii) Nullification of Prior Expression: Electors & Members of the Community

29. The impact of Bill 5 on expressive rights falls not only on candidates but also on electors and other members of the community. Freedom of expression protects the right to receive as well as to convey information.⁵⁶ Because the above noted forms of candidate expression have been drained of all politically meaningful content, the right of electors to receive such information during the initial period of the campaign process has been infringed.

⁵¹ Moise Affidavit, *supra* at para 20.

⁵² Valverde Affidavit, *supra* at paras 15-16, 19-23; Padovani Affidavit, *supra* at para 15.

⁵³ Moise Affidavit, *supra* at para 18; Siemiatycki Affidavit, *supra* at paras 19-21, 26; Padovani Affidavit, *supra* at para 14; Aderonmu Affidavit, *supra* at para 6.

⁵⁴ Moise Affidavit, *supra* at para 28.

⁵⁵ Moise Affidavit, *supra* at paras 23-26; see also Affidavit of Gary Davidson, City of Toronto Application Record Tab 5, paras 57-58 addressing wards split as a result of Bill 5 ("Davidson Affidavit").

⁵⁶ *Vancouver Sun (Re)*, 2004 SCC 43 at para 26.

30. Bill 5 has also interfered with past elector expression through campaign donations, another form of political expression protected by s. 2(b).⁵⁷ As set out above, funds expended on campaign materials that reflect existing ward boundaries have been effectively wasted, and the right of electors to engage in political expression through donations thus negated.

iii) Interference with Ongoing Expression: Candidates

31. Going forward, Bill 5 continues to impose substantial burdens on candidates' political expression. The significant expansion of wards imposes a requirement, mid-way through the electoral period to organize, campaign, fundraise and operate in materially different areas, and at an unprecedented and unparalleled scale.⁵⁸ Candidates must commence new campaigns on virtually no notice in areas where they may well have no connections or established support (including volunteers), and craft messages to address new and different issues and appeal to new and different voters.⁵⁹ The mid-campaign change in ward boundaries for which candidates were neither prepared nor resourced compromises their ability to effectively communicate their political message to relevant voters.⁶⁰

32. From a campaign finance perspective, Bill 5 imposes substantial burdens on ongoing expression through the collection and use of donations. The campaign funds expended to date for materials that are no longer usable nevertheless count against candidates' spending limits going forward for the remainder of the campaign, even while the territory where they must

⁵⁷ *Harper, supra.*

⁵⁸ *Siemiatycki Affidavit, supra* at para 18.

⁵⁹ *Moise Affidavit, supra* at para 24; *Willson Affidavit, supra* at para 15; *Beall Affidavit, supra* at paras 22, 24; *Padovani Affidavit, supra* at paras 15-17; *Myers Affidavit, supra* at paras 26-27.

⁶⁰ *Valverde Affidavit, supra* at para 41; *Padovani Affidavit, supra* at para 16; *Myers Affidavit, supra* at para 26; *Lewis-Thurab Affidavit, supra* at para 17; *Beall Affidavit, supra* at paras. 20, 22, 24; *Willson Affidavit, supra* at paras 12-15.

communicate has expanded dramatically.⁶¹ Effectively, Bill 5 therefore operates as a major change in campaign spending limits, limiting the capacity of candidates to effectively communicate, in violation of s. 2(b). This is analogous to, and indeed substantially more burdensome than the restrictions on campaign financing donations and expenditures that were found to violate s. 2(b) in *Harper* and *Libman*.

33. Moreover, many candidates are not able to raise sufficient funds for effective political expression in the abbreviated time remaining, particularly given the fact that funds have already been raised and expended on materials that are no longer usable. As Applicant Moise explains:

...the pool of donors is limited as are the amounts they are willing to contribute. To go back to my donors and ask them for more money, on the basis that our prior efforts (on which their funds were spent) have been rendered pointless and there is now an entirely different area where I would be running, particularly where I would be running against incumbents at a significant disadvantage, would be very difficult. At this stage of the campaign period, I do not think I could credibly raise additional and sufficient funds for an effective campaign...⁶²

34. These burdens on expression imposed by Bill 5 are not distributed evenly, but have particular and adverse effects on new candidates and other challengers who do not enjoy the same name recognition, access to experienced campaign managers, or donors, volunteers and other resources as incumbents.⁶³ These effects are especially problematic given that, as a direct result of Bill 5, candidates who had intentionally sought nomination and organized campaigns in “open” wards must now run against one or more incumbents.⁶⁴ Further, as discussed in detail below, incumbent candidates for City Council are disproportionately white and male, while

⁶¹ Cheng Affidavit, *supra* at para 26.

⁶² Moise Affidavit, *supra* at para 28.

⁶³ Moise Affidavit, paras 13 and 26; Siemiatycki affidavit para 8-9; Beall Affidavit, *supra* at paras 12, 24; Padovani Affidavit, *supra* at paras 21-22; Myers Affidavit, *supra* at paras 28-29; Lewis-Thurab Affidavit, *supra* at para 17; Aderonmu Affidavit, *supra* at para 10.

⁶⁴ Aderonmu Affidavit, *supra* at para 11; Siemiatycki Affidavit, *supra* at paras 29-32; Padovani Affidavit, *supra* at para 21; Moise Affidavit, *supra* at paras 25-26

many of the first-time candidates nominated under the 47 ward model were women and/or members of racialized and other historically underrepresented communities.⁶⁵

35. Courts have been sensitive to legislative action that has the effect of favouring established political actors, or that exacerbates differences in the ability of less established actors to communicate effectively in the electoral process. In *Harper*, McLachlin C.J. and Major J. were concerned not only with political advertising limits per se but especially with the fact that the restrictions on third party political advertising expenses disadvantaged the ability of ordinary citizens to communicate their views during an election as compared to the rights of established political parties. Their reasons support that limits on expression, including those that permit some communication but constrain “effective” communication, or that confine “effective communication” to certain privileged groups while imposing burdens on others, violate s. 2(b).⁶⁶

36. The impact of Bill 5 is so substantial that some candidates have been forced to withdraw, thus nullifying their own political expression and that of their supporters (including donors).⁶⁷

iv) Interference with Ongoing Expression: Electors & Community Members

37. Citizens who wish to discuss election issues with candidates, and thereby effectively and meaningfully participate in the political process, have had their ability to do so compromised by the major changes to campaigns and candidacies resulting from Bill 5.⁶⁸ The mid-campaign alteration of ward boundaries has caused tremendous confusion. Candidates must spend time and

⁶⁵ Siemiatycki Affidavit *supra* at para 10; Khosla Affidavit, *supra* at paras 38-39; Beall Affidavit, *supra* at para 22.

⁶⁶ *Harper v. Canada*, 2004 SCC 33 at paras 1-9, per McLachlin C.J. and Major J. (concurring on s. 2(b) and dissenting on s. 1)

⁶⁷ Moise Affidavit, *supra* at paras 25-29; Aderonmu Affidavit, *supra* at para 12; Moya Affidavit, *supra* at paras 21, 24, 26; Wilson Affidavit, *supra* at para 20; Myers Affidavit, *supra* at para 31.

⁶⁸ Moise Affidavit, *supra* at para 31.

resources that would otherwise be used to convey their political message to educate voters about the changes to the ward boundaries and election process.⁶⁹ Electors thus have less opportunity to be informed about substantive issues relating to City governance.

38. The ongoing effects of Bill 5 on campaign financing as a form political expression are not limited to candidates. The expressive rights of electors who wish to financially support a candidate are also impaired. The amount an individual may donate to “any one candidate” for council is \$1200.⁷⁰ As a result of Bill 5, individuals who have donated funds that have now been expended on unusable materials cannot simply replace these funds with an additional donation where this would place them over the \$1200 limit, because the “candidate” is the same, even if the race and the ward have significantly changed.⁷¹ In some cases, this will reduce the effective donation limit for electors to zero, where they had already previously donated the maximum amount. This reduction (and in some cases negation) of electors’ ability to express themselves through campaign contributions violates s. 2(b).

v) ***Conclusion on Section 2(b)***

39. Election campaigns are fundamentally about expression. Every actor in Toronto’s political process understood that the 2018 campaign would occur under a 47 ward structure, and planned and undertook their campaigns accordingly. They relied on their own settled expectations to make choices and expend limited human and financial resources to maximize the impact and effectiveness of their political expression.

⁶⁹ Wilson Affidavit, *supra* at paras 13-14.

⁷⁰ *Municipal Elections Act, 1996*, SO 1996, c 32, Schedule, s. 88.9; Cheng Affidavit, *supra* at para 26.

⁷¹ Aderonmu Affidavit, *supra* at para 14

40. The sudden change imposed by Bill 5 undermined all of this. Past expression was rendered meaningless in the context of a new 25 ward election. Decisions that were made early in the campaign could not be wholly undone, causing prejudice to the ability of candidates and electors to engage in meaningful expression going forward. This unprecedented change to the fundamental structure of an ongoing campaign has made it harder – and in some cases, impossible – to meaningfully engage in the political expression that is inherent with democratic elections. Wholly apart from any right to a particular municipal electoral structure, Bill 5 has interfered with and undermined a wide range of expressive conduct, and thereby violated s. 2(b).

B. Bill 5 Violates Section 2(d)'s Guarantee of Freedom of Association

i) Freedom of Association in the Context of Elections

41. In *Mounted Police Association of Ontario* (“MPAO”), the Supreme Court articulated a comprehensive approach to the purpose and scope of s. 2(d), emphasizing that “freedom of association... stands as an independent right with independent content, essential to the development and maintenance of the vibrant civil society upon which our democracy rests.”⁷² The Court also adopted the purposive approach to freedom of association first articulated by Dickson C.J. in dissent in the *Alberta Reference*, under which the content of s. 2(d) is to be defined by reference to the purpose of the guarantee of freedom of association, namely the protection of (1) individuals joining with others to form associations (the constitutive approach); (2) collective activity in support of other constitutional rights (the derivative approach); and (3) collective activity that enables “those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and,

⁷² *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 49 [MPAO].

perhaps, conflict.”⁷³

42. In particular, the Court recognized that freedom of association is intended to “empower... groups whose members’ individual voices may be all too easily drowned out.”⁷⁴ As the Court emphasized:

[57] Historically, those most easily ignored and disempowered as individuals have staked so much on freedom of association precisely because association was the means by which they could gain a voice in society. As Dickson C.J. put it in the Alberta Reference:

Freedom of association is most essential in those circumstances where the individual is liable to be prejudiced by the actions of some larger and more powerful entity, like the government or an employer. Association has always been the means through which political, cultural and racial minorities, religious groups and workers have sought to attain their purposes and fulfil their aspirations; it has enabled those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict...

[58] ...In this way, the guarantee of freedom of association empowers vulnerable groups and helps them work to right imbalances in society. It protects marginalized groups and makes possible a more equal society.

[70] ... s. 2(d) functions to prevent individuals, who alone may be powerless, from being overwhelmed by more powerful entities, while also enhancing their strength through the exercise of collective power.

43. Moreover, even before *MPAO*, courts recognized that in the context of elections, freedom of association is also particularly important for the exercise of other fundamental freedoms, such as freedom of expression.⁷⁵ The inter-related guarantees of expression and association are vital to the proper and fair functioning of the political process. As the Alberta Court of Appeal commented in *Somerville*:

⁷³ *Ibid* at para 54.

⁷⁴ *Ibid* at para 55.

⁷⁵ *Reference Re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313 at 391, *per* Le Dain J.; *Professional Institute of the Public Service of Canada v. Northwest Territories (Commissioner)*, [1990] 2 SCR 367 at 398-9.

An important aspect of association is the ability to combine resources to pursue common goals, influence others, exchange ideas and effect change. If the right of a group to speak is limited, then the good that comes from that association is thwarted. Association for the purpose of participation and communication during an election must surely stand as a primary reason for constitutionally entrenching the right to associate.⁷⁶

Thus, freedom of association includes participation in political campaigns, and extends to a group's ability to identify to the electorate the candidates it supports, to inform voters and promote its legitimate interests.⁷⁷

44. Courts have also found that restrictions on political expression (for example, in the form of campaign finance restrictions) not only impinge on freedom of expression, but also the right to associate with a candidate and lend one's strength to a candidate or party:

By interfering with this ability of individuals, through association of their choice, to independently lend strength to a candidate or party, this legislation is a limitation of legitimate activities of association, and by extension one's right to associate. This prohibition is an interference with an integral function of association -- namely that of sharing resources, knowledge and skills with a view to achieving common goals.⁷⁸

45. In the Applicants' submission, given the purposive approach to freedom of association adopted in *MPAO*, it is clear that the election-related aspect of freedom of association is particularly engaged by underrepresented and disadvantaged individuals and communities banding together to seek to rectify representational and political imbalance.

ii) *The Impact of Bill 5 on Associational Rights of Groups and Individuals*

46. Given the underlying purposes of freedom of association, it is abundantly clear that the

⁷⁶ *Somerville, supra* at para 26.

⁷⁷ *Somerville, supra* at para 29.

⁷⁸ *Somerville, supra* at para 27. See also *Pacific Press v AGBC*, 2000 BCSC 248, where s. 2(b) and 2(d) violations were conceded in a challenge to provincial campaign financing rules, and were not saved by s. 1; *Libman, supra* at paras 36-37, addressing s. 2(b) and 2(d) together in the context of a challenge to campaign financing rules affecting both individuals and groups

various activities engaged in by the individual candidates and organizations described in the Applicants' materials were constitutionally protected associational activities. Indeed, in *MPAO*, the Supreme Court of Canada emphasized the extent to which freedom of association is intended to protect the very equality-seeking collective activities that these various groups and associations have engaged in with respect to the 2018 election, going so far as to recognize that s. 2(d) protects "collective rights that inhere in associations".⁷⁹

47. Various groups and organizations have formed and undertaken associational as well as expressive activity in relation to the 2018 election. For example, WWTO was formed and engaged in extensive efforts to train women to run effective political campaigns. Other groups have formed with respect to municipal issues of particular interest to the 2018 election, including the future of public transit. These groups have sought to strategically support the nominations and election of new voices to City Council. They have endorsed individual candidacies, selected and supported 'slates' of candidates, and canvassed and organized in an effort to influence public discourse and support the election of candidates committed to the issues important to them as associations.⁸⁰ These associational efforts are especially significant in the context of Toronto municipal elections, which do not involve political parties.⁸¹

48. Those associational activities, aimed, *inter alia*, at electing women, visible minority and LBGT candidates who until now have been underrepresented in Toronto municipal government, were entirely premised on and shaped by the election rules and boundaries established well in

⁷⁹ *MPAO*, *supra* at paras 62 to -65.

⁸⁰ Beall Affidavit, *supra* at paras 13-14, 29; Myers Affidavit, *supra* at paras 1, 11-14.

⁸¹ Valverde Affidavit, *supra* at para 17

advance of the 2018 municipal election.⁸² As a result of Bill 5, candidates who had been supported and endorsed by various groups have been forced to withdraw or pitted against one another, thus negating the ability of the groups to continue to support the candidates with whom they had chosen to associate under the pre-existing established election rules. These groups simply do not have sufficient time or resources to start over at this point – particularly given the continued uncertainty of the campaign and the fact that a final list of which candidates will run and where will not be available until nominations close in mid-September.

49. In *MPAO*, the Supreme Court concluded that “a process that substantially interferes with a meaningful process of collective bargaining by reducing employee’s negotiating power”⁸³ is inconsistent with s. 2(d). One need only substitute “campaigning” for collective bargaining, “women, racialized and LGBT candidates” for employees, and organizational for “negotiating,” to recognize the adverse impact of Bill 115 on s. 2(d) protected associational activity.

50. The participation by individuals in political campaigns, through donations of their time and funds, is also associational activity.⁸⁴ By associating with candidates’ campaigns, individual electors can have a meaningful impact on the political process by influencing the direction of those campaigns, assisting in spreading political messages and affecting the direction of public discourse, and working towards the election of candidates who will implement the ideas supported by those electors. By associating with campaigns, electors seek to accomplish collectively what they cannot accomplish solely as individuals.

⁸² Khosla Affidavit, *supra* at paras 32-33; Siemiatycki Affidavit, *supra* at paras 54-57; Wilson Affidavit, *supra* at paras 7-9, 13; Myers Affidavit, *supra* at paras 18-19; Lewis-Thurab Affidavit, *supra* at paras 7-10.

⁸³ *MPAO*, *supra* at para 71, see also para 80.

⁸⁴ See footnote 76

51. Individual electors have engaged in canvassing and other forms of associational volunteer activity on behalf of candidates since the beginning of the campaign period – and indeed earlier through pre-election planning.⁸⁵ As set out above, their efforts have been rendered moot and ineffective as a result of ward boundary changes.⁸⁶ These changes affect not only the expressive but also the associational rights of volunteers, whose efforts at meaningful participation in the electoral process through association with a candidate and advocacy on their behalf have been seriously undermined. Similarly, the effects of Bill 5 on campaign financing, described in detail above, have significant implications for individuals’ associational as well as expressive rights. The wasting of past donations on materials that are no longer usable, and the restriction on replacing those donations due to statutory campaign contribution limits, impede individuals’ ability to meaningfully associate with a candidate, and diminish their impact on the electoral process through such association.

C. Bill 5 Violates Equality Rights Under Section 15 of the *Charter*

52. The impairment of the expressive and associative freedoms guaranteed by s. 2 of the *Charter* has a disproportionately negative impact on both candidates and electors who are members of historically disadvantaged and equity seeking groups. Bill 5 thus not only perpetuates but exacerbates barriers to equitable participation in local democracy, thereby violating the right to equality protected by s 15(1) of the *Charter*.

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

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

⁸⁵ Aderonmu Affidavit, *supra* para 4, 6-7, 14

⁸⁶ Moise Affidavit, *supra* para 23

- b) If so, does the law impose “burdens or [deny] a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating...disadvantage”?⁸⁷

54. The Supreme Court has emphasized that substantive equality is an “animating norm”⁸⁸ of s. 15(1). In *Andrews* and subsequent cases, it outlined key aspects of substantive equality that should inform this Court’s approach, including that: “identical treatment may frequently produce serious inequality”⁸⁹; the main consideration for the Court is the real impact of the law on the claimant and members of the group to which they belong, rather than the law’s purpose⁹⁰; “accommodation of differences” is “the essence of true equality”⁹¹; and “any consideration of factors which could justify the discrimination” should be addressed under s. 1, where the government bears the burden of proof.⁹²

i) Bill 5 Creates Distinctions on Enumerated and Analogous Grounds

55. Although Bill 5 does not on its face distinguish among candidates and electors on the grounds of race, gender, sexual orientation, or gender identity, it has a disproportionate impact on candidates and electors who are racialized, women, and/or LGBT persons.

56. As described above, one of the effects of Bill 5 is to render campaign materials that reflect previous ward boundaries useless, and the funds spent preparing and producing those materials effectively wasted. This has a disproportionate impact on candidates from financially disadvantaged communities, who have more limited access to financial resources and are thus

⁸⁷ *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*, 2018 SCC 17, at para 25. Although a s. 15 claimant previously had to identify a ‘mirror comparator group’ and demonstrate prejudice and stereotyping, the Supreme Court’s s. 15 jurisprudence has evolved away from categorical requirements towards a more robust and contextual analysis: *ibid* at para 27.

⁸⁸ *Withler v. Canada (Attorney General)*, 2011 SCC 12, at para 2.

⁸⁹ *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143 at 164.

⁹⁰ *Ibid* at 165; see also *Withler*, *supra* at para. 2.

⁹¹ *Ibid* at 169.

⁹² *Ibid* at 176.

less able to bear the cost of preparing new materials mid-campaign.⁹³ Because of the persistent gender wage gap, women candidates are also disadvantaged in terms of the financial resources and networks they can access to fund their campaigns.⁹⁴

57. The sudden redrawing of ward boundaries in the midst of the election also means that for some candidates, time spent campaigning in neighbourhoods that were previously part of their wards has been wasted.⁹⁵ Moreover, it requires that all candidates must now reach out to a much larger group of constituents on a highly abbreviated timeline.⁹⁶ This too has a disproportionately negative impact on women candidates and volunteers, who are often the primary caregivers in their families and communities and carry a disproportionate share of domestic responsibilities, which leaves them with less time to devote to campaigning relative to men.⁹⁷

58. Perhaps most significantly, Bill 5 disrupts the strategic planning, coordination and campaign efforts undertaken in reliance on the existing ward structure. This has a disproportionate impact on racialized, women, and LGBT candidates and electors. Based on “commonality of experience, conditions, and aspirations,” distinct communities of interest develop particular priorities and objectives regarding municipal responsibilities and services.⁹⁸ The participation, impact and representation of a historically marginalized community of interest increase when it forms a “critical mass of population” within a ward.⁹⁹

⁹³ Moise Affidavit *supra* para 28; Aderonmu Affidavit, *supra* para 14; Khosla Affidavit, *supra* paras 41-42; Siemiatycki Affidavit, *supra* para 33

⁹⁴ Khosla Affidavit, *supra* at para 23.

⁹⁵ Moise Affidavit *supra* paras 23-24; Davison Affidavit *supra* paras 57-58

⁹⁶ Siemiatycki Affidavit, *supra* paras 33-35

⁹⁷ Khosla Affidavit, *supra* at para 23.

⁹⁸ Siemiatycki Affidavit, *supra* at paras 8 and 15; Davidson Affidavit, *supra* at paras 56-57.

⁹⁹ Siemiatycki Affidavit, *supra* at para.11.

59. The geographic distribution of the City's communities of interest makes it challenging for these groups to establish a critical mass population in a particular ward.¹⁰⁰ Toronto, as a "city of neighbourhoods" is significantly less racially segregated than other municipalities.¹⁰¹ While particular racialized groups, and communities of interest, regularly constitute a critical mass of population within a specific neighbourhood, the same does not hold true when their neighbourhoods are subsumed within a larger ward made up of multiple neighbourhoods.¹⁰²

60. As a result, communities of interest must work strategically and creatively to achieve a more diverse and representative City Council. For example, candidates from a particular equity seeking community of interest may work to coordinate their campaigns in various ways, ranging from simply ensuring that they do not run against one another, to endorsing and promoting each other's campaigns, to developing common platforms.¹⁰³ Electors are similarly strategic in deciding where to direct their financial and other resources, and may choose to campaign and fundraise for a candidate running outside of their own ward because they nevertheless see those candidates as representatives of their communities.¹⁰⁴

61. By altering the number and structure of city wards in the middle of the election campaign, Bill 5 frustrates the efforts of communities of interest to mobilize and organize effectively around representative candidates.

¹⁰⁰ Valverde Affidavit, *supra* at para 33.

¹⁰¹ Valverde Affidavit, *supra* at paras 33 and 35.

¹⁰² Valverde Affidavit, *supra* at paras 33-35; Siemiatycki Affidavit, *supra* at paras. 39-47.

¹⁰³ See *eg* Myers Affidavit, *supra* at paras 24-25.

¹⁰⁴ Valverde Affidavit, *supra* at para 38; Beall Affidavit, *supra* at paras 25-26.

ii) Bill 5 Imposes Burdens that Exacerbate Disadvantage

74. The impacts of Bill 5 are in addition to and compound the existing structural and systemic barriers confronted by women, racialized and LGBT candidates.¹⁰⁵ Underrepresentation of women, racialized and LGBT communities on City Council means that the needs and interests of these communities are not meaningfully reflected in City policies and priorities, or equitably addressed through the provision of City programs and services.¹⁰⁶ These existing disadvantages both demonstrate and underscore the disproportionate burdens imposed by Bill 5 on women and racialized and LGBT communities.¹⁰⁷

75. Despite Toronto being known as one of the world's most "multi-racial, multicultural, multi-religious cities," and home to "dynamic Indigenous and LGBTQ communities,"¹⁰⁸ the composition of Council does not reflect the growing diversity of the City's residents.¹⁰⁹ Only a very small minority of current councillors are racialized. Women, who comprise the majority of the population, only make up 13 out of 44 councillors. There is currently only one openly LGBT councillor, who is also the only racialized woman, and one Black councillor.¹¹⁰

76. The City's governance structure, rooted in the highly individualized and localized ward-based model, depends upon Councillors playing a significant role in representing and advancing the unique interests of their communities.¹¹¹ In this model, Councillors drive City policies and programming, unlike the federal and provincial levels of government where policy developments largely occur at the executive or ministerial level. The ward model uniquely depends upon the

¹⁰⁵ Khosla Affidavit, *supra* at paras 20-23; Siemiatycki Affidavit, *supra* at para 37

¹⁰⁶ Khosla Affidavit *supra* at paras 13-15; Padovani Affidavit, *supra* at para 4

¹⁰⁷ Withler, *supra* at para 64.

¹⁰⁸ Siemiatycki Affidavit, *supra* at para 6.

¹⁰⁹ Siemiatycki Affidavit, *supra* at paras 6 and 10; Davidson Affidavit, *supra* at para 60.

¹¹⁰ Lewis-Thurab Affidavit, *supra* at paras 12-13

¹¹¹ Valverde Affidavit, *supra* at para 37.

deep “local knowledge and community expertise of councillors.”¹¹² Councillors are positioned as “the key actors” in municipal government.¹¹³

77. The presence – or absence – of Councillors who identify as members of one of the claimant groups accordingly has a significant impact on the degree to which the needs and interests of those groups are represented in City policies and programs.¹¹⁴ The evidentiary record establishes that the interests of electors from the claimant groups are better reflected in municipal governance when members of the claimant groups serve as elected Councillors.¹¹⁵ Councillors who share the lived experience of their constituents have directly influenced the City’s policies to improve the socioeconomic status of their communities.¹¹⁶

78. In contrast, the underrepresentation of women – especially Black, Indigenous, racialized, and LBT women – on City council has resulted in City policies that are not gender-inclusive with respect to public transit, recreational programming, and housing, and is reflected in the absence of institutional structures promoting gender equality and anti-racism.¹¹⁷ The underrepresentation of claimant groups on Council also contributes significantly to the underrepresentation of those same groups on City agencies, boards, and commissions.¹¹⁸ If a community of interest cannot elect a councillor who understands and effectively represents its needs, community members may be deprived of necessary public services.¹¹⁹

79. The election of Councillors from marginalized and historically disadvantaged

¹¹² Valverde Affidavit, *supra* at paras 15 and 21.

¹¹³ Valverde Affidavit, *supra* at para 15.

¹¹⁴ Valverde Affidavit, *supra* at paras 11, 23, 26-30, 32.

¹¹⁵ Siemiatycki Affidavit, *supra* at paras 39-47.

¹¹⁶ Siemiatycki Affidavit, *supra* at paras 45-46.

¹¹⁷ Khosla Affidavit, *supra* at paras 11-18; Beall Affidavit, *supra*, at para. 17.

¹¹⁸ Khosla Affidavit, *supra* at paras 13-18; Beall Affidavit, *supra* at para 17.

¹¹⁹ Davidson Affidavit, *supra* at para 61.

communities also has a significant communicative effect. For example, the election of Kyle Rae to City Council, an openly gay man who had previously served as the co-ordinator of Pride, was both indicative of, and contributed to, the increased acceptance of the LGBT community in the City.¹²⁰ The composition of City Council thus not only shapes City policy and programs but also sends a significant message to Toronto residents about democracy, inclusion, and belonging.

80. In summary, by radically decreasing the number of wards, redrawing their boundaries and changing the rules mid-election, Bill 5 erects significant additional barriers to the ability of the women, racialized and LGBT candidates to campaign for and access public office on an equitable and non-discriminatory basis, and perpetuates and exacerbates the disadvantaged faced by women and racialized and LGBT communities in achieving meaningful representation on City Council. The effects of Bill 5 thus offend s. 15(1) by widening the gap between members of the claimant groups and the rest of society.¹²¹

D. No Possible Section 1 Justification for Bill 5

81. The Applicants are at a loss as to what possible section 1 argument the government will proffer in purported justification of Bill 5's mid-campaign interference with constitutionally protected rights and freedoms, and reserve the right to reply accordingly.

PART IV ORDER REQUESTED

82. The Applicants respectfully request the following relief:

- a) An order, pursuant to section 52 of the Constitution Act, 1982, declaring that ss. 5-7 of Schedule 1 and s 1 of Schedule 3 to the Better Local Government Act, 2018, SO

¹²⁰ Valverde Affidavit, *supra* at para 37.

¹²¹ *Quebec (Attorney General) v A*, 2013 SCC 5 at para 332.

2018, c. 11 (the “impugned provisions”) are inconsistent with ss. 2(b), 2(d) and 15 of the Canadian Charter of Rights and Freedoms (the Charter), that such inconsistency cannot be demonstrably justified in a free and democratic society and that the impugned provisions are thereby of no force and effect;

b) An order that the municipal election in the City of Toronto proceed as previously scheduled and organized prior to the introduction and passage of the impugned provisions;

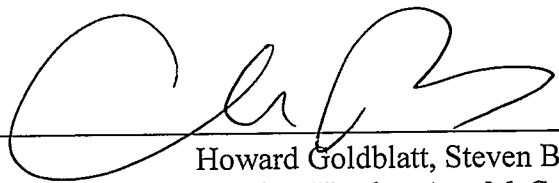
c) An order that this Honourable Court remain seized of any issues with respect to the implementation of the order;

d) An order pursuant to rule 12.08 authorizing the Applicant Prabha Khosla to bring the herein application on behalf of all members of Women Win TO;

e) Costs of this application; and

f) Such further and other relief as counsel may request and this Honourable Court may deem to be just and appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of August, 2018.



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Simon Archer, Adriel Weaver,
Dan Sheppard and Geetha Philipupillai

Counsel for the Applicants

SCHEDULE “A”

Case Law

Andrews v Law Society of British Columbia, [1989] 1 SCR 143, 56 DLR (4th) 1.

Baier v Alberta, 2007 SCC 31, [2007] 2 SCR 673.

Canada (Attorney General) v Somerville, 1996 ABCA 217, 136 DLR (4th) 205.

Di Ciano v Toronto (City), 2017 CanLII 85757 (ON LPAT)

Edmonton Journal v Alberta (Attorney General), [1989] 2 SCR 1326, 64 DLR (4th) 577.

Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component, 2009 SCC 31, [2009] 2 SCR 295.

Haig v Canada (Chief Electoral Officer), [1993] 2 SCR 995, 105 DLR (4th) 577.

Harper v Canada (Attorney General), 2004 SCC 33, [2004] 1 SCR 827.

Irwin Toy Ltd v Quebec (Attorney General), [1989] 1 SCR 927, 58 DLR (4th) 57 .

Libman v Québec (Attorney General), [1997] 3 SCR 569, 1997 CanLII 326.

Montréal (City) v 2952-1366 Québec Inc, 2005 SCC 62, [2005] 3 SCR 141.

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

Natale v City of Toronto, 2018 ONSC 1475.

Ontario (Attorney General) v Fraser, 2011 SCC 20, [2011] 2 SCR 3.

Ontario (Public Safety and Security) v Criminal Lawyers' Association, 2010 SCC 23, [2010] 1 SCR 815.

Pacific Press v AGBC, 2000 BCSC 248, [2000] 5 WWR 219.

Professional Institute of the Public Service of Canada v Northwest Territories (Commissioner), [1990] 2 SCR 367, 1990 CanLII 72.

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

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

R v Keegstra, [1990] 3 SCR 697, 1990 CanLII 24.

R v Zundel, [1992] 2 SCR 731, 95 DLR (4th) 202.

Reference re Public Service Employee Relations Actt (Alta.), [1987] 1 SCR 313, 38 DLR (4th) 161.

Reference re Secession of Quebec, [1998] 2 SCR 217, 161 DLR (4th) 385.

Taman v Canada (Attorney General), 2015 FC 1155, [2016] 2 FCR 297.

Trial Lawyers Association of British Columbia v British Columbia (Attorney General), 2014 SCC 59, [2014] 3 SCR 31.

Vancouver Sun (Re), 2004 SCC 43, [2004] 2 SCR 332.

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

Secondary Sources

Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Oxford University Press, 1979).

SCHEDULE "B"

Better Local Government Act, 2018, SO 2018, ch 11.

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

Short title

3 The short title of this Act is the Better Local Government Act, 2018.

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 2

MUNICIPAL ACT, 2001

1 (1) Paragraph 2 of subsection 218 (1) of the Municipal Act, 2001 is amended by striking out “Subject to paragraph 2.1” at the beginning.

(2) Paragraph 2.1 of subsection 218 (1) of the Act is repealed.

2 Section 218.1 of the Act is repealed and the following substituted:

Head of regional council

Appointment

218.1 (1) On the day the new council is organized following the regular election in 2018, the head of council of the following regional municipalities shall be appointed by the members of council:

1. The District Municipality of Muskoka.
2. The Regional Municipality of Niagara.
3. The Regional Municipality of Peel.
4. The Regional Municipality of York.

General vote

(2) On the day the new council is organized following the regular election in 2018, the head of council of the following regional municipalities shall be elected by general vote in accordance with the Municipal Elections Act, 1996:

1. The Regional Municipality of Durham.
2. The Regional Municipality of Halton.
3. The Regional Municipality of Waterloo.

Conduct of 2018 regular election

(3) The regular election in 2018 shall be conducted as if the method of selecting the head of council described in subsection (1) or (2), as applicable, was already in effect.

Regulations

(4) The Minister may make regulations that, in the opinion of the Minister, are advisable or necessary for implementing the purposes of this section and, without restricting the generality of the foregoing, the Minister may make regulations,

- (a) varying the operation of any provision of this Act for those purposes;
- (b) 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.

Conflict

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

Power to change method for selecting head of council

218.2 Nothing in section 218.1 limits the power of a municipality referred to in subsection 218.1 (1) or (2) to change the method of selecting its head of council under section 218 for any regular election after 2018.

Commencement

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

SCHEDULE 3

MUNICIPAL ELECTIONS ACT, 1996

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

2018 regular election, City of Toronto

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

Exception, head of council

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

New nomination day

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

1. Nomination day as set out in section 31 is deemed not to have occurred.

2. The period for filing a nomination is deemed to have run continuously from May 1, 2018 until September 14, 2018.

Notifying the clerk re office on the council

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

Notifying clerk re office on a school board

(5) If a person has filed a nomination under section 33 for an office on a school board and wishes to continue to be a candidate in the 2018 regular election, the

person shall notify the clerk in writing before 2 p.m. on September 14, 2018 of the office on the same school board for which the person wishes to be nominated.

Same, not a new nomination

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

Same, not multiple campaigns

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

Deemed withdrawal of nomination

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

Notice by clerk

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

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

Regulations

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

- (a) prescribing anything that is referred to, in this section, as prescribed;
- (b) varying the operation of any of the provisions of this Act for the purposes of the 2018 regular election; and

(c) with respect to this Act, governing transitional matters that arise out of the implementation of this section, including

any such transitional matters that may arise for the 2022 regular election or any by-election that takes place before the 2022 regular election.

Same

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

Retroactivity

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

Conflict

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

2018 regular election, certain regional municipalities

Deemed withdrawal of nominations

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

Regulations

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

(a) varying the operation of any of the provisions of this Act for those purposes;

(b) governing transitional matters that arise out of the implementation of section 218.1 of the Municipal Act, 2001.

Same

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

Retroactivity

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

Conflict

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

Commencement

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

Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

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.

Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

Democratic Rights

Democratic rights of citizens

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.

Equality Rights

Equality before and under law and equal protection and benefit of law

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.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

City of Toronto Act, SO 2006, c 11, Sched A (version in force August 13, 2018)

Wards continued

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

Application

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

Division of wards after 2018 regular election

128 (1) On the day city council is organized following the 2018 regular election, the City is divided into wards whose boundaries are identical to those of the electoral districts for Ontario that are within the boundaries of the City. 2018, c. 11, Sched. 1, s. 5.

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. 2018, c. 11, Sched. 1, s. 5.

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. 2018, c. 11, Sched. 1, s. 5.

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. 2018, c. 11, Sched. 1, s. 5.

Retroactivity

(5) A regulation made under subsection (4) is, if it so provides, effective with reference to a period before it was filed. 2018, c. 11, Sched. 1, s. 5.

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. 2018, c. 11, Sched. 1, s. 5.

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. 2018, c. 11, Sched. 1, s. 5.

Municipal Elections Act, 1996, SO 1996, c 32, Schedule, s. 88.9

Voting day

5 Voting day in a regular election is the fourth Monday in October, subject to section 10. 1996, c. 32, Sched., s. 5; 2009, c. 33, Sched. 21, s. 8 (4).

...

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).

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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