

Court of Appeal File No.: C65861 \_\_\_\_\_  
Superior Court File Nos. CV-18-00603797-0000  
CV-18-00602494-0000  
CV-18-00603633-0000

**COURT OF APPEAL FOR ONTARIO**

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BETWEEN :

**CITY OF TORONTO**

Applicant  
(Respondent in appeal – Responding Party)

- and -

**ATTORNEY GENERAL OF ONTARIO**

Respondent  
(Appellant – Moving Party)

---

AND BETWEEN :

**ROCCO ACHAMPONG**

Applicant  
(Respondent in appeal – Responding Party)

- and -

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

Respondents  
(Appellants – Moving Parties)

- and -

**CITY OF TORONTO**

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(Respondent in appeal – Responding Party)  
(Title of Proceedings Continued on p. 2)

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**MOTION RECORD**  
**(returnable September 18, 2018)**

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AND BETWEEN :

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

Applicants  
(Respondents in appeal – Responding Parties)

- and -

**ATTORNEY GENERAL OF ONTARIO**

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(Appellant – Moving Party)

- and -

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

Interveners  
(Respondents in appeal – Responding Parties)

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**MOTION RECORD  
(returnable September 18, 2018)**

September 14, 2018

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Court of Appeal File No.:  
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# INDEX

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Intervenors  
(Respondents in appeal – Responding Parties)

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**MOTION RECORD**

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**TAB 1**

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**NOTICE OF MOTION TO INTERVENE  
(returnable September 18, 2018)**

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Interveners  
(Respondents in appeal – Responding Parties)

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**NOTICE OF MOTION TO INTERVENE  
(returnable September 18, 2019)**

The Proposed Intervener, Ulli Watkiss, City Clerk of the City of Toronto (the “Clerk”), will make an urgent motion to the Court on Tuesday, September 18, 2018 at 10 a.m. or as soon a time thereafter as a motion can be heard, at the Courthouse at 130 Queen St. West.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) An order that the Clerk be granted leave to intervene in the motion to stay the Order of the Superior Court of Justice dated September 10, 2018 declaring provisions of the *Better Local Government Act, 2018*, SO 2018, c. 11 to be of no force and effect (the “**Motion to Stay**”) and have the

right to file the affidavit of Fiona Murray affirmed September 14, 2018 and make submissions;

- (b) an order, if necessary, abridging the time for service of this notice of motion and the Clerk's motion record; and
- (c) such further or other relief as the Clerk requests and this Honourable Court may grant.

THE GROUNDS FOR THE MOTION ARE:

- (a) Rule 13.03(2) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 allows the court to grant leave to intervene in the Court of Appeal. Rule 39.01 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 allows affidavit evidence to be given on a motion.
- (b) The Clerk holds a statutory position defined by s. 137(1) of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A.
- (c) The Clerk is responsible for conducting elections pursuant to s. 11 of the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched. ("MEA"). This is an independent function which requires the Clerk to prepare for and maintain peace and order in connection with an election.
- (d) The Clerk's ability to conduct an election on October 22, 2018 is an issue in the Motion to Stay.

- (e) This court would benefit from hearing the evidence of the Clerk regarding the ability to administer an election in accordance with the principles of the MEA, independent from the evidence of the other parties.
- (f) The Clerk will take no position on the appeal or the Motion to Stay.
- (g) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of Fiona Murray affirmed September 14, 2018; and
- (b) Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

September 14, 2018

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and

ONTARIO  
Respondent (Appellants)

and

CITY OF TORONTO  
Respondent (Respondent on Appeal)

Court of Appeal. File No. C65861  
Superior Court File No: CV-18-  
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THE CITY OF TORONTO  
Applicant (Respondent in appeal)

ATTORNEY GENERAL OF ONTARIO  
Respondent (Appellant)

Superior Court File No:  
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CHRIS MOISE *et al.*  
Applicants (Respondent in appeal)

ATTORNEY GENERAL OF ONTARIO  
Respondent (Appellants)

and

CITY OF TORONTO  
Respondent (Respondent on Appeal)

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CV-18-00603633-0000

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

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**NOTICE OF MOTION TO INTERVENE  
(RETURNABLE SEPTEMBER 18, 2018)**

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**TAB 2**

Court of Appeal File No.: C65861  
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**AFFIDAVIT OF FIONA MURRAY  
 (sworn September 14, 2018)**

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Interveners  
(Respondents in appeal – Responding Parties)

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**AFFIDAVIT OF FIONA MURRAY  
(Affirmed September 14, 2018)**

I, Fiona Murray, of the City of Toronto, in the Province of Ontario MAKE OATH AND AFFIRM:

1. I am the Deputy City Clerk of Election Services at the City of Toronto. In this capacity, I am responsible for providing overall direction and leadership in the delivery of programs and services to fulfill the City Clerk’s responsibilities under the *Municipal Elections Act, 1996* (the “**MEA**”) and various other provincial statutes.

2. As such, I have personal knowledge of the matters deposed below, except where it is based on information from others, in which case I have indicated the source of the information and believe such information to be true.

3. I previously affirmed an affidavit in this proceeding on August 22, 2018.

### **The Role of the City Clerk**

4. The City Clerk (the “**Clerk**”) holds a statutory position defined by subsection 137(1) of the *City of Toronto Act, 2006*.

5. The Clerk’s primary duties include administering the municipal election, managing the decision making process by supporting City Council and committee meetings, making information accessible to the public while protecting privacy, providing leadership in matters of protocol, providing administrative support to members of City Council and their staff and processing registry and gaming licenses.

6. Section 11 of the MEA requires the Clerk to prepare for and conduct the elections for municipal City Council as well as four local school boards. The Clerk’s responsibility includes preparing for the election and maintaining peace and order in connection with the election. The MEA grants authority to the Clerk to (among other things) establish voting places, determine policies and procedures, hire staff and delegate responsibilities.

7. Staff of the City Clerk’s Office are delegated responsibilities to administer the election. The Clerk’s office is responsible for planning, organizing and implementing the logistics of a complex election that has multiple interdependencies and technology.

8. When conducting an election, the Clerk and her staff are guided by the following principles:

- (a) the secrecy and confidentiality of the voting process is paramount;

- (b) the election shall be fair and non-biased;
- (c) the election shall be accessible to the voters;
- (d) the integrity of the voting process shall be maintained throughout the election;
- (e) there is to be certainty that the results of the election reflect the votes cast;
- (f) voters and candidates shall be treated fairly and consistently; and
- (g) the proper majority vote governs by ensuring that valid votes are counted and invalid votes are rejected so far as reasonably possible.

9. As reflected in these guiding principles, the Clerk must adhere to her statutory duty as provided for in the MEA when conducting an election. The Clerk acts at all times in an independent manner to ensure a fair election. With the exception of a few specific matters, the Clerk's responsibilities under the MEA are not subject to the direction of the Mayor or City Council.

10. The MEA was the subject of a comprehensive review starting in 2015 that resulted in significant legislative changes to the MEA in 2017. The changes included a shortened nomination period from 9 months to 3 months and moved the close of nominations from mid-September to the end of July. The shift provided municipal clerks with additional time after the close of nominations to adequately prepare to administer municipal elections.

### **The Conduct of Municipal Elections in Toronto**

11. The conduct of a municipal election in the City of Toronto is a significant and highly complex undertaking.

12. Toronto's municipal election is the fourth largest municipal election in North America and is larger than 9 of the 13 provinces and territories in Canada. The City has 2.7 million residents and approximately 2 million eligible electors. In the 2014 election, a total of 991,754 votes were cast in 1,679 voting locations. Over 15,000 short term election workers were hired and trained. The overall expenditure was approximately \$8,390,900.

13. The date of the 2018 municipal election is October 22, 2018. This date is fixed by section 5 of the MEA which specifies that the voting day in a regular election is the fourth Monday in October.

14. For the 2018 municipal election, the Clerk is planning to print 2.6 million ballots, arrange for 1709 voting day places, and fill just under 18,000 positions. Some of the positions that need to be filled for the 2018 election include approximately 60 ward manager and assistant ward managers, 550 supervisors, 130 ward centre support staff, 500 receiving staff, 36 tabulator technicians and 90 results call centre agents. The remainder of the positions will be in the voting day places. The Clerk has planned to undertake over 1100 training sessions for voting place staff.

**The Better Local Government Act, 2018**

15. As detailed in my prior affidavit, throughout 2017 and 2018 the Clerk's office had been preparing to conduct an election for mayor, 47 councillor positions and 39 school board trustees across four school boards, based on the new ward structure that was in effect for the 2018 election. My prior affidavit outlines the task that had been completed or commenced by the Clerk's office prior to the end of July 2018 for a municipal election based on a 47-ward structure.

16. The nominations for an election based on the 47-ward structure closed July 27, 2018 at 2 p.m. The Clerk certified the nominations prior to the deadline of July 30, 2018 at 4 p.m. as required by the MEA. The certification of nominations permits the Clerk to begin production of the ballots. Due to the large number of ballots and ballot types, the Clerk had arranged with an external vendor to begin the process of producing ballots in August 2018. The Clerk would then undertake logic and accuracy testing (the "**L&A Testing**") on the ballots and tabulators.

17. Absent the changes resulting from Bill 5, the Clerk had planned by mid-September to have all ballots printed, L&A Testing on the ballots and tabulators completed, and all election information technology systems and tabulators would be "locked down" (i.e. secured with restricted access) for the election on October 22, 2018. The Clerk utilizes 14 different systems and applications to support the administration of the election. The administration of the election requires the use of over 2000 tabulators, 60 voter assist terminals (for voters with disabilities), 600 laptops and 200 desktops.



18. Upon the introduction of Bill 5 into the Legislative Assembly on July 30, 2018, the Clerk's office began to develop a contingency plan to conduct an election on October 22, 2018 utilizing a 25-ward structure in anticipation of the new legislation. While the situation was unprecedented, the Clerk's office drew upon other resources within the City, Elections Ontario, the Municipal Property Assessment Corporation and external vendors to develop a contingency plan to administer the 2018 municipal election on October 22, 2018 utilizing a 25 ward structure. Based on the support the Clerk's office received, the Clerk was confident that the election could be administered in a manner consistent with the Clerk's obligations under the MEA.

19. The contingency plan was implemented by the Clerk when Bill 5 received Royal Assent and the *Better Local Government Act, 2018* took effect. In implementing the contingency plan, the Clerk's office took measures to ensure that the possibility of running an election using a 47-ward structure would remain a viable option, including retaining and securing all data and information related to the 47-ward structure. The measures taken by the Clerk's office are detailed in a report to City Council prepared by the Clerk dated August 17, 2018. A copy of the report is attached to this affidavit as Exhibit "A".

20. Under Bill 5, the 509 certified candidates for Councillor and school trustee elections in the 47-ward election had until September 14, 2018 at 2:00 pm to indicate in writing to the City Clerk their intentions to run in the 25-ward election (by filing a Change of Ward form), otherwise they would be deemed to have withdrawn their nomination altogether. Candidates who had not previously registered to run in the 47-

ward election also had until September 14, 2018 to submit their nominations to run in the 25-ward election.

21. From August 20, 2018 (the first date nominations were accepted under the 25-ward structure) to September 10, 2018 (the date of the Order of Justice Belobaba), a total of 16 new candidates filed nominations for the 25-ward election under Bill 5 who were not registered under the 47-ward structure. Of the 509 certified candidate in the 47-ward election, as of September 10, 2018:

- (a) 293 candidates had filed Change of Ward forms to specify which ward in a 25-ward election they were running for;
- (b) 4 candidates had changed offices by withdrawing under the 25-ward model and then re-filing for a different office;
- (c) 6 candidates withdrew under the 25-ward model; and
- (d) 206 candidates had not yet taken action, in terms of filing a Change of Ward form, changing offices or withdrawing their nomination.

22. Due to the uncertainty around the election, the Clerk's office has taken a number of steps to ensure the options of conducting an election on either a 25 or 47-ward structure remain open. These steps include: the design of a householder (i.e. an information package about the election sent to each household in the City) that will work under either structure; the retention of all voting place permits for advance voting and voting day for the 47-ward structure while also obtaining permits for a 25-ward

structure; and confirming that our external vendor has the ability to print separate sets of voter information cards for either a 25 or 47-ward structure.

23. The Clerk's office also investigated the possibility of having our external vendor print a separate set of ballots for both a 25 and 47-ward structure. However, due to capacity limitations and difficulties with calibrating tabulators, the Clerk has determined that it is simply not feasible to print two separate sets of ballots.

### **The Order of Justice Belobaba**

24. The Order of Justice Belobaba dated September 10, 2018 declared the relevant portions of the *Better Local Government Act, 2018* to be of no force or effect and ordered the election to proceed on the basis of a 47-ward structure (the "**Order**").

25. Upon the release of the Order, the Clerk's office began the work of reverting back to a 47-ward structure. The Clerk's office was in contact with Elections Ontario, the Municipal Property Assessment Corporation and external vendors to begin the work needed to administer the election with confidence and in accordance with the principles of the MEA.

26. On September 10, 2018 the Clerk sent a letter to Ms. Laurie LeBlanc, Deputy Minister at the Ministry of Municipal Affairs and Housing, that identified a list of items for the Minister's consideration to be included in a new regulation. These items must be addressed to meet the incredibly tight timelines and to ensure the integrity of the administration of the upcoming municipal election. The Clerk advised Ms. LeBlanc that her ability to revert back to a 47-ward structure would be compromised if a regulation

was not received within a few days. A copy of the letter to Ms. LeBlanc is attached to this affidavit as Exhibit "B".

27. The Clerk's office sent a notice to candidates and provided information to the public on the City's Elections website notifying of the court's decision and that the election would now be administered under a 47-ward structure. The notice indicated that the Clerk would no longer accept nominations, change of ward notices and/or withdrawals, notwithstanding that under Bill 5, their deadline to file these documents were on September 14, 2018.

28. I am currently aware of 22 potential candidates, including six incumbent Councillors, who intended to submit nominations for the 25-ward structure but did not do so prior to the release of the Order. These potential candidates have expressed concern to the Clerk's office that they will not be able to submit nominations if the Order is stayed after September 14, 2018 (the date on which nominations close under the *Better Local Government Act, 2018*).

29. In the event that a stay of the Order is granted by the Court of Appeal, provision should be made to extend the nomination day for two days following the date on which the stay is granted. This will allow any potential candidates a final opportunity to submit nominations for the 25-ward structure.

### **The Introduction of Bill 31**

30. On September 10, 2018 the Premier of Ontario announced that the Province would reintroduce the provisions of the *Better Local Government Act, 2018* and invoke

the notwithstanding clause in section 33 the *Charter of Rights and Freedoms*. These provisions were contained in Bill 31, the *Efficient Local Government Act, 2018*, which was introduced to the Legislative Assembly on September 12, 2018.

31. If passed, Bill 31 will also extend the nomination date for two days following the date of Royal Assent for the *Efficient Local Government Act, 2018*. Based on media reports, I understand that Bill 31 is not expected to pass the Legislative Assembly and receive Royal Assent until early in the week of September 24, 2018. This would extend the nomination period until at least September 26, 2018.

#### **Retention of Independent Counsel and Intervention**

32. The Clerk retained independent legal counsel on September 13, 2018. The Clerk determined that it was necessary to intervene in the Attorney General's motion to stay to ensure that the Court has access to independent evidence on the Clerk's responsibilities under the MEA.

33. The Clerk does not take a position on the stay motion or the underlying appeal.

#### **The Stay Motion**

34. In response to the Order of Justice Belobaba and the introduction of Bill 31, the Clerk's office developed a number of contingency options to carry out the election on October 22, 2018 as required by the MEA using either a 25 or 47-ward structure.

35. At this time, the Clerk is prepared to conduct an election using either a 25 or 47-ward structure in accordance with the principles of the MEA. The conduct of an election

using a 47-ward structure is complicated by the absence of a regulation that addresses the items identified in the Clerk's letter of September 10, 2018.

36. Without clarity on the structure of the election, the Clerk is rapidly reaching a point at which she will be unable to conduct an election on October 22, 2018 in accordance with the requirements of the MEA under either a 25 or 47-ward structure. It is simply not feasible for the Clerk's office to continue to effectively prepare for two elections at the same time given the October 22, 2018 election date.

37. If the current uncertainty is not resolved quickly, the Clerk will be required to implement measures that may undermine the integrity of the voting process in order to hold the election. Advance voting is currently scheduled to begin on October 10, 2018 and run until October 14, 2018. The measures in the contingency options developed by the Clerk's office include the cancellation of advance voting days and the reduction of L&A Testing. The Clerk is concerned that these measures increase the risk of irregularities with the election.

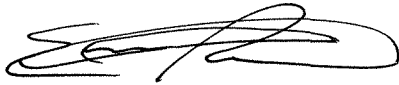
38. In addition, the current schedule does not provide any room for slippage for unanticipated issues or the correction of errors. For example, the current plan requires the printing of ballots 14 hours a day for 7 days. Any disruption in the printing process could have follow-on consequences. The Clerk is also taking measures to avoid the impact of a potential labour disruption by Canada Post, the union for which I understand will be in a legal strike position on September 26, 2018.

39. If the stay motion brought by the Attorney General is not granted, the Clerk will continue with her preparations to hold an election on October 22 utilizing a 47-ward

structure while also planning for the contingency of reverting to a 25-ward structure in the event that Bill 31 is passed by the Legislative Assembly.

40. In the event the stay motion is granted, the Clerk will revert to her contingency plan for holding an election using a 25-ward structure.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario on September 14, 2018.



\_\_\_\_\_  
Commissioner for Taking Affidavits



\_\_\_\_\_  
FIONA MURRAY

**TAB A**

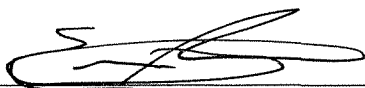


**EXHIBIT "A"**

referred to in the Affidavit of

**FIONA MURRAY**

Sworn September 14, 2018



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Commission for Taking Affidavits



## REPORT FOR INFORMATION

### The Impact of the Better Local Government Act, 2018 (Bill 5) on Toronto's 2018 Municipal Election

**Date:** August 17, 2018

**To:** City Council

**From:** City Clerk

**Wards:** All

#### SUMMARY

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The Better Local Government Act, 2018 (Bill 5) received Royal Assent on August 14, 2018 amending the City of Toronto Act, 2006 (COTA) and the Municipal Elections Act, 1996 (MEA) requiring the City Clerk to administer the 2018 municipal election on the basis of 25 wards. The Minister of Municipal Affairs and Housing filed regulations under COTA and the MEA providing implementation details for these changes.

The legislative and regulatory changes require the City Clerk to:

- Accept nominations for councillor and school board trustee beginning August 20, 2018 until 2:00 p.m. on September 14, 2018;
- On September 17, 2018:
  - Initiate voting proxy applications;
  - Issue the voters' list to certified candidates; and
  - Begin the revision period for the voters' list.

Nominations for the office of the mayor closed at 2:00 pm on July 27, 2018 and were not extended. The City Clerk has certified thirty-five mayoral candidates whose names will appear on the ballot on October 22, 2018.

Adjusting the administration of the 2018 election from 47 to 25 wards for implementation on October 22, 2018, requires extraordinary efforts and is only possible by leveraging support and partnerships with the Toronto Public Service, Municipal Property Assessment Corporation (MPAC), Elections Ontario, vendors and others.

The City Clerk continues to make the necessary adjustments to administer the 2018 municipal election on the basis of 25 wards while upholding the principles and legislative framework governing elections.

The City Clerk is concerned that further ward boundary changes will provide insufficient time to undertake the actions necessary to administer the election in accordance with the principles of election administration. Further ward boundary changes for implementation on October 22, 2018 in such compressed timelines are likely to compromise the integrity and security of the 2018 municipal election. Additional ward boundary changes so close to the election will result in an unacceptable level of risk to the City.

## **FINANCIAL IMPACT**

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The additional costs associated with adjusting the administration of the election from 47 wards to 25 wards is approximately \$2.5M over and above the current budget of \$14.9M.

Funding for the 2018 municipal election is included in the City Clerk's Office approved 2018 Operating and Capital budgets and is recovered from the Election Reserve Fund. The City is required to pay all election-related costs once certified by the City Clerk.

The Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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At its meeting on July 23, 2018 City Council considered on an urgent basis, the Provincial Government's Plan to Reduce the Size of City Council and made a number of decisions that included that the City Solicitor report backs to City Council at a special meeting on August 20, 2018 with respect to Bill 5, Better Local Government Act, 2018.

City Council also exempted the City Clerk from City policies or procedures related to procurement, human resources, budget and information technology that the City Clerk believes is necessary or desirable in order to conduct the election.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.MM44.128>

### **Issue/Background**

The MEA designates the City Clerk as the person responsible for administering Toronto elections, by-elections and questions on the ballot and performs a statutory role in this regard, independent from the City.

The Clerk is required to administer elections, by-elections and questions on the ballot in compliance with the following principles:

- The secrecy and confidentiality of individual votes is paramount;
- The election should be fair and non-biased;
- The election should be accessible to the voters;
- The integrity of the process should be maintained throughout the election;
- Voters and candidates should be treated fairly and consistently within a municipality;
- There should be certainty that the results of the election reflect the votes cast; and
- The proper majority vote governs by ensuring that valid votes are counted and invalid votes are rejected so far as reasonably possible.

The MEA provides the City Clerk with significant discretion in administering elections and the independence of a municipal clerk for election purposes is a fundamental underpinning of the legislative framework.

To ensure the integrity, fairness and transparency of municipal elections, unless the MEA provides a specific role, municipal councils have no authority to direct the conduct of an election. Given that the City is currently in an election period, directions or requests to the City Clerk with respect to the conduct of the 2018 election are inappropriate.

## COMMENTS

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City Council requested the City Solicitor to report to City Council at its meeting on August 20, 2018 on a range of matters including whether the capacity of the City Clerk to implement ward changes contemplated by the introduction of Bill 5 impacted the validity of the constitutionality of the legislation. The City Solicitor has also submitted a supplementary report outlining the Regulations recently enacted under COTA and the MEA, which provide further implementation details related to the 2018 municipal election.

This report is supplementary to the City Solicitor's report, Legal Options to challenge Bill 5, the Better Local Government Act, 2018 and provides further information with respect to the administration of the 2018 municipal election and the City Clerk's capacity to implement the legislative changes.

### **1. Implications on the Administration of the 2018 Municipal Election**

Bill 5 became law on August 14, 2018 requiring the City Clerk to administer Toronto's election on October 22, 2018 on a 25-ward model for the offices of councillor and trustee for the Toronto District School Board, Toronto Catholic District School Board, Conseil scolaire Viamonde, and Conseil scolaire catholique MonAvenir.

Nominations for the offices of councillor and school board trustee are extended from August 20, 2018 until September 14, 2018 at 2:00 pm.

Candidates already certified by the City Clerk for the 47-ward model may provide notice to the City Clerk (using a prescribed form) of their intention to run in the 25-ward model and for which ward. Certified candidates who do not notify the City Clerk by September 14, 2018 by 2:00 p.m. will be deemed to have withdrawn and their names will not appear on the ballot. The voters' list will be available to candidates on September 17, 2018.

Nominations for the office of the mayor closed on July 27, 2018 at 2:00 pm and were not extended. The City Clerk has certified thirty-five candidates for the office of mayor whose names will appear on the ballot.

Voting proxy applications will be available beginning September 17, 2018 and this is also the date that the revision period starts, which will enable eligible electors to add, delete or amend their information on the voters' list.

## **2. Contingency Plans to Administer the Election under a 25-ward Model**

Bill 5 was introduced in the Legislature on July 30, 2018 and proposed changes that would significantly impact the administration of Toronto's 2018 municipal election. The City Clerk undertook emergency contingency planning to prepare to administer the election pursuant to the changes in the event that the legislation became law. Until the bill received Royal Assent, the City Clerk continued to administer the election based on 47 wards and ensured that election systems, data and information associated with the 47 ward model was retained and secured.

Extraordinary effort was expended to develop contingency plans in very compressed timelines to prepare to administer the election on a 25 ward basis to comply with Bill 5. Electoral geography is the basis of election administration requiring significant changes to election systems, processes and activities to accommodate new boundaries. The City Clerk leveraged resources from within the City, partnerships with the Municipal Property Assessment Corporation (MPAC), Elections Ontario, Ministry of Municipal Affairs and Housing, City agencies and others in developing a contingency plan. The level of support and cooperation across the Toronto Public Service, partners and vendors has been unprecedented and has been a key factor enabling the City Clerk to prepare for these changes.

The key activities the City Clerk has taken or will take to administer the 2018 municipal election under a 25-ward model include:

- Revising the geography (wards and subdivisions) based on the Provincial electoral districts and assessing all voting locations;
- Adjusting election information technology systems, applications and vote counting equipment to administer the election on revised geography and undertaking additional cyber security testing;

- Additional communications, advertising and outreach to voters about the changes and how, where and when to vote;
- Additional communications and information sessions for candidates;
- Adjusting staffing, warehouse distribution and supply packaging to new wards and subdivisions;
- Assessing advance vote dates and locations; and
- Executing a data sharing agreement with Elections Ontario related to wards and subdivisions, voting locations, staffing models and the voters' list.

The City Clerk is confident that she has the capacity to administer the 2018 municipal election on a 25 ward basis and has taken the necessary steps to develop contingency plans to accommodate these changes in time for October 22, 2018.

### **3. Additional Ward Changes for the 2018 Municipal Election**

In the event a challenge to Bill 5 is successful in the courts (which could be subject to further appeals), the City Clerk has assessed the risk and capacity to revert back to 47 wards in the administration of the October 22, 2018 election.

Assuring compliance with the principles of the MEA and ensuring the integrity and confidence in the electoral process will be severely compromised. Reverting back to a 47 ward model so close to election day raises unacceptable levels of risk and undermines the trust and confidence of candidates and voters. The City Clerk is concerned she will be unable to undertake the necessary due diligence required to administer an election while meeting the principles of the MEA including the ability to

- produce an accurate voters list based a revised 47 ward model.
- secure additional and re-permit voting places that meet the accessibility requirements outlined in legislation;
- design, produce, print and perform logic and accuracy testing of 2 million ballots across 235 ballot types and required end-to-end testing of election systems;
- amend and print training materials and execute training for over 18,000 election day workers; and
- provide revised communication and information to voters, candidates and the public; about their ward and where to vote.

**CONTACT**

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Fiona Murray, Deputy City Clerk, Election Services, City Clerk's Office  
416-392-8019; [fiona.murray@toronto.ca](mailto:fiona.murray@toronto.ca)

**SIGNATURE**

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Ulli S. Watkiss  
City Clerk

**TAB B**

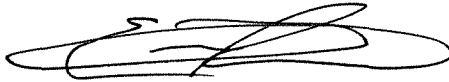


**EXHIBIT "B"**

referred to in the Affidavit of

**FIONA MURRAY**

Sworn September 14, 2018

A handwritten signature in black ink, appearing to read 'Fiona Murray', is written over a horizontal line.

Commission for Taking Affidavits



City Clerk's Office

City Hall,  
100 Queen Street West  
West Tower, 13<sup>th</sup> Floor  
Toronto, Ontario M5H 2N2

**Ulli S. Watkiss**  
City Clerk

**Tel:** 416-392-8011  
**Fax:** 416-392-4900  
clerk@toronto.ca  
toronto.ca

September 10, 2018

Ms. Laurie LeBlanc  
Deputy Minister  
Ministry of Municipal Affairs and Housing  
College Park 17<sup>th</sup> Floor; 777 Bay Street  
Toronto, ON M5G 2E5

Dear Deputy Minister LeBlanc:

As you know, the Superior Court of Justice rendered its decision on September 10, 2018, striking down the *Better Local Government Act, 2018* and its associated regulations. While a leave to appeal application may be submitted to the Court of Appeal, we must develop a plan to revert back to a 47-ward model for the 2018 municipal election on October 22.

To meet the incredibly tight timelines and to ensure the integrity of the administration of the upcoming municipal election, I have attached a list of items for the Minister's consideration to be included in a regulation. With just 30 days until the first advance vote date and 6 weeks until election day, I am concerned that if we do not receive a regulation within a few days, our ability to revert back to a 47-ward model as directed by the Superior Court will be compromised.

We have been in contact with Elections Ontario, the Municipal Property Assessment Corporation, external vendors as well as various interdivisional contacts. Despite their strong commitment to assist us under these extraordinary circumstances, there continues to be much work that needs to be completed for us to administer the election with confidence and in accordance with the principles of the *Municipal Elections Act, 1996*.

As we continue the work to revert back to a 47-ward model structure, it is possible that we may request additional items to be included in future regulations. We look forward to our continued cooperation during the upcoming election and would be pleased to discuss this further.

Yours truly,

Original signed by Ulli. S. Watkiss

Ulli S. Watkiss  
City Clerk

Attachment

CC: Kate Manson-Smith, Asst. Deputy Minister, Ministry of Municipal Affairs and Housing, Government of Ontario  
Tanzeel Merchant, Director, Ministry of Municipal Affairs and Housing, Government of Ontario  
Chris Murray, City Manager, City of Toronto  
Fiona Murray, Deputy City Clerk, City of Toronto

### Transition Regulation Requirements to Revert Back to a 47-Ward Model

Requirements	Rationale	MEA Section if applicable	Notes
Nomination date reverts back to July 27, 2018 and the certified list of candidates	Previous nomination date needs to be reinstated and reverted back to certified list of candidates	Section 31	Assumes nomination reverts back to July 27 and the certified list of candidates at that time
Last date to withdraw reverts back to July 27, 2018	Previous withdrawal date needs to be reinstated	Section 36(a)	Assumes nomination reverts back to July 27 and the certified list of candidates at that time
Proxy date needs to be established – recommending September 17	Date of July 27 for proxy applications will have passed	Section 44	Recommend proxy date be established as September 17 consistent with Regulation 407/18
Maximum campaign expense certification date needs to be established	Date of July 27 for Clerk to give each candidate certificate will have passed	Section 33.01(1)	If maximum limit has changed or allows for exceptions due to new expense limits based on 25 ward model, will need to provide new certificate. Need to determine what date the clerk needs to provide by
Revision period needs to be established – recommending September 17	Date of September 4 for revision period to begin will have passed	Section 23(2) (b)	Recommend revision period be established as September 17 consistent with Regulation 407/18
Date for Clerk to distribute voters list to certified candidates needs to be established – recommending September 17	Date of September 4 for voters list to be distributed will have passed	Section 23(2) (a), 10 (1)	Recommend voters list distribution be established as September 17 consistent with Regulation 407/18

Requirements	Rationale	MEA Section if applicable	Notes
Provisions for candidates who filed after August 20	Candidates who filed after August 20 will need to understand their status and financial reporting requirements	Sections 88.19, 88.20, 88.24, 88.25	If the legislation and associated regulations are struck down, candidates who filed during the extended period, will not be candidates
New expense limits	Candidates may have overspent the initial limits set for the 47 ward model	Section 88.20(6)	Clarity will need to be provided for candidates that have overspent including consideration of exemption from the Compliance Audit Committee
Exemption of costs incurred from a candidate's spending limit for expenses incurred solely due to file and refile under 47, 25, 47 ward model,	Relieve financial burden on candidates to change plans, materials and resources to accommodate ward changes	Section 88.20(8)	It would be helpful to clarify if costs related to moving from 47 to 25 and back to 47 will be addressed including consideration of exemption from the Compliance Audit Committee
Self contribution limits	The self contribution limits increased under the 25 ward model and will be reduced again under a 47 ward model	Section 88.9.1(1)	Clarity will need to be provided for candidates who have exceeded their self contribution limits including consideration of exemption from the Compliance Audit Committee
Controverted Election limitations	Include provisions to limit orders related to controverted election applications due to actions the Clerk took or did not take to revert back to a 47 ward model	Section 88(3)	Provisions should be similar to the provisions included in Regulation 407(18)

ROCCO ACHAMPONG  
Applicant (Respondent in appeal)

and

ONTARIO  
Respondent (Appellants)

and

CITY OF TORONTO  
Respondent (Respondent on Appeal)

**Court of Appeal. File No. C65861**

Superior Court File No: CV-18-  
00602497-0000

THE CITY OF TORONTO  
Applicant (Respondent in appeal)

ATTORNEY GENERAL OF ONTARIO  
Respondent (Appellant)

Superior Court File No: CV-18-  
006003797-0000

CHRIS MOISE *et al.*  
Applicants (Respondent in appeal)

ATTORNEY GENERAL OF ONTARIO  
Respondent (Appellants)

and

CITY OF TORONTO  
Respondent (Respondent on Appeal)

Superior Court File No: CV-18-  
00603633-0000

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

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**AFFIDAVIT OF FIONA MURRAY  
(AFFRIMED SEPTEMBER 14, 2018)**

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Lawyers for the Intervener  
Ulli Watkiss, City Clerk, City of Toronto

ROCCO ACHAMPONG  
Applicant (Respondent in appeal)

and

ONTARIO  
Respondent (Appellants)

and

CITY OF TORONTO  
Respondent (Respondent on Appeal)

Court of Appeal. File No. C65861 \_\_\_\_\_  
Superior Court File No: CV-18-  
00602497-0000

THE CITY OF TORONTO  
Applicant (Respondent in appeal)

ATTORNEY GENERAL OF ONTARIO  
Respondent (Appellant)

Superior Court File No:  
CV-18-006003797-0000

CHRIS MOISE *et al.*  
Applicants (Respondent in appeal)

ATTORNEY GENERAL OF ONTARIO  
Respondent (Appellants)

and

CITY OF TORONTO  
Respondent (Respondent on Appeal)

Superior Court File No:  
CV-18-00603633-0000

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

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**MOTION RECORD  
(RETURNABLE SEPTEMBER 18, 2018)**

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**STIKEMAN ELLIOTT LLP**  
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