

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROCCO ACHAMPONG

Applicant
(Responding Parties)

-and-

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

Respondents
(Responding Parties)

NOTICE OF MOTION

(Motion for Leave to Intervene, Returnable August 21, 2018)

The Canadian Taxpayers Federation (“CTF”) will make a motion to the court on Tuesday, August 21, 2018, at 10:00 a.m., or soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1 (1) because it is (*insert one of on consent, unopposed or made without notice*);
- in writing as an opposed motion under subrule 37.12.1 (4);
- orally.

THE MOTION IS FOR:

- (a) An order granting leave to CTF to intervene in this proceeding on the following terms and conditions:
 - (i) CTF shall be entitled to serve and file a factum not exceeding twenty (20) pages in length on or before August 29, 2018;

- (ii) CTF shall be granted permission to present oral submissions not to exceed twenty (20) minutes in length at the return of this hearing;
 - (iii) CTF shall not be entitled to raise new issues or adduce further evidence or otherwise supplement the record of the parties;
 - (iv) Costs of this motion and the application shall not be awarded to or against CTF;
and
- (b) Any further or other order that this Honourable Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. CTF is a federally incorporated, not-for-profit citizen's group dedicated to lower taxes, less waste, and accountable government. The CTF currently has approximately 117,000 supporters nationwide.
2. CTF issues regular news releases, commentaries, online postings and publications to advocate on behalf of CTF members. Its advocacy initiatives include direct representations to all levels of government, organizing events and campaigns to effect public policy change, and where appropriate, intervening in court proceedings that raise important public policy issues.
3. CTF has a genuine interest in the matters at issue in this application. Based on materials filed by the applicant to date, the applicant intends to argue, among other things, that the unwritten principles of democracy, constitutionalism and rule of law, are engaged by the passage of Bill 5, *The Better Local Government Act* (the "Act") and in particular, those provisions in the Act that reduce the number of City of Toronto wards from 47 to 25.
4. CTF and its members have a genuine interest in the ability of democratically elected governments to take steps to increase the efficacy of government, reduce the cost of government, and to reduce the importance and power of special interest groups in governance. CTF and its members also have a genuine interest in the extent to which the judiciary has the ability to invalidate laws passed by democratically elected and constitutionally recognized levels of government, particularly through unwritten constitutional principles that are developed by the courts.
5. While the applicant has raised a number of different issues, including the application and interaction of the Act and other provisions of the *City of Toronto Act*, CTF intends to principally focus its submissions on issues relating to the unwritten constitutional principles, and in particular, the unwritten constitutional principle of democracy.

6. Relying on authorities and secondary sources in Canada and internationally, CTF will make submissions relating to both (a) the content of the unwritten constitutional principle of democracy; and (b) the operational force, if any, of such constitutional principle. CTF intends to advance the position that there are other aspects of the unwritten constitutional principles engaged by the applicant's request for relief, including parliamentary supremacy, separation of powers, constitutionalism and the rule of law, which militate against granting the relief sought by the applicant.
7. CTF will submit that the courts have recognized that the unwritten constitutional principles described by the Supreme Court of Canada in the *Secession Reference* do not lead to the conclusion that such principles can be used to invalidate laws. By virtue of their unwritten status which thus requires definition by way of judicial determination, the lack of any governmental protection enshrined elsewhere in the constitution (such as the section 33 notwithstanding clause or the section 1 justification clause), and other reasons, the unwritten constitutional principles should be used sparingly, if ever, in relation to legislation passed by either the federal or provincial government.
8. In respect of the content of the unwritten constitutional principle of democracy, to the extent it relates to municipal elections at all, CTF will submit that there are aspects of the democratic process that are closer to the "core" of the constitutional principle, and aspects that are more peripheral. Core aspects of the constitutional principle include the right of citizens to vote, and the right of citizens to run for office as a candidate. The matters at issue in this proceeding do not relate to the core aspects of the constitutional principle of democracy.
9. The arguments advanced by CTF will be different from, and will not substantially overlap with, arguments anticipated to be made by the respondents, and will be designed to assist the court in adjudicating the matters at issue in this proceeding.
10. Rule 13 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194.

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

1. The affidavit of Aaron Wudrick, sworn August 20, 2018
2. Such further and other evidence as counsel may

August 18, 2018

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

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