

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ROCCO ACHAMPONG

Applicant
(Responding Party)

-and-

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

Respondents
(Responding Parties)

AFFIDAVIT OF AARON WUDRICK

SWORN AUGUST 20, 2018

I, Aaron Wudrick, of the City of Ottawa, in the Regional Municipality of Ottawa-Carleton, in the province of Ontario, AFFIRM AS FOLLOWS:

1. I am the Federal Director of the moving party, the Canadian Taxpayers Federation the (“CTF”), and as such have knowledge of the matters hereinafter depose to, except where I have made statements based on information and belief, in which case I have identified the source of that information and I believe such information to be true.

2. I joined CTF in 2014. My position includes researching public policy, writing reports, editorials and other materials, organizing advocacy campaigns, and speaking on behalf of the CTF and its supporters to policymakers, media and other bodies. I obtained a J.D. from the University of Western Ontario.

3. The CTF seeks leave to intervene in this proceeding on the basis that it is uniquely positioned as a representative of taxpayers to assist this Honourable Court in addressing the issues raised in this case, reflecting CTF's 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 influence and power of special interest groups in governance.

4. The CTF has a demonstrated historical and continuing interest in ensuring fiscal restraint, government transparency and democratic accountability. It has a particular interest in promoting these objectives in the context of government decisions that affect budgetary matters, and therefore affect the taxes that all Canadians must pay, including decisions relating to the size of the public sector.

5. While the CTF agrees, from a public policy standpoint, with the decision of the Ontario government in passing Bill 5, *The Better Local Government Act* (the "Act"), the focus of CTF's submissions, as described below, will relate to the *power* of the Ontario government to enact such legislation, and the extent to which, if at all, unwritten constitutional principles limit that power.

6. At its core, CTF is concerned with good governance, and at the most general level, holds the belief that good governance is effected through constitutionally recognized democratic institutions, exercising constitutional powers free from special interest interference.

Background and the Mandate of the CTF

7. The CTF was incorporated federally in 1990, as a result of the merger between The Association of Saskatchewan Taxpayers and The Resolution One Association. Today, the CTF maintains a federal office in Ottawa, and has expanded its operations to include regional offices in B.C., Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Atlantic Canada. Its administrative head office is in Regina, Saskatchewan.

8. Since its inception, the CTF has been devoted to mobilizing Canadian taxpayers to promote the objectives of budgetary restraint, government transparency, and the democratic accountability of government decision-makers, and to publicly advocate in support of these objectives.

9. The CTF is not affiliated in any way with any political party or institute, and does not endorse political parties or candidates. It also does not accept government grants or financial concessions, and is entirely supported by voluntary donations. In addition, the CTF directors and employees are not permitted to be members of, or donate to, any political party during their tenure with the CTF.

10. These steps have been taken in order to ensure both the reality and appearance of non-partisanship, which serves to better promote the CTF's goals of ensuring fiscal responsibility and democratic accountability of elected governments across the political spectrum.

11. The mandate of the CTF is:

- a. To act as a watchdog on government spending and to inform taxpayers of governments' impact on their economic well-being;
- b. To promote responsible fiscal and democratic reforms, and to advocate the common interest of taxpayers; and
- c. To mobilize taxpayers to exercise their democratic responsibilities.

12. The CTF believes that while taxpayers are personally affected by each and every spending decision that governments make, they are not able to effectively pursue their interests as individuals. Because each individual government spending decision may only have a marginal impact on overall government expenditures, and the effects of government expenditures are widely dispersed throughout the population, taxpayers must organize collectively to have their voices heard with respect to specific spending and policy decisions.

13. Put another way, individual taxpayers and voters do not always have the necessary tools or prerequisites - such as access to resources and information, and legal structures promoting government accountability, responsiveness and transparency - that are necessary to meaningfully impact government decision-making. The CTF seeks to fill that logistical and organizational gap, so that taxpayers can more meaningfully and effectively influence government decision-makers to take the long-term interests of the public into account in making spending decisions.

14. To that end, the CTF is dedicated to informing the public about government decision-making that has an effect on their lives and their pocket books, to supporting measures to improve government accountability and transparency, and to assisting the public in mobilizing grassroots support in favour of policy initiatives that the CTF seeks to advance, including support for balanced budgets and debt reduction, tax relief measures, personal self-sufficiency, as well as democratic transparency and financial accountability.

15. In this way, the CTF serves a democratic watchdog function, in an effort to keep citizens informed of the financial decisions of the government and the mechanisms through which they may influence that decision-making. This facilitates the ability of citizens to hold their governments accountable, both at the ballot box and between elections.

The CTF's Political and Legal Advocacy

16. The CTF's activities over its history have included advocating to government and regulatory bodies on behalf of its supporters with respect to policy and legislative reform; informing its supporters and the public with respect to changes in legislation affecting government transparency and accountability as well as a wide range of policy initiatives impacting the fiscal and budgetary health of governments; advertising and grassroots mobilization efforts (such as petitions and rallies) in support of both targeted and wide-ranging policy initiatives; and advocating on behalf of taxpayers and voters with respect to significant public policy decisions.

17. The CTF's work also includes advocating for large scale legislative reform initiatives that cut across jurisdictions. For instance, the CTF has mobilized its supporters across Canada to seek statutory reform regarding legislators' compensation, to ensure that legislative compensation standards are built around the guiding principles of transparency, fairness and simplicity.

18. For example, the CTF has campaigned to oppose overly-generous pensions for legislators, and so-called "tax-free allowances" that exempt some legislators' salaries from federal and provincial income taxes. This campaign has contributed to meaningful legislative changes in a number of provinces across the country, as well as reform in legislator's pensions in the federal Parliament.

19. While the CTF's public advocacy and grassroots organizing often centres around specific policy initiatives or reforms, the CTF also recognizes that issues of government waste and overspending are often symptomatic of larger problems in a modern democracy. The CTF believes that our current political system often fails to be accountable to the people who pay for it, leading to an accountability gap which undervalues the importance of farsighted and sustainable public sector spending in favour of increasing expenditures beyond the financial means of governments.

20. Therefore, the CTF has acted on a number of fronts - through commentaries, legislative presentations, reports, campaigns and conferences - to advance the empowerment of voters and everyday Canadians with respect to fundamental democratic choices. While the CTF has in the past, and will continue to in the future, advocate for political changes that result in more participatory democracy, CTF believes that such changes are usually most appropriately advanced in the realm of politics, not the courts. CTF believes that where legislatures have been democratically elected, they should be free to govern and carry out their mandates with minimal intrusion by special interest groups and others with vested interests in maintaining the status quo.

21. In addition, the CTF believes that sound democratic deliberation and decision making cannot take place where voters do not have the information they need to make informed decisions and to promote their interests in the democratic arena. As such, the CTF has consistently promoted the

expansion of Freedom of Information laws, and has opposed efforts to curtail the transparency of public decision making through restrictive reforms to these laws.

22. In addition to its public advocacy and broader democratic accountability and transparency initiatives, the CTF is dedicated to informing the public and playing a more general watchdog function. In furtherance of this objective, representatives of the CTF engage in research on public policy issues, collect information on government expenditures and policy decisions, speak at functions, engage in public advocacy and media promotion, and organize events and campaigns to both inform and mobilize citizens to effect public policy change.

23. The CTF has also produced numerous reports on both discrete and general public policy issues, in an effort to promote a more informed citizenry. The CTF issues a tri-monthly publication, *The Taxpayer*, which inform readers of the issues the CTF has addressed, as well as upcoming initiatives important to the CTF's supporters and voters more generally. The CTF also regularly issues press releases on emerging issues or recent events that are of significance to its supporters and Canadians in general.

24. The CTF has intervened in cases affecting both the CTF's supporters and the public at large, as well as initiating legal proceedings in an effort to ensure that the government is held accountable and acts within the scope of the law.

25. For example, the CTF has intervened before the Federal Court and the Federal Court of Appeal in *Benoit v. Canada*, [2002] F.C.J. No. 257, rev'd 2003 FCA 236. This case involved the circumstances under which treaty rights should properly be understood to exempt individuals covered by the treaty from paying taxes, and provided the CTF with the opportunity to advocate for the principle that all citizens be treated equally in taxation matters before and under the law. In an effort to assist the court in reaching its conclusions in this case, the CTF marshalled a number of arguments based on the principles of federalism, the Charter, and considerations of public policy.

26. The CTF has also intervened in a Privacy Commissioner inquiry involving an FOI request relating to legislators' compensation, in support of the public interest in the disclosure of legislative members' expense account claims: *Alberta (Legislative Assembly Office) (Re) (Order 97-017)*, [1998] A.I.P.C.D. No. 2.

27. In addition to these occasional interventions, the CTF initiated proceedings in its own name in *Canadian Taxpayers Federation v. Ontario (Minister of Finance)*, [2004] O.J. No. 5239 (S.C.). This case involved an application brought by the CTF against the Ontario government and various of its representatives, and raised legal issues respecting the enforceability of clear political commitments, and the legal validity of health care premiums in light of legislation requiring a referendum prior to the establishment of new taxes.

28. In these cases, as in the context of the proposed intervention in this appeal, the CTF has been guided by its core mandate to ensure fiscal sustainability, government accountability and public sector transparency in furtherance of the protection and promotion of the public interest.

CTF's Proposed Intervention

29. I have reviewed the Notice of Application issued in this proceeding dated July 31, 2018, the Amended Notice of Application of the same date, the Affidavit of Rocco Achampong sworn August 6, 2018, the Affidavit of Rocco Achampong sworn August 13, 2018, the Notice of Motion of the applicant dated August 13, 2018, and the Factum of the applicant dated August 13, 2018. I have been advised by counsel that there was a hearing held August 14, 2018, where a further hearing was scheduled for August 21, 2018 to deal with matters relating to parties.

30. I appreciate the urgency of this proceeding and that the nature of the issues being advanced has changed, and likely will continue to change, somewhat, over time. While it is not clear from the notices of application that the applicant is seeking a declaration of invalidity with respect to the Act, that would appear to be the necessary implication of the arguments being advanced.

31. Paragraph 18 of the applicant's factum on the injunction motion advanced the following proposition:

While the applicant acknowledges that s.3 of the Charter applies specifically to Parliament and the provincial Legislatures, "[t] The Constitution also "embraces unwritten, as well as written rules"... and includes "the global system of rules and principles which govern the exercise of constitutional authority in the whole and in every part of the Canadian state." <emphasis added> These unwritten supporting principles include Democracy, Constitutionalism, and the Rule of Law. The applicant alleges serious deprivations of procedural fairness in the alteration of the electoral rules during the campaign, and argues that both the timing and manner of introduction are contrary to the basic principles of democracy and the rule of law. To be clear, the applicant argues that the timing and manner in which the [Act] was introduced, and not its specific content, is the subject of his application. These are serious justiciable issues which should be tried.

32. This issue -- the extent to which unwritten constitutional principles, notably democracy -- will be the focal point of the CTF's submissions, if leave to intervene is granted. 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.

33. 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.

34. 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. CTF will submit that the matters at issue in this proceeding do not relate to the core aspects of the constitutional principle of democracy.

35. Although the specific position of the Ontario government (or even the applicant) is not fully known at this time, I expect that 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.

36. If granted leave, the CTF will not broaden the issues on appeal, but rather will provide a different perspective on these issues. The CTF will not seek to adduce any evidence, nor raise any new issues.

Affirmed before me at the City of Ottawa
in the Regional Municipality of Ottawa-
Carleton, in the Province of Ontario, on
August 20, 2018.

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Commissioner for Taking Affidavits
(or as may be)

.....
AARON WUDRICK

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF AARON WUDRICK,
SWORN AUGUST 20, 2018**

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