

Court File No. CV-18-00603797-0000

**ONTARIO****SUPERIOR COURT OF JUSTICE****BETWEEN:****CITY OF TORONTO**

Applicant

- and -

**ATTORNEY GENERAL OF ONTARIO**

Respondent

APPLICATION UNDER Rule 14.05(3)(d), (g.1) and (h) of the *Rules of Civil Procedure***AFFIDAVIT OF GIULIANA CARBONE**

(Sworn August 22, 2018)

I, Giuliana Carbone, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I was the Interim City Manager of the City of Toronto (the "City") from April 4, 2018 to August 12, 2018. As the Interim City Manager, I was the most senior official in the City's administrative structure. I was accountable to City Council for the policies and programs delivered by members of the Toronto Public Service. The City Manager is assisted by three Deputy City Managers and a Chief Financial Officer (the "Deputy City Managers"). Prior to my appointment as the Interim City Manager, I was one of the Deputy City Managers. Since the expiry of my

appointment, I have returned to my previous position as Deputy City Manager. As such, I have personal knowledge of the matters deposed to below.

## **THE STRUCTURE AND FUNCTIONING OF THE CITY OF TORONTO**

2. According to 2016 census data from Statistics Canada, the City of Toronto is home to approximately 2.7 million people.

3. In 2017, the City had an operating budget of \$10.5 billion and a 10 year capital budget of \$26.5 billion.

4. In order to serve so many citizens, as a sophisticated level of government, the City has a complex administrative structure made up of approximately 35,000 active employees of the City employed in a variety of City divisions providing City services. City Council is the elected government currently made up of 44 councillors and the Mayor. The councillors of the City of Toronto also sit on various City boards and committees, such as those listed above, in addition to City Council. I am attaching as **Exhibit "A"** some basic information from the City's public website about the City's local government and the Councillor's role.

5. The City has:

- (a) four community councils (which have between ten and twelve councillors as members);
- (b) eight standing committees (which each have six councillor as members);

- (c) numerous special committees (which each have five or six councillors as members);  
and
- (d) various local boards and business improvement areas (which have varying numbers of councillors as board members).

A list of some of the committees and boards of the City is attached to my affidavit as **Exhibit "B"**.

6. The vast majority of councillors already serve on multiple committees and boards. For example, Councillor Cressy sits on over 25 boards and committees. Given the number of committees and boards within the City, the higher the number of councillors, the greater the ability of councillors to share in the committee work.

7. As a result, the reduction in the number of councillors on City Council will impact on how many such committees and boards councillors will sit on in order to ensure that these committees and boards have the requisite number of members.

8. One natural consequence of sitting on more committees and boards is the increased workload resulting from such participation, which takes away from a councillor's accessibility to his or her constituents for other matters.

9. In addition, there is a lot of development in the City of Toronto. As part of that process, the City is required to hold at least one statutory meeting with respect to each development application. The ward councillor is automatically notified of any development that is taking place

in his or her ward and has the ability to attend, and often does attend, these statutory meetings. The larger the ward, the greater the potential for development applications within the ward, and the higher the number of mandatory statutory meetings.

## **MEETINGS OF CITY COUNCIL**

10. As the Interim City Manager and as a Deputy City Manager, I have had the opportunity to attend numerous meetings of Standing Committees and of City Council.

11. As City Council only meets once a month and, normally, only ten times a year, at any given meeting of council, there are numerous agenda items to be discussed and voted on. For example, in 2016, City Council went through 1,803 agenda items over the course of the year.

12. In addition, City Council passes numerous by-laws at these meetings. In 2016, City Council enacted 1,290 by-laws. By contrast, the City of Pickering passed 72 by-laws in 2016.

13. I present this information to show the significant work and decision making carried out in Committees and City Council which are the responsibility of elected councillors.

**FINANCIAL IMPACT OF REDUCTION OF COUNCILLORS ON CITY COUNCIL**

14. Currently, every councillor has 4 full-time staff persons. The total amount spent in 2017 on support staff salaries for all 44 existing councillors was \$11,047,540. The total remuneration and expenses for all councillors spent in 2017 was \$19,267,027.

15. If City Council is reduced to 25 councillors from the 44 existing councillors, based on the above numbers, support staff salary costs would reduce to 25/44 or 56.8% of existing salaries, as would the total expenses, assuming a uniform spending pattern across all councillors. This would mean that 25 councillors would have spent in 2017 \$6,277,011 in staff salaries and the total expenditure for councillors would have been \$10,947,174.

16. However, if each councillor decides to hire twice as many support staff because their ward has doubled in size, this would add another \$6,277,011 in staff salary costs and the total remuneration and expenses for 25 councillors would be \$17,224,185. This would be approximately \$2,000,000 less than the existing \$19,267,027 expenditure.

17. \$2,000,000 is approximately 0.02% of the City's 2017 operating budget.

18. The above does not take into account the changes that would be made to councillors' offices at City Hall to realign with the new number of councillors and their staff, nor the cost of redoing City Council chambers to adapt to the new number of councillors.

19. As well, I am advised by the City Clerk that the cost of changing the election from a 47-ward election to a 25-ward election will cost the City an additional \$2.5 million.

## THE CONSULTATION FRAMEWORK

20. Pursuant to s. 1(3) of the *City of Toronto Act, 2006* (“COTA”), both the Province of Ontario (“Ontario”) and the City recognized that it was in the best interests of both levels of government to engage in ongoing consultations with each other about matters of mutual interest and to do so in accordance with an agreement. That agreement has been, since 2008, the Toronto-Ontario Cooperation and Consultation Agreement (“T-OCCA”).

21. The first T-OCCA was signed by then Minister of Municipal Affairs and Housing, Jim Watson, and then Mayor of the City, David Miller, on January 15, 2008. It was then renewed by then Minister Rick Bartolucci and then Mayor Rob Ford on May 10, 2011, and then renewed again most recently, by then Minister Ted McMeekin and Mayor John Tory on May 12, 2016. The term of each T-OCCA was three years. Attached hereto as Exhibits “C”, “D” and “E” are these three agreements respectively.

22. T-OCCA captures the spirit and intention of s. 1(3) of COTA by setting out in its preamble, among other things, that “it is in the best interests of the Province and the City to work together in a relationship of mutual respect, ongoing consultation and cooperation on matters of mutual interest; and to do so in accordance with an Agreement between the Province and the City”.

23. T-OCCA also recognized that Ontario and the City are best served when the following principles are observed:

- (a) respect for each other's jurisdiction and authority;
- (b) co-operation on shared policy matters and/or other matters of mutual interest; and
- (c) shared commitment to consult with one another on matters described in T-OCCA.

24. It is also important to note that, pursuant to s. 6 of T-OCCA, both Ontario and the City agreed that Ontario would consult with the City on, among other things, "[a]ny proposed change in legislation or regulation that, in Ontario's opinion, will have a significant financial or policy impact on the City".

25. The following matters were excluded from the ambit of T-OCCA:

- a) emergency situations;
- b) matters subject to public interest immunity and matters in the Provincial budget, budget papers and budget bills;
- c) meetings and negotiations of First Ministers, Council of the Federation, Provincial-Territorial Ministers or Federal-Provincial-Territorial Ministers; and
- d) Meetings and negotiations of municipal organization and alliances (eg: Federation of Canadian Municipalities).

26. The process of consultation takes the form of meetings or teleconferences between representatives from Ontario and the City. Such consultations may include:

- (a) regular formal meetings with the City Manager/Deputy City Managers and Provincial Deputy Ministers;
- (b) periodic meetings between the Mayor and the Premier, and the Mayor and the Minister of Municipal Affairs;
- (c) periodic meetings between the Mayor and/or councillors and the Premier and/or Provincial Cabinet ministers, as jointly determined; and
- (d) additional ad hoc meetings on particular issues as jointly determined.

27. From the City's perspective, it is the City Manager's Office that has the responsibility to perform the monitoring and administration functions under T-OCCA.

28. In recent years, Ontario, under the Liberal government, has consulted the City on various provincial initiatives such as:

- o Cannabis legalization
- o Construction Lien Act reform
- o Canada-Ontario Immigration Agreement
- o City of Toronto Act review

29. Furthermore, the City and Ontario consult on numerous matters whether or not specifically referred to in T-OCCA.

**LACK OF CONSULTATION WITH RESPECT TO *BETTER LOCAL GOVERNMENT ACT, 2018* (“BILL 5”)**

30. It was and continues to be the expectation of the City that Ontario would consult with it pursuant to the terms of T-OCCA and COTA.

31. Both while I was the Interim City Manager and before that, when I was one of the Deputy City Managers, the City Manager’s Office had never been consulted or even approached by Ontario to discuss the types of changes to COTA and the *Municipal Elections Act, 2006* that Bill 5 introduces. There were no discussions whatsoever about any provincial plan to remove the City’s powers to establish its own ward boundaries or council composition, or to impose on the City a specific ward and council composition structure of Ontario’s choosing, let alone that these changes were intended to take effect for the October, 2018 municipal election in Toronto and that they would be imposed in the middle of the current election campaign.

32. Indeed, although, as I indicated above, there has been consultation with respect to a COTA review, none of those consultations even hinted at any of the changes introduced in Bill 5.

33. It would have been my expectation that Ontario would have consulted the City with respect to such important changes to the City’s governance structure in accordance with the terms of T-OCCA and COTA, since these changes are to legislation that “will have a significant financial or policy impact on the City” and do not fall within any of the enumerated exceptions to consultation. This is especially so since it is my understanding that the purported rationale for Bill 5 includes the desire to save money for taxpayers in the City.

34. I can think of few things that would have more impact for the City than the changes contemplated by Bill 5.

35. Furthermore, to my knowledge, there was no mention of any of the types of changes contemplated by Bill 5 during the election campaign of the Progressive Conservative Party of Ontario prior to the 2018 provincial election.

36. On July 27, 2018—well into the election year and the election process, on the last day that nominations were open, and just under three months before Election Day—the government of Ontario announced for the first time its intention to reduce the number of City of Toronto councillors from 47 to 25 for the 2018 election.

37. Bill 5 came into force on August 14, 2018, the day it passed third reading and received Royal Assent. Bill 5 was not sent to Committee for any consultation and the time frames in the Legislature for debate were shortened.

## **2018 ELECTION**

38. Among other things, Bill 5 requires the City Clerk to conduct the 2018 election for 25 councillor positions for 25 wards whose boundaries align with those of the provincial electoral districts. The nomination period for councillor or school board trustee is also extended to September 14, 2018. The mayoral election is not affected.

39. Bill 5 effectively abandons the 47-ward election, forcing active candidates for councillor and school board trustee to choose to either run for one of the new offices under the 25-ward structure, or withdraw from the election. (School board trustee elections are impacted because school board wards are formed by combining municipal wards.)

40. From the date their nomination is filed, each candidate is eligible to solicit and accept contributions toward their campaign and to incur campaign expenses. However, candidates are subject to limits on campaign expenses, and, upon filing their nomination, are advised by the Clerk of their financial limits, which are calculated based on the number of electors in the ward which they are a candidate for. A printout of the Election Services webpage posting the financial limits as it appeared on August 10, 2018, is attached as **Exhibit "F"**.

41. Many candidates have already produced campaign material based on 47 City wards. Reviewing the contact information submitted by candidates on the Election Services website reveals that many candidates for councillor had established campaign websites under 47 City wards. A copy of the list of candidates' information as of August 10 is attached as **Exhibit "G"**, and printouts of many councillor candidate websites as of the same date are attached as **Exhibit "H"**. Attached as **Exhibit "I"** is a sampling of campaign pamphlets from various 2018 candidates, which are provided to me from lawyers in the City Solicitor's Office who advise that these were delivered to their residences under the 47-ward model.

## THE TORONTO WARD BOUNDARY REVIEW

42. As noted above, until Bill 5 passed, the City Clerk had been preparing an election organized around a new 47-ward distribution. This ward structure was the result of a multi-year process known as the Toronto Ward Boundary Review ("TWBR").

43. In 2013, the City began the TWBR of its then existing 44-ward structure, with the goal being the adoption of a new ward boundary structure which would be more reflective of "effective representation". At its meeting on June 11 to 13, 2013, City Council authorized the retention of a third party consultant to undertake the review. Council's decision is attached as **Exhibit "J"**, along with the associated report from the City Manager, and appendices containing Toronto's population information and the terms of reference for the ward boundary review.

44. The TWBR project commenced with the request for proposals from qualified consultants in 2013. The City's chosen consulting team was ultimately retained in 2013 and began their review. Attached as **Exhibit "K"** is City Council's decision on June 13, 2014 to approve the TWBR work plan, civic engagement and public consultation strategy, as well as the associated staff reports, appendix and presentation.

45. Once started on the TWBR, the consultants held over 100 face-to-face meetings with members of City Council, school boards and other stakeholder groups and held 24 public meetings and information sessions and produced a number of substantial reports. Among others, the project team prepared a *Background Research Report ("Research Report")*, *Options Report* and a *Final Report* (a draft of each report was reviewed by a 5-person Advisory Panel). Following direction

from the Executive Committee, an *Additional Information Report* followed by a *Supplementary Report* were issued, with the final result being Council's decision to enact the Ward Boundary By-laws adopting the 47-ward option. Attached to my affidavit is the *Round 2 Report on Civic Engagement and Public Consultation* as **Exhibit "L"**. The other reports have been made exhibits in affidavits provided by the intervenors, Jennifer Hollett, Lily Cheng, Susan Dexter, Geoffrey Kettel and Dyanoosh Youssefi and will not be made exhibits to my affidavit.

46. The *Research Report* examined other ward boundary reviews, the legislative framework, OMB decisions, ward history in the City, projected development and electoral issues and incorporated comments from the Advisory Panel.

47. The *Options Report* (August 2015, revised October 2015) analyzed eight options for drawing new ward boundaries. The purpose of the report was to commence a discussion about a new preferred ward system among the public, stakeholders and Council. The methodology used for the development of the options addressed the components of effective representation plus: Toronto's population growth; a ward structure that will last for multiple elections; balanced ward population size; and effective new boundaries. The conclusion reached at this stage of the review was that five of the eight options provided for effective representation and should be carried forward. These were termed: minimal change; 44 wards; population per ward at 50,000 (small wards); population per ward at 75,000 (large wards); and wards drawn on natural and physical boundaries.

48. The prospect of using the Federal Electoral Districts (FEDs) to draw new ward boundaries was addressed in the *Options Report*. The City's consultants commented in that report that during

Round One of the civic engagement and public consultation process the idea of using the boundaries of the 25 federal and provincial ridings was discussed in some detail. The TWBR stated that, with 25 wards, each would have a population of about 123,000 people in 2026, resulting in very large wards. It stated that while there was little public support for this outcome, there was considerable support for an option that would divide the population in each federal riding in half, resulting in 50 wards with an average population of about 62,000 people per ward. The TWBR average population target per ward was determined to be 61,000. The FEDs option was not pursued as the conclusion reached by the TWBR team was that it would not achieve effective representation:

This option does not resolve the issue of very large wards in the Downtown, Willowdale and southern Etobicoke and the city's numerous small wards. It merely continues most of the inequities of the current situation that led to the TWBR. An option based on using the federal riding boundaries and then dividing them into two will not achieve effective representation and has, therefore, not been pursued (*Options Report*).

49. The *Final Report* was reviewed by the City's Executive Committee on May 24, 2016. The recommendation from the TWBR was to increase the number of wards from 44 to 47. It recommended addressing existing voter parity issues with a minimum number of changes to the existing boundaries. It recommended minimally increasing the number of wards to accommodate projected population growth, retain an average ward size of 61,000 people to ensure a manageable capacity for councillors to represent their constituents, achieve effective representation in all wards by 2026, and be workable through to the 2030 election.

50. Following receipt of the *Final Report*, the Executive Committee requested additional information on several matters, including a "ward option that is consistent with the boundaries of the 25 federal and provincial ridings". The Executive Committee's decision and associated background information are attached as **Exhibit "M"**. An *Additional Information Report* (August, 2016) was prepared and it responded to several suggestions for ward specific refinements and re-examined whether the ward boundaries could be consistent with existing federal and provincial boundaries.

51. Thereafter the TWBR submitted its *Supplementary Report* (October 2016) and confirmed its recommended 47-ward structure (with refinements) as the new ward boundaries, effective for the 2018 election. The refinements included changes to keep several communities of interest together, including the community on either side of Sentinel Road, Regent Park, and Church-Wellesley Village.

52. Council adopted the recommended 47-ward structure at its November 2016 meeting. Attached as **Exhibit "N"** is Council's decision and associated background information. By-laws 267-2017 and 464-2017 to implement the 47-ward structure were adopted by Council in March, 2017 and April, 2017, and there were six appeals of the By-laws to the Ontario Municipal Board (the "OMB" or the "Board"). Copies of these by-laws are attached as **Exhibits "O" and "P"** respectively.

53. The Board held a two week hearing in October of 2017. At the hearing, the City presented evidence in support of the 47-ward structure from the consultant team who conducted the TWBR. The appellants likewise called two expert witnesses who disagreed with the City's witnesses and

who were in support of the 25-ward FEDs boundaries. In the course of this hearing, the OMB received over 1,000 pages of documents and testimony from the parties and other witnesses, including five expert witnesses.

54. The OMB released its decision on December 15, 2017, which was in time for the new ward structure to be implemented by the City for the 2018 municipal election. A copy of the Board's decision is attached as **Exhibit "Q"**.

55. The Board found that the City's preferred option of 47 wards did indeed provide for effective representation in Toronto, which is the legal test on a ward boundary review as established by the Supreme Court of Canada in its 1991 decision known as the *Carter Case*.

56. The Board found that the City's preferred 47-ward structure provided for voter parity based on the evidence at the hearing and concluded that:

Effective representation is the primary goal and the Board finds that the 47 ward structure, reflected in the By-laws, does achieve that goal. The Board rejects that public consultation was inadequate.

(OMB Decision, **Exhibit "Q"**, para. 40)

57. With regard to the FEDs scheme, the Board stated that its adoption would cause the Board to impose on the City a structure that could decrease the current 44-ward structure to 25 wards and increase individual ward population, resulting in a significant impact on the capacity of councillors to represent their constituents.

58. Leave to appeal this OMB decision was sought by the proponents of the 25-ward option on the basis that the OMB had made an error in law in finding that the City's 47-ward option achieved comparable voter parity to the 25-ward FEDs option. A single Justice heard the appellants' leave motion on March 2, 2018 and released her decision on March 6, 2018. The Court found that the OMB's decision to approve the City's 47-ward option was reasonable and that there were no obvious legal errors in the Board's decision. As such, the Court refused the appellants' request for leave to appeal and the City's 47-ward option approved by the OMB was therefore allowed to stand. A copy of the leave to appeal decision is attached as **Exhibit "R"**.

59. To summarize, the City conducted the TWBR over a period commencing with the establishment of the terms of reference for the retainer of consultants in 2013 and concluding with the Divisional Court refusing to grant leave to appeal on March 6, 2018. From start to finish, the undertaking took close to five years and concluded with the City Council-adopted 47-ward option having been approved. The 47-ward option was found by the Ontario Municipal Board to be a reasonable number and configuration of ward boundaries which met the tests of effective representation as set out in the Supreme Court of Canada's *Carter* decision.

#### **SPECIAL COUNCIL MEETING ON AUGUST 20, 2018**

60. I attended a special meeting of City Council on August 20, 2018.

61. At that meeting, various councillors presented numerous petitions from members of the public with a total of 28,826 signatures, all of which opposed Bill 5.

62. I swear this affidavit for use in these proceedings and for no other purpose.

Sworn before me at the City of Toronto, )  
in the Province of Ontario, this 22<sup>nd</sup> day )  
of August, 2018. )  
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)  
  
\_\_\_\_\_)  
DIANA DIMMER )  
Commissioner for Taking Affidavits, etc. )

  
\_\_\_\_\_)  
GIULIANA CARBONE