

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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*

NOTICE OF CONSTITUTIONAL QUESTION

The Applicant intends to question the constitutional validity of Schedules 1 and 3 of the *Better Local Government Act, 2018*, S.O. 2018, c. 11 (the “Act”) and O. Reg. 407/19 and 408/18 made pursuant thereto, except for the following:

- (i) the part of s. 1 of Schedule 3 of the Act that adds s-ss. 10.1(1) and 10.1(10) to the *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched. to the extent that it permits the sections of O. Reg. 407/18 referred to in paragraph (ii) below to remain in force; and
- (ii) ss. 4(2), 5, and 12 of O. Reg. 407/18.

The question is to be argued at the hearing of the within application, scheduled for Friday, August 31, 2018, at 10:00 a.m. at 393 University Ave., Toronto, ON M5G 1E6.

The following are the material facts giving rise to the constitutional question:

1. Pursuant to the provisions of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sch. A. (“COTA”), the City council is a democratically elected government which is responsible and accountable;
2. Pursuant to the provisions of COTA and the Toronto-Ontario Cooperation and Consultation Agreement (“T-OCCA”), the City and the Province of Ontario agreed that the Province would consult the City with respect to matters of mutual interest, including provincial legislation that will have a significant financial or policy impact on the City and on broad policy matters where the two may have mutual interests;
3. Pursuant to the provisions of COTA prior to the enactment of the Act, City council had the power, *inter alia*, to divide or redivide the City into wards, subject to an appeal to the then Ontario Municipal Board (“OMB”), now the Local Planning Appeal Tribunal;
4. Beginning in 2013, pursuant to this authority, the City undertook an extensive review of its then existing wards to determine whether they should be redivided;
5. After an almost four year review process, on March 29, 2017 and April 28, 2017, respectively, City Council passed By-law 267-2017 and By-law 464-2017 (the “By-Laws”), which redivided the City’s 44 wards into 47 wards;
6. Notices of Appeal to the OMB with respect to the By-Laws were filed on multiple dates between March and June, 2017;
7. The OMB issued its order with respect to the appeals of the By-Laws on December 15, 2017 (the “Order”);
8. The majority of the OMB panel upheld the By-Laws with one small amendment as to the boundary between two wards, but otherwise confirmed the division of the City of Toronto into 47 municipal electoral wards;
9. Two of the appellants from the OMB hearing brought a motion for leave to appeal the Order;

10. On March 6, 2018, the Divisional Court dismissed the motion for leave to appeal;
11. The Clerk is charged with administering the Election;
12. Pursuant to the MEA, the Election began on May 1, 2018 when candidates were first allowed to submit their nominations for the Election with a 47-ward City structure;
13. The Clerk began preparing for the Election early in 2018 based on a 47-ward City structure;
14. Election day is October 22, 2018. The nomination period started on May 1 and ended on July 27, 2018. As of July 30, 2018, the Clerk had certified the nominations of the candidates qualified to run in the Election. From May 1, 2018, once a candidate was nominated she or he could begin campaigning which included spending money on their campaigns and receiving donations for their campaigns in accordance with the provisions of the MEA;
15. Despite COTA and T-OCCA, there was no prior consultation with the City from the Province prior to introducing in the Ontario legislature, on July 30, 2018, the bill that later became the Act;
16. The Act was passed, received Royal Assent, and became law on August 14, 2018;
17. The Act redivides the City into 25 wards and declares that this ward structure will be used for the Election. Dividing the City into 25 wards creates ward sizes that are significantly larger than ward sizes of any other municipality in Ontario. Such a redistribution of wards does not provide for effective representation now or in the future;
18. Pursuant to COTA, as a level of government, the City has very wide powers to pass by-laws that have the force of law; and
19. The Act does not alter the City's status as a government, the fact that City councillors will be selected by election, nor the City's ability to pass by-laws.

The following is the legal basis for the constitutional question:

1. The unwritten constitutional principles of democracy and the rule of law, and the principles underlying the right to vote in s. 3 of the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, being Sch. B to the *Canada Act, 1982 (U.K.), 1982, c. 11, Part I* (the “Charter”), all limit Ontario’s power under s. 92 of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), and do not permit Ontario to interfere with an ongoing democratic election by altering the ward boundaries of the City or changing City Council composition after the start of an election, or to create and maintain ward boundaries that do not provide for effective representation, all of which the Act purports to do;
2. The Act infringes s. 2(b) of the Charter and is not saved by s. 1. In particular, campaigning for public office and voting in elections are expressive acts covered by s. 2(b). The interference in the electoral process, once underway, constitutes a breach of s. 2(b) of the Charter;
3. The treatment of the City and its residents pursuant to the Act is discriminatory and arbitrary;
4. A partial declaration of invalidity of Schedule 1 of the Act would create internal inconsistencies in COTA and leave a gap in COTA;
5. A declaration of invalidity of the Act may require the implementation of one-time changes to the MEA as it applies to the Election;

Date: August 22, 2018

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BETWEEN:

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ONTARIO
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Proceeding commenced at Toronto

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