

September 10, 2018

## **Court Decision and Next Steps: Bill 5 – Reducing the Size of City of Toronto Council**

### **For Your Information – Highlights of Today**

#### **Ontario Superior Court of Justice Decision found that**

:

- i. The legislative change during the election period "interfered with the candidate's freedom of expression" and "undermined an otherwise fair and equitable election process."
- ii. An imposed 25-ward structure "interfered with a voter's right to freedom of expression when it double the ward population from 61,000 average to 111,000 average, effectively denying the voter's right to cast a vote that can result in effective representation."
- iii. That these breaches, based on the evidence filed "cannot be demonstrably justified in a free and democratic society and cannot be saved as reasonable limits under s.1 of the Charter of Rights."

The 20-page ruling is

[available here.](#)

The Decision only focuses on S 2(b) of the Charter and the guarantee of freedom of expression and points to a number of previous cases related to freedom of expression.

Of further note, the Decision said:

There was no dispute that the Province has the authority under the *Constitution Act 1867* to pass laws in relation to municipal governments. It notes, "the Province can pass a law that is wrong-headed, unfair or even "draconian"." Legislation must comply with the Charter of Rights. "As long as a statute is "neither ultra vires nor contrary to the [Charter], courts have no role to supervise the exercise of legislative power." Nor is there dispute that a provincial legislature can over-rule or contradict a previously enacted law.

### **Provincial Reaction and Next Steps:**

Premier Ford said that the Decision was "deeply concerning" and appeal proceedings are underway. At the same time, the Legislature is to be called back this week to enable the government to introduce the Bill (under a new number) and invoke s. 33 of the Charter of Rights. Known as the 'notwithstanding clause', the section allows Parliament or provincial legislatures to override certain portions of the Charter.

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