

Court of Appeal File No:

Superior Court File Nos: CV-18-00603797-0000

CV-18-00602494-0000

CV-18-00603633-0000

COURT OF APPEAL FOR ONTARIO

BETWEEN:

CITY OF TORONTO

Applicant

(Respondent in appeal – Responding Party)

and

ATTORNEY GENERAL OF ONTARIO

Respondent

(Appellant – Moving Party)

AND BETWEEN:

ROCCO ACHAMPONG

Applicant

(Respondent in appeal – Responding Party)

and

**ONTARIO (HON. DOUG FORD, PREMIER OF ONTARIO), ONTARIO
(ATTORNEY GENERAL)**

Respondents

(Appellants – Moving Parties)

and

CITY OF TORONTO

Respondent

(Respondent in appeal – Responding Party)

(Title of Proceedings Continued on p. 2)

**NOTICE OF MOTION
(STAY PENDING APPEAL)**

AND BETWEEN:

**CHRIS MOISE, ISH ADERONMU, and PRABHA KHOSLA, on her own
behalf and on behalf of all members of Women Win TO**

Applicants
(Respondents in appeal – Responding Parties)

and

ATTORNEY GENERAL OF ONTARIO

Respondent
(Appellant – Moving Party)

and

**JENNIFER HOLLET, LILY CHENG, SUSAN DEXTER, GEOFFREY KETTEL AND
DYANOOSH YOUSSEFI**

Interveners
(Respondents in appeal – Responding Parties)

**NOTICE OF MOTION
(STAY PENDING APPEAL)**

The Respondent, the Attorney General of Ontario, will make an urgent motion to a judge of the Court on Tuesday, September 18, 2018 at 10 a.m. or as soon a time thereafter as a motion can be heard, at the Courthouse at 130 Queen St. West.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) An order staying the Order of the Superior Court of Justice dated September 10, 2018 made in the applications below pursuant to rule 63.02 of the *Rules of Civil Procedure*;
- (b) An order abridging the time for serving and filing this motion; and

(c) Any further or other order that this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

A. A single judge has jurisdiction to hear this motion

1. Section 7(2) of the *Courts of Justice Act*, RSO 1990, c. C.34 provides that a motion in the Court of Appeal shall be heard and determined by one judge.
2. Rule 63.02(1)(b) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 allows an interlocutory or final order to be stayed on such terms as are just by an order of a judge of the court to which an appeal has been taken.

B. There is a serious issue to be adjudicated

3. There is a serious issue to be adjudicated on appeal. This branch of the test for a stay sets a low threshold that the matter not be “vexatious or frivolous.” The provisions of the *Better Local Government Act, 2018* (the “Act”) declared by the Superior Court of Justice to be of no force and effect directed a 25-ward municipal election to be held on October 22, 2018 (the “Election”). The issues that will be raised by the Attorney General on appeal are whether the Honourable Judge below erred in law, *inter alia*: (a) in holding that s 2(b) of the *Charter* was infringed by the timing of the enactment of the Act; (b) in holding that s 2(b) of the *Charter* includes a right to effective representation, in effect importing into the municipal context the requirements of s 3 of the *Charter* which apply only to federal and provincial elections; (c) in holding that any breach of s 2(b) of the *Charter* was not justified under s 1; and (d) in declaring the operative provisions of the Act to be immediately of no force and effect (without providing an opportunity to the Attorney General to make submissions on the question of a suspension of the declaration of invalidity) and ordering as a remedy that a 47-

ward election be held on October 22 reviving the electoral regime that the Act had amended. In light of the existing appellate jurisprudence indicative of errors of law on the part of the Superior Court, it is clear that all of these are serious issues to be adjudicated on appeal. The first step of the test is met.

C. Refusing to grant the stay would cause irreparable harm

4. The stay should be granted if the harm flowing from a refusal to grant the stay cannot be remedied at a later date if the lower court's decision is overturned on appeal. A public authority can almost always show irreparable harm if a stay is not granted by demonstrating its actions have been taken to promote the public interest.
5. There will be irreparable harm if the 25-ward election is not allowed to proceed as scheduled on October 22. In this case, the City Clerk had already advised Council that (as of August 20, 2018) she was prepared to run a 25-ward election on October 22 and that reverting to a 47-ward election would cause her concerns regarding the integrity of the election and the possibility that the results would be controverted. In the circumstances, it is in the public interest for the 25-ward election to be held on October 22. In the event that the Attorney General is ultimately successful on appeal, no further action would be required. In the event that the applicants are successful on appeal, it does not follow that a 47-ward election will need to be held, because this Court may suspend its declaration of invalidity to allow for a legislative response.

D. The balance of convenience favours allowing the 25-ward election to proceed pending appeal

6. The balance of convenience favours a stay. Allowing the 25-ward election to proceed would avoid cost, disruption and inconvenience, rather than cause it. The Superior Court of Justice's

order that the operative provisions of the *Better Local Government Act, 2018* are unconstitutional has brought to a halt preparation for the 25-ward election.

7. Public interest is a special factor to be considered at the balance of convenience stage of the test. There is a legal presumption that statutes are enacted in the public interest. This presumption remains in effect even where a judge at first instance has held that the legislation is unconstitutional.

E. Abridgment of the time for service and filing

8. For the reasons set out above as to why a stay should be granted, it is also in the public interest to decide as soon as possible whether a stay will be granted.
9. The time for service and filing should be abridged to allow this motion to be determined in as expeditious a fashion as possible to preserve the integrity of the upcoming October 22, 2018 election.

F. Other grounds

10. Rules 2.03, 3.02, 37, 61.16, and 63.02 of the *Rules of Civil Procedure*, RRO 1990, Reg 194.
11. Section 106 of the *Courts of Justice Act*, RSO 1990, c C43.
12. Such further and other grounds as counsel may advise and this Court may deem just.

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

- (a) The Affidavit of Adam Kanji filed in the applications below and Exhibits attached thereto;
- (b) The transcript of the City Clerk's report to Council on August 20, 2018 filed in the applications below.

ESTIMATED TIME FOR ORAL ARGUMENT: The amount of time estimated to argue the motion not including reply is two hours.

September 12, 2018

ATTORNEY GENERAL OF ONTARIO
Constitutional Law Branch
McMurtry-Scott Building
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

Robin Basu (LSO# 32742K)
Tel: 416-326-4476
Email: robin.basu@ontario.ca

Yashoda Ranganathan (LSO# 57236E)
Tel: 416-326-4456
Email: yashoda.ranganathan@ontario.ca

Audra Ranalli (LSO# 72362U)
Tel: 416-326-4473
Email: audra.ranalli@ontario.ca

Of Counsel for the Attorney General of Ontario
(Appellant)

TO: ROCCO K. ACHAMPONG
Barrister & Solicitor
2500-1 Dundas Street West
Toronto, Ontario, M5G 1Z3

Rocco Achampong (LSO# 57837J)
Gavin Magrath (LSO# 51553A)
Selwyn Pieters (LSO# 50303Q)

roccoachampong@gmail.com
gavin@magraths.ca
selwyn@selwynpieters.com

Applicant/Counsel for Applicant (Respondent in appeal),
Rocco K. Achampong

AND TO:

THE CITY OF TORONTO

City of Toronto Legal Services
Metro Hall
55 John Street, 26th Floor
Toronto, Ontario M5V 3C6
Fax: (416) 397-5624

Glenn Chu (LSO# 40392F)
Diana W. Dimmer (LSO# 40392F)
Philip Chan (LSO# 68681S)

glenn.chu@toronto.ca
diana.dimmer@toronto.ca
philip.k.chan@toronto.ca

Counsel for the Applicant (Respondent in appeal),
City of Toronto

AND TO:

GOLDBLATT PARTNERS LLP

20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2

Howard Goldblatt (LSO# 15964M)
Steven M. Barrett (LSO# 24871B)
Simon Archer (LSO# 46263D)
Geetha Philipupillai (LSO# 74741S)

hgoldblatt@goldblattpartners.com
sbarrett@goldblattpartners.com
sarcher@goldblattpartners.com
gphilipupillai@goldblattpartners.com

Counsel for the Applicants (Respondents in appeal),
Chris Moise, Ish Aderonmu and Prabha Kosla on her own behalf and on
behalf of all members of Women Win TO

AND TO:

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1

Donald K. Eady (LSO# 30635P)
Caroline V. (Nini) Jones (LSO# 43956J)
Jodi Martin (LSO# 54966V)

Counsel to the Interveners (Respondents in appeal)
Jennifer Hollet, Lily Cheng, Susan Dexter, Geoff Kettel, and Dyanoosh
Youssefi

AND TO:

DLA PIPER (CANADA) LLP

Suite 6000, 1 First Canadian Place
PO Box 367, 100 King St. W.
Toronto, ON M5X 1E2

Derek Bell (LSO# 43420J)
Ashley Boyes (LSO# 74477G)

derek.bell@dlapiper.com
ashley.boyes@dlapiper.com

Counsel for the Intervener,
The Canadian Taxpayers Federation

AND TO:

TORONTO DISTRICT SCHOOL BOARD

Legal Services
5050 Yonge Street, 5th Floor
Toronto, ON M2N 5N8

Patrick Cotter (LSO# 40809E)

patrick.cotter@tdsb.on.ca

Lawyer for the Intervener,
Toronto District School Board

ROCCO ACHAMPONG and ONTARIO and CITY OF TORONTO
Applicant (Respondent in appeal) Respondent (Appellants) Respondent (Respondent on Appeal)

THE CITY OF TORONTO and ATTORNEY GENERAL OF ONTARIO
Applicant (Respondent in appeal) Respondent (Appellant)

CHRIS MOISE *et al.* and ATTORNEY GENERAL OF ONTARIO and CITY OF TORONTO
Applicants (Respondent in appeal) Respondent (Appellants) Respondent (Respondent on Appeal)

Court of Appeal File No.:

Superior Court File No.: CV-18-00602494-0000

Superior Court File No.: CV 18-00603797-0000

Superior Court File No. CV-18-00603633-0000

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at Toronto

NOTICE OF MOTION
(STAY PENDING APPEAL)

ATTORNEY GENERAL OF ONTARIO

Constitutional Law Branch
McMurtry-Scott Building
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9
Fax: 416-326-4015

Robin Basu (LSO#32742K)

Tel: 416-326-4476
Email: robin.basu@ontario.ca

Yashoda Ranganathan (LSO#57236E)

Tel: 416-326-4456
Email: yashoda.ranganathan@ontario.ca

Audra Ranalli (LSO#72362U)

Tel: 416-326-4473
Email: audra.ranalli@ontario.ca

Of Counsel for the Attorney General of Ontario

