

January 13, 2020

Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario
K1A 0J1

Attention: Registrar

Dear Sir/Madam:

Re: City of Toronto v. Attorney General of Ontario
Supreme Court File No: 38921

Please accept this correspondence as the Response of the Intervenor Party Toronto District School Board (“TDSB”) to the Application for Leave to Appeal to the Supreme Court of Canada filed by the City of Toronto.

TDSB supports the City of Toronto’s (the “City”) Application for Leave to Appeal and submits that the leave application and the decisions rendered in the courts below raise substantial issues of critical public importance that necessitate a full hearing by this court. TDSB submits that the 2018 introduction of Bill 5 by the Province of Ontario mid-election stream undermined the fundamental protections enshrined in section 2(b) of the *Charter* and substantially interfered with the candidates’ freedom of expression in an unreasonable and unwarranted manner.

Procedural History (As it relates to TDSB)

In the chaos and fray that ensued upon the introduction of Bill 5 in 2018 and its ultimate enactment mid-election, what was virtually forgotten was that not one, but five elections were simultaneously taking place in October 2018 – one election for candidates contesting for Toronto City Council positions, and a second election for candidates running in the four school boards in the City including the 22 School Board trustee positions at TDSB.

By virtue of the provisions of the *Education Act* and its regulations, TDSB is required to align its electoral boundaries with municipal ward boundaries in the City. Between 2014 and 2016, the City conducted a Ward Boundary Review, as a result of which review it increased the number of its wards in Toronto from 44 to 47. Consequently, in February 2018 and after months of extensive community consultations, TDSB approved its new trustee ward boundaries and approved the number and distribution of trustees for the October 2018 election, well in advance of the election and before the opening of candidate nominations and the start of the campaign period.

On July 27, 2018, the Province of Ontario (“Ontario”) announced its intention to introduce legislation to reduce the number of municipal councillors from 47 to 25 to align the municipal ridings with the current provincial and federal ridings for the 2018 election. Bill 5 was thus introduced in the Ontario Legislative Assembly on July 30, 2018 and eventually *The Better Local Government Act, 2018*, S.O. 2018, c. 11 was passed and received Royal Assent on August 14, 2018. Simultaneous to the passage of Bill 5, complementary amendments were made to *O. Reg. 412/00* of the *Education Act* requiring TDSB to realign its trustee ward boundaries to the 25 provincial/federal boundaries in the City as mandated by Bill 5.

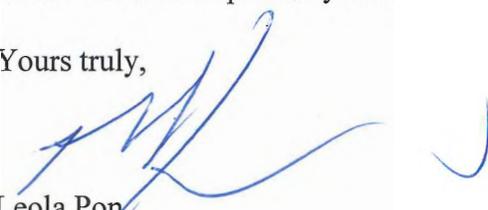
On July 30, 2018, Ontario directed that TDSB communicate its intended determination (number) and distribution (geographic allocation) of trustees to the Minister of Education by August 14, 2018, failing which the Minister of Education would impose a distribution plan on TDSB. The limited timeline prescribed by Ontario provided no opportunity to conduct any public consultation on the changes to trustee ward boundaries and the months-long consultation previously undertaken by TDSB was effectively rendered meaningless.

TDSB complied with the Province’s direction and the revised amendments to *O. Reg. 412/00* and its ward boundaries were adjusted mid-election stream leading to the same chaos and confusion to school board trustees, candidates and the public that were experienced by the candidates engaged in the municipal election. In short, what started out as an orderly and informed school board trustee election soon devolved, as a result of the passage of Bill 5 and amendments to the *Education Act*, into disarray.

To underscore the significant public importance of this case, it is noted that for only the second time in Canadian history, a Court of Appeal proceeding was telecast live to the public. Of further note, threats by Ontario to invoke section 33 of the *Charter of Rights and Freedoms* (the notwithstanding clause) as a result of the lower court decision in this matter underscore the importance of this proceeding to both the provinces and to the general public. It is TDSB’s submission that the gravity of the issues raised in the leave to appeal application weigh in favour of a full hearing by this court.

All of which is respectfully submitted this 13th day of January, 2020.

Yours truly,



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