SUPREME COURT OF CANADA

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Case in Brief: *Toronto (City) v. Ontario (Attorney General)*

Judgment of October 1, 2021 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2021 SCC 34

The Supreme Court rules an Ontario law that cut the number of Toronto city councillors during the 2018 municipal election was constitutional.

On May 1, 2018, a municipal election campaign started in the City of Toronto. Candidate nominations were due by July 27, 2018. Over 500 people registered as candidates. On the day nominations closed, the government of Ontario announced its intention to introduce a law to reduce the number of electoral wards from 47 to 25.

The law, known as the *Better Local Government Act, 2018*, came into force on August 14, 2018. Soon after, the City challenged the law in court. It argued the law violated the freedom of expression of candidates and voters, contrary to section 2(b) of the *Canadian Charter of Rights and Freedoms*. It also argued the law violated certain unwritten constitutional principles, such as democracy.

The Ontario Superior Court agreed with the City. The Province of Ontario appealed that decision. In the meantime, the election was held on October 22, 2018, with 25 wards only. Later, the Court of Appeal ruled in favour of the Province. The City then appealed to the Supreme Court of Canada.

The Supreme Court has agreed with the Province.

The law did not violate the freedom of expression of candidates and voters.

Writing for the majority, Chief Justice Wagner and Justice Brown said the law did not stop candidates from expressing themselves: “The candidates and their supporters had 69 days — longer than most federal and provincial election campaigns — to re-orient their messages and freely express themselves according to the new ward structure”.

The judges said the law did not restrict what candidates could say or do. They noted many candidates had successful campaigns, raised substantial amounts of money and won lots of votes. They said this would not have been possible if candidates had been prevented from meaningful expression. The majority recognized that some of the candidates’ messages, made before the number of wards was reduced, may have lost their relevance. However, they said section 2(b) of the *Charter* does not guarantee the effectiveness or relevance of messages or campaign materials.

Unwritten constitutional principles cannot invalidate a law.

The majority said unwritten constitutional principles, such as democracy, can be used to understand and interpret the Constitution, but these principles cannot be used to invalidate laws.

The authority of provinces over municipalities was not in dispute.

Section 92(8) of the Constitution allows provinces to pass laws affecting municipalities. That means the Province could change the number of wards at any time without consulting the City beforehand. This authority was not in dispute in this case.

Breakdown of the decision: *Majority*: Chief Justice Richard Wagner and Justice Russell Brown dismissed the appeal. They said the new law did not violate the freedom of expression of candidates and voters contrary to section 2(b) of the *Charter*. They also said unwritten constitutional principles cannot serve as the basis for invalidating legislation (Justices Moldaver, Côté and Rowe agreed) | ***Dissenting:*** Justice Rosalie Abella would have allowed the appeal. She said the timing of the new law violated section 2(b) of the *Charter* and was not justified, and that unwritten constitutional principles can in fact serve to invalidate legislation. (Justices Karakatsanis, Martin and Kasirer agreed)

More information (case # 38921): Decision | Case information | Webcast of hearing

Lower court rulings: judgment (Ontario Superior Court of Justice) | appeal (Court of Appeal for Ontario)
