

FORD-WARD LOOKING AT THE IMPACTS OF THE BETTER LOCAL GOVERNMENT ACT, 2018

Posted on August 1, 2018

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As we reported in a bulletin released on Friday, July 27th ([click here](#)), Premier Doug Ford has announced that his government will be significantly reducing the number of wards in the City of Toronto (the “**City**”), with new ward boundaries matching existing provincial and federal ridings.^[1] On Monday, July 30th, the Premier tabled draft legislation to bring these changes into effect. Provided that this legislation receives royal assent and becomes law, the City will see its number of City Council seats reduced from 47 to 25 in the 2018 municipal election (amongst other changes).^[2] The Premier’s plan raises concerns regarding provincial authority to make such unilateral changes to Toronto City Council without consultation or referendum, and Mayor Tory himself has been calling for a legal challenge to the Premier’s changes.

Matters of Provincial Jurisdiction

Under the *Constitution Act, 1867*, provincial governments have exclusive authority to make laws in relation to “Municipal Institutions in the Province” (s.92(8))^[3] as well as “generally all matters of a merely local or private Nature in the Province” (s.92(16)).^[4] Provinces may then delegate certain of their authority to municipalities. Thus, the City of Toronto’s authority and power over its own governance comes from the powers delegated by the Province of Ontario through the *City of Toronto Act, 2006*. The issue is whether such powers can be so simply taken away from the province at will and without consultation. Subject to particular legislative processes described below, it appears that yes - the provincial government of Ontario can take away or change any municipal power that it had previously granted to the City.^[5]

The City of Toronto Act, 2006

In Ontario, municipalities are delegated power through the *Municipal Act, 2001*. However, the *City of Toronto Act, 2006* (the “Act”) is a provincial statute that specifically delegates broad powers to the City and recognizes that the City “is a government that is capable of exercising its powers in a responsible and accountable fashion.”^[6]

In particular, s.8(2)(1) of the Act allows the City to pass by-laws respecting the governance structure of the City.^[7] The City has the authority to “divide or redivide the City into wards or to dissolve existing wards.”^[8] If

there is a conflict between a by-law and any provincial act, the City by-law prevails.^[9] The Act also provides for a petition process, by which an elector may ask City Council to “pass a by-law dividing or redividing the City into wards or dissolving the existing wards.”^[10] The authority to change the composition of City Council is also found in the Act,^[11] as well as the authority to override any other act that relates to the City in particular, which seeks to change the composition of City Council^[12] and/or the wards.^[13]

The Bill and its Proposed Changes to the Act

As mentioned above, on Monday, July 30th, Premier Ford introduced Bill 5, being “An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996”, which is also known as the Better Local Government Act, 2018 (the “**Bill**”).^[14] Amongst other things, Premier Ford’s plan seeks to change all of the provisions of the Act outlined in the section above, by:

- Removing the City’s delegated powers to determine the composition of City Council and the division of the City into wards.^[15]
- Removing a City by-law’s superiority over any conflicting provincial acts.^[16]
- Repealing the petition process by which an elector may petition City Council to divide or re-divide the City into wards or dissolve the existing wards.^[17]
- Establishing new ward boundaries in the City that match the electoral districts for Ontario within the City boundaries.^[18]
- Stipulating that the 2018 election shall be conducted as though the establishment of the new wards matching the electoral districts of Ontario was already in effect.^[19]
- Repealing the City’s override power, which previously could be used to override other acts that relate to the City in particular and which seek to interfere with the composition of City Council and/or the wards.^[20]

In order to become law, the Bill must attain royal assent. At the time of writing this article, the Bill has only passed First Reading.

The Legislative Process of Ontario Government Bills:

A government bill (i.e., a bill introduced by a Cabinet Minister)^[21] is introduced when the House is in Session and proceeds through three readings, during which members discuss the purpose of the bill, debate and then vote on the bill. Before going into Third Reading, a bill will proceed to the Committee stage which provides an opportunity to hear witness testimony and learn more about the public’s concerns through public hearings. The bill is examined clause-by-clause and the Committee votes on any proposed amendments, then votes on the bill as a whole. Once past the readings and Committee, a bill requires Royal Assent and finally becomes law

when it comes into force on a date specified in the Bill or by Proclamation.^[22]

Current Status of the Bill

The First Reading of the Bill was on July 30, 2018, and Premier Ford is determined to get through all 3 readings in quick order by relying on the Conservative majority. According to the Legislative Assembly of Ontario (the “**Assembly**”), the Bill has been “carried on division”^[23] which means that, although a majority of the Members supported the Bill, it did not have unanimous support.^[24] According to the Assembly’s Current Agenda of Tuesday, July 31, the Bill is in Second Reading.^[25] It is quite possible, given the majority government, that the Bill will pass Second Reading and move on to the Committee stage in short time. If that happens, it is unclear which Committee will be responsible to review the Bill. Provided that it passes each stage outlined above, the Bill states that it will come into force on the day that it receives Royal Assent.^[26] We note that there has already been direct push-back in the House, particularly from the NDP whose proposed amendments to the Bill have delayed its progress through the Session by another 2 days.

Ford-ward Looking

The changes to the *City of Toronto Act* which will be implemented on the passing of the *Better Local Government Act*, 2018 effectively removes all self-governance with regard to representation and ward boundaries, as well as removing any direct avenues of recourse and autonomy of the citizens of Toronto and Toronto City Council. All remaining possible action now rests in the hands of the provincial representatives, the MPPs (subject to City counsel finding an alternative solution). It is interesting to note that the amendments have only been removed for the City of Toronto.

At the time of writing this bulletin, it is unclear what routes for legal challenge are open to Mayor Tory and Toronto City Council. At this point, it appears that any argument will necessarily come back to constitutional rights; City Council has called an emergency council meeting for August 20, 2018 at which time they have called for the City’s lawyers to report on whether Premier Ford’s actions offend the constitutional rights of Toronto voters, namely “fair and effective representation.” There have been allegations that the cuts are a direct attack on certain councillors who have not historically been supporters of Premier Ford during his time as a Councillor in the City of Toronto.

We will continue to monitor and consider the impacts looking Ford-ward.

by Mary Flynn-Guglietti, Kailey Sutton and Maressa Singh, Summer Law Student

[1] CTV News, “[Ontario premier Ford reveals plan to slash Toronto city council](#)” (27 July 2018), online.[ps2id id='1' target='']

[2] [The Bill's most current version](#). [ps2id id='2' target='']

- [3] *Ibid* at s 92(8).[ps2id id='3' target=""]
- [4] *Ibid* at s 92(16).[ps2id id='4' target=""]
- [5] *Powers of Canadian cities – the legal framework*, (City of Toronto: City Solicitor, 2000).[ps2id id='5' target=""]
- [6] *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A, preamble.[ps2id id='6' target=""]
- [7] *Ibid* at s 8(2)(1).[ps2id id='7' target=""]
- [8] *Ibid* at s 128(1).[ps2id id='8' target=""]
- [9] *Ibid* at s 128(2).[ps2id id='9' target=""]
- [10] *Ibid* at s 129(1).[ps2id id='10' target=""]
- [11] *Ibid* at s 135(1).[ps2id id='11' target=""]
- [12] *Ibid* at s 4(3)(3).[ps2id id='12' target=""]
- [13] *Ibid* at s 4(3)(2).[ps2id id='13' target=""]
- [14] CP24 “[Council votes to oppose bill that would cut number of Toronto councillors](#)” (30 July 2018), online.
[ps2id id='14' target=""]
- [15] Bill 5, *An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996*, 1st Sess, 42nd Parliament, Ontario, 2018, Schedule 1, 1 and 3 [Bill 5].[ps2id id='15' target=""]
- [16] *Ibid* at 5.[ps2id id='16' target=""]
- [17] *Ibid*.[ps2id id='17' target=""]
- [18] *Ibid*.[ps2id id='18' target=""]
- [19] *Ibid*.[ps2id id='19' target=""]
- [20] *Ibid* at 2.[ps2id id='20' target=""]
- [21] As opposed to Private Members’ Public Bills and Committee Bills. See Ontario Legislative Assembly Publication “How an Ontario Bill Becomes Law” which can be viewed [here](#).[ps2id id='21' target=""]
- [22] How an Ontario Bill Becomes Law, (Ontario Legislative Assembly, 2011) at 7.[ps2id id='22' target=""]
- [23] Legislative Assembly of Ontario, “[Current Bills](#)” (31 July 2018), online.[ps2id id='23' target=""]
- [24] As explained during an anonymous phone call with the Procedural Services Branch of the Office of the [Legislative] Assembly [of Ontario] on July 31, 2017.[ps2id id='24' target=""]
- [25] Legislative Assembly of Ontario, “[Current Agenda](#)” (31 July 2018), online.[ps2id id='25' target=""]
- [26] Bill 5, *supra* note 13 at 9.[ps2id id='26' target=""]

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.