Journal of Law and Social Policy

Volume 34 *Toronto v Ontario: Implications for Canadian Local Democracy*
Guest Editors: Alexandra Flynn & Mariana Valverde

Article 3

2021

Deference to Legislatures: The Case of the 2018 Ontario Better Local Government Act

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This article analyzes the legislative debates on Ontario's *Better Local Government Act, 2018* through the prism of the reasons why deference should be conferred on choices made by legislatures. It uses the works of British scholar Aileen Kavanagh and Canadian scholar Yasmin Dawood to define a nuanced model of deference focused on the manner in which legislatures have engaged with the problem of rights protection. It provides a six-point framework that summarizes current caselaw and integrates Dawood's and Kavanagh's insights. The framework suggests that deference is not warranted on the definition of rights, "manner and form" legislative prescriptions, or partisan self-entrenchment motivations, but is warranted for the resolution of multifaceted issues, informed by governmental expertise, and subject to meaningful parliamentary debates focused on rights and accompanied by participation of electors.

The article then carefully analyses the entire parliamentary debates surrounding the *Better Local Government Act, 2018*. It focuses, as Kavanagh suggests, on the importance of distinguishing between the quality of the decision-making process and the quality of the individual reasoning, the former being the matter that courts should assess, rather than the latter. The article concludes that deference is not warranted in the case of the *Better Local Government Act, 2018*, since the legislative debates did not focus on expertise, were truncated, dealt minimally with the possible rights violations, and did not offer any participatory possibility.

The article also offers some conclusions as to the proper use of parliamentary debates. It concludes that courts could send a signal that deference is owed only when governments and legislatures take rights seriously and provide a rationale for their choices. This may create the right incentives for Parliamentarians to address *Charter* concerns.

IN *CITY OF TORONTO V ONTARIO (ATTORNEY GENERAL)*,[1] the Government of Ontario argued that because municipalities are "creatures of provincial statutes,"[2] a government can interfere with

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[1] 2019 ONCA 732.

[2] This fiction has been used in numerous cases: see *Baie d'Urfé (Ville) c Québec (Procureur Général)*, [2001] RJQ 2520 at paras 116 [translated by author]:

> Il est de jurisprudence constante et ce depuis le début de la Confédération que les législatures ont compétence complète sur les institutions municipales d'une part et que les municipalités n'ont aucun statut constitutionnel indépendant d'autre part. Elles sont, suivant l'expression consacrée, des créatures des législatures. *Translation:* "It has been established case-law since the start of Confederation that legislatures have complete jurisdiction over municipal institutions on the one hand and that municipalities have no independent constitutional status on the other. They are, as the saying goes, creatures of legislatures."

The Quebec Court of Appeal at para 117 then refers to Chief Justice Ritchie, who quoted favourably from an American decision, *Meriwether v Garrett* ((1880) 102 US 472):

municipal elections and reshape electoral rules at any time. The logical extension of the government's argument is that a province could appoint mayors or cancel elections when a disliked candidate is likely to be elected. Can that be right? This case raises the issue of whether there is any circumstance in which it is appropriate to legislatively interfere with an ongoing electoral process.

This article analyzes the issues raised by the case of *City of Toronto v Ontario* from a traditional study of the role of courts vis-à-vis other branches of government as defenders of democratic rights.[3] It asks whether the reasons why courts ought to "defer" to parliament and legislatures are at play. It aims to contribute to the issue of the responsibilities of various branches of government to uphold the *Canadian Charter of Rights and Freedoms* (*Charter*)[4] in all public decision-making. This question has been at the heart of debates about the *Charter* since its adoption. It is also raised in discussions about rights protection instruments around the world.[5]

My purpose in this article is to use the Ontario *Better Local Government Act, 2018* as a case study for analyzing current understandings of deference and limits on the role of courts in rights protection, in an effort to bridge constitutional legal theory with the practical reality of legislative debates. This analysis draws upon the works of British scholar Aileen Kavanagh[6] and Canadian scholar Yasmin Dawood,[7] to broaden and deepen the traditional approach to deference.

> Municipal corporations are mere instrumentalities of the State for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure. This is common learning, found in all adjudications on the subject of municipal bodies and repeated by text-writers.

See also *Lynch v Canada North-West Land Co.*, (1892) 1891 CanLII 60 (SCC), 19 RCS 204 at 209; *Ladore v Bennett*, 1939 CanLII 270 (UK JCPC), [1939] AC 468. The fiction continues to be used in the 21st century. For a critical look at the fiction, see Kristin R Good, "The Fallacy of the "Creatures of the Provinces" Doctrine: Recognizing and Protecting Municipalities' Constitutional Status" (2019) 46 IMFG Papers on Municipal Finance & Governance 1; Nathalie Des Rosiers, "Constitutional Space for Cities" (paper to be delivered at the Constitutional Space for Cities Conference, 7-8 April 2021) [available from author].

[3] See *e.g.* Charles-Maxime Panaccio, "The Justification of Rights Violations: Section 1 of the Charter" in Peter Oliver, Patrick Macklem & Nathalie Des Rosiers, eds, *The Oxford Handbook of the Canadian Constitution* (New York: Oxford University Press, 2017) at 671; Janet L Hiebert, "The Human Rights Act: Ambiguity about Parliamentary Sovereignty" (2013) 14:12 German LJ 2253 at 2272–73; Vanessa MacDonnell, "The New Parliamentary Sovereignty" (2016) 21:1 Rev Const Stud 13; Liora Lazarus & Natasha Simonsen, "Judicial Review and Parliamentary Debate: Enriching the Doctrine of Due Deference" in Murray Hunt, Hayley J Hooper & Paul Yowell, eds, *Parliaments and Human Rights: Redressing the Democratic Deficit* (London: Hart Publishing, 2015) 385; Mark Tushnet, "Institutions for Implementing Constitutional Law" in Ian Shapiro, Stephen Skowronek & Daniel Galvin, eds, *Rethinking Political Institutions: The Art of the State* (New York: New York University Press, 2006) 241; James B Kelly, *Governing with the Charter: Legislative and Judicial Activism and Framers' Intent* (Vancouver: UBC Press, 2005) at 232; and Joel C Bakan, "Constitutional Arguments: Interpretation and Legitimacy in Canadian Constitutional Thought" (1989) 27:1 Osgoode Hall LJ 123.

[4] See *Canadian Charter of Rights and Freedoms,* Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 1.

[5] This article will refer to the British scholarship on the issue, *supra* note 3; Panaccio, *supra* note 3 at 671 (refers to the case law in South Africa, Israel, Ireland, and New Zealand).

[6] Aileen Kavanagh, "Proportionality and Parliamentary Debates: Exploring Some Forbidden Territory" (2014) 34:3 Oxford J Leg Stud 443.

[7] Yasmin Dawood, "Democratic Rights" in Peter Oliver, Patrick Macklem & Nathalie Des Rosiers, eds, *The Oxford Handbook of the Canadian Constitution* (New York: Oxford University Press, 2017) 717.

This is not a political paper, despite my status as an elected member of the Legislature of Ontario at the time of the adoption of the *Better Local Government Act, 2018* and my vote against it.[8]

The article is divided into three parts. I begin by summarizing the factors identified in the case law and constitutional literature that must be taken into account in determining whether courts should exercise deference. In Part II, I describe the legislative process that led to the adoption of the *Better Local Government Act, 2018*. In this section, I present a chronology and a summary of the arguments put forth in the Ontario Legislature. Finally, in Part III, I apply the theoretical framework developed in Part I to the analysis generated in Part II to make suggestions as to the level of deference that could be applied to legislation such as the *Better Local Government Act, 2018* and draw a few conclusions on the soundness of our current approach to deference.

I. THE ARGUMENTS FOR DEFERENCE TO LEGISLATURES

Much has been written on the subject of when it is appropriate, or not, for the judicial branch to intervene and thwart action taken by one of the other two branches of government (the legislature or the executive).[9] In constitutional matters, most judicial pronouncements on the issue of deference have been made when discussing section 1 of the *Charter*. Beginning in *R v Edwards Books and Arts*, in 1986, Justice La Forest suggested that "[a] legislature must be given reasonable room to manoeuvre."[10] Subsequently, in 1989, in *Irwin Toy Ltd v Quebec (Attorney General)*, the Supreme Court of Canada used the phrase "margin of appreciation" to describe the deference to be afforded to governmental action.[11] In 2009, in *Alberta v Hutterian Brethren of Wilson Colony*, the Court later said that, "[w]hile the government is entitled to deference in formulating its objective, that deference is not blind or absolute. The test at the minimum impairment stage is whether there is an alternative, less drastic means of achieving the objective in a real and substantial manner."[12] Most recently, in 2019, in *Frank v Canada*, Chief Justice Wagner summarized the distinctions necessary to grant deference to the government by stating that, "[d]eference may be appropriate in the case of a complex regulatory response or a decision involving competing social and political policies, but it is not the appropriate posture for a court reviewing an absolute prohibition of a core democratic right."[13]

When dealing with the "law of democracy," as Yasmin Dawood puts it, the issue of deference is squarely raised.[14] The level of deference is what often differentiates majority from minority opinions.[15] Dawood suggests that when partisan interests are involved, that is, when a

[8] I was the member representing the riding of Ottawa Vanier. I was in opposition during the summer of 2018 and had been elected as a member of the Liberal Party. As the Liberal Party did not have party status (it had elected seven members to the Legislature whereas eight was the threshold for party status at the time), my ability to participate in debates and to ask questions was limited. Nevertheless, I had the opportunity to participate in the debate for a few minutes on August 14 during the third reading debate. I voted against the bill because, in my view, it was inappropriate to interfere in ongoing elections, barring serious arguments as to emergency and necessity of such intervention. I also believed that the provisions of the agreement between the City of Toronto and the provincial government referred to in the *City of Toronto Act, 2006* regarding consultations should be respected.

[9] Panaccio, *supra* note 3; Hiebert, *supra* note 3; MacDonnell, *supra* note 3; Lazarus & Simonsen, *supra* note 3; Tushnet, *supra* note 3; Kelly, *supra* note 3; Bakan, *supra* note 3.

[10] *R v Edwards Books and Arts*, [1986] 2 SCR 713 at 795.

[11] [1989] 1 SCR 927 at 999.

[12] 2009 SCC 37 at para 55.

[13] 2019 SCC 1 at para 43.

[14] Dawood, *supra* note 7 at 719.

[15] *Ibid* at 732.

government seeks to change the rules to advantage its future electoral performance, courts ought to intervene. As she argues,

> '[a] right to participate in a fair election' offers a promising way for the Court to ensure the fairness and legitimacy of the electoral process. By recognizing a right to a fair and legitimate democratic process as one of the purposes of the right to vote, the Court would send a signal … that partisan rule-making is constitutionally impermissible.[16]

Although the concern for deference is most obviously raised in the context of a section 1 *Charter* analysis, the issue of respect for the role of other branches of government is subliminally present in all discussions surrounding the legitimacy of courts' interventions. For example, when analyzing British decisions and their concern for appropriate deference, Aileen Kavanagh writes,

> It seems intuitively plausible to think that the degree of respect which is due to a legislative measure impacting on rights should be influenced (at least to some degree) by the seriousness of Parliament's engagement with the human rights issue. After all, if the legislature has engaged in a careful and considered weighing of all the competing interests and has squarely faced the implications for Convention rights, should this not count in favour of the legislation when the courts come to assess its proportionality? By the same token, if legislation has been passed without any awareness or proper consideration of the implications for rights, should this not count against the legislation (at least to some degree) during the judicial assessment of proportionality?[17]

Kavanagh quotes the language used in these decisions[18] to conclude that,

> [i]f there is evidence that Parliament has addressed the human rights issue (*focus*) and subjected it to extensive discussion (*deliberation*) in the context of an inclusive debate (*participation*), then this warrants judicial respect. By the same token, if there is evidence of a lack of parliamentary engagement with the human rights issue, then heightened scrutiny may be warranted.[19]

I find Kavanagh's evaluation of "*focus*, *deliberation* and *participation*"[20] to be a useful hypothesis to analyze the level of deference to be afforded to legislatures or parliament.

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[16] *Ibid* at 735.

[17] Kavanagh, *supra* note 6 at 445.

[18] *Ibid* at 469, stating that,

> The courts have held that the subject-matter of the case is enormously important in this regard—'the more the legislation concerns matters of broad social policy, the less ready will be a court to intervene'. Other 'deference-increasing factors' include: the complexity and sensitivity of the issue governed by the legislation; whether the legislation resulted from a difficult balancing of competing interests; whether the issue is the subject of deep societal controversy; whether the subject-matter of the case involves 'changing social conditions and attitudes'; and whether Parliament has the relevant institutional competence or expertise to determine the issue in question. This list is not exhaustive. The various factors may combine and interact in different ways, sometimes pulling in different directions in the context of a single case [footnotes omitted].

[19] *Ibid* at 472 [emphasis in the original].

[20] *Ibid* at 463 *et seq*.

In my view, the case for deference in constitutional cases can be summarized into the following six-point framework, one that reflects traditional approaches to deference and incorporates the insights from both Dawood and Kavanagh:

(1) Deference does not extend to the definition of rights, as judges are experts in the interpretation of the Constitution. Although all actors have a duty to respect the Constitution, and must "govern with the *Charter*,"[21] the ultimate definition of the scope of rights and the interpretation of the Constitution properly belong to the judicial branch. For constitutional law scholar Mark Carter,"[t]he ability to interpret these constitutional guarantees which limit government activity is a distinctly legal (non-political) skill and function which, in the words of Justice Lamer, is 'in the inherent domain of the judiciary.'"[22] The "margin of appreciation" extends then to an analysis of competing ways to achieve legitimate public policy objectives, and *not* to the definition of what constitutes the infringement of a right. Judicial expertise to determine the extent of rights protection not only applies to constitutional rights, but also to the determination of internationally or legislatively guaranteed human rights. Moreover, the very determination of whether an internationally or legislatively protected right is constitutionally guaranteed is a strictly judicial function.
(2) Proper "manner and form" restrictions, that is, mandated procedural steps prescribed by legislation, ought to be enforced by courts.[23] The key question remains whether courts are faced with a mandatory procedural step or a less stringent directory one.[24]
(3) Drawing on Dawood's work, little deference ought to be paid to a legislative process that would be driven by partisan concerns and a desire for a government to amend rules to secure a partisan objective.
(4) Since governments have the benefit of more resources to consult and conduct studies, as well as have access to the expertise of the civil service, the analysis of competing rights raised in attempting to solve complex multifaceted social issues warrants deference.[25]
(5) Respect is due to the deliberative legislative process. As Kavanagh argues, an inclusive debate, with extensive discussion focused on the rights issue (in her view, "*focus*, *deliberation* and *participation*") warrants deference. The respect that we give to the legislative process reflects our belief that proper parliamentary debates, where elected officials ponder a question, exchange information, and debate the merits, both on principle and in detail, matter. In the normal course of events, the parliamentary process provides opportunities for discussions, particularly through the debates at second reading, consideration in committee, the report stage, and third reading debates.[26]
(6) Respect ought to be given to the intentions of voters. That "the electorate is never wrong" is at the core of our belief in democracy. However, this belief is tempered by giving respect

[21] Kelly, *supra* note 3 at 108.
[22] Mark Carter, "Diefenbaker's Bill of Rights and the "Counter-Majoritarian Difficulty": The Notwithstanding Clause and Fundamental Justice as Touchstones for the Charter Debate" (2019) 82:2 Sask L Rev 121 at 134.
[23] Peter Hogg, *Constitutional Law of Canada,* 2015 Student ed (Toronto: Carswell, 2015) at 12 – 3(b).
[24] See *Greater Vancouver Regional District v British Columbia (Attorney General),* 2011 BCCA 345.
[25] But see David Wiseman, "Competence Concerns in Charter Adjudication: Countering the Anti-Poverty Incompetence Argument" (2006) 51 McGill LJ 503.
[26] See Legislative Assembly of Ontario & Legislative Research Service, "How Bills Become Law" (2011) at 7, online (pdf): *Ontario Legislative Assembly* <www.ola.org/sites/default/files/common/how-bills-become-law-eng.pdf> [perma.cc/6527-XKVK].

> to our constitutional framework and the protection of minority rights. Within the bounds of the Constitution, and following a fair electoral process, the clear intentions of voters are to be heeded.[27]

In the next section, I review the parliamentary debates surrounding the adoption of Ontario's *Better Local Government Act, 2018* in light of this six-point framework. I present the process chronologically, analyzing the legislative debates from 31 July 2018 to 14 August 2018.

II. THE BETTER LOCAL GOVERNMENT ACT, 2018

On 7 June 2018, the Conservative Party of Ontario, with seventy-six elected members, secured a majority government. As expected, there was a sense of euphoria from the newly elected government. The Legislature was called back on 11 July 2018 to elect the Speaker of Ontario's Legislative Assembly, and to hear the Speech from the Throne on 12 July 2018. After the introduction of the ceremonial *Act to perpetuate an ancient parliamentary right*, the *Urgent Priorities Act, 2018* (dealing with the labour dispute at York University, Hydro One, and the cancellation of a wind project) was introduced and debated on July 19 and 23, and adopted on 25 July 2018.

Shortly thereafter, on the morning of 27 July 2018, the Government of Ontario announced the introduction of Bill 5, now the *Better Local Government Act, 2018.*[28] Most significantly, Bill 5 proposed to reduce the number of wards in the City of Toronto from forty-seven to twenty-five. At the time of its introduction, the nomination period for municipal candidates in the City of Toronto had just closed on 27 July 2018, and the municipal election campaign had been under way since 1 May 2018. The election was to take place on 22 October 2018. The Bill also proposed the cancellation of four elections for regional chairs.

The announcement came from the Premier, Doug Ford's, Office, rather than from the Minister of Municipal Affairs and Housing, Steve Clark, and seemed to catch people by surprise, as it had not been mentioned in the Speech from the Throne.

The Bill contained three schedules: one amending the *City of Toronto Act, 2006*, one amending the *Municipal Act, 2001*, and one amending the *Municipal Elections Act, 1996*. Significantly, it eliminated the power of the City of Toronto to establish, change, or dissolve wards and to change the composition of its council.[29] It also eliminated the power of the City to pass by-laws with respect to the composition of City Council and the division of the City into wards, and stipulated that the City must be divided into wards that mirror provincial electoral districts. The Bill further provided that the "regular" 2018 election be conducted as though the changes had already been in effect, allowed for retroactive regulations and regulations that would supersede

[27] See *Reference re Secession of Quebec*, [1998] 2 SCR 217 at paras 61–65; see also para 87:

> The democratic principle identified above would demand that considerable weight be given to a *clear* expression by the people of Quebec of their will to secede from Canada, even though a referendum, in itself and without more, has no direct legal effect, and could not in itself bring about unilateral secession … The referendum result, if it is to be taken as an expression of the democratic will, must be free of ambiguity both in terms of the question asked and in terms of the support it achieves [emphasis added].

[28] 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 Leg, Ontario, 2018, (assented to 14 August 2018), SO 2018, c 11.

[29] *Ibid* Schedule 1, section 5.

any contrary legislative provisions, and mandated that by-laws passed by the City of Toronto prescribing division into wards be presumed not to have been passed.[30]

Schedule 2, specifically, dealt with the cancelling of regional chair elections, while Schedule 3 amended the *Municipal Elections Act, 1996* to presume that the nomination day was deemed not to have occurred, and that the period for filing a nomination was deemed to have run continuously from 1 May 2018 to 14 September 2018—the new nomination day. Schedule 3 also provided for a process mandating that candidates must give new notice of their candidacy, and presumed withdrawal of their candidacy if they did not give notice to the clerk between the date that the Act entered into force and 14 September 2018. The Minister was given the power to enact regulations that vary the "operation of any of the provisions of [the *Municipal Elections Act, 1996*] for the purposes of the 2018 regular election," as well as for by-elections or the 2022 regular election with respect to transitional matters.[31]

The most controversial provisions of Bill 5 were the removal of powers from Toronto's City Council to determine its organization, the "deemed" withdrawal of candidacy if no additional notice was filed with the clerk, and the deeming of the nomination date not to have occurred (which is prescribed in the *Municipal Elections Act, 1996* as the fourth Friday of July of the election year—27 July in 2018).

Interestingly, for the purposes of the analysis of the "manner and form" issue, Bill 5 did not amend subsections 1(2) or (3) of the *City of Toronto Act, 2006* which provide that,

> (2) The Province of Ontario endorses the principle that it is in the best interests of the Province and the City to work together in a relationship based on mutual respect, consultation and co-operation.
>
> (3) For the purposes of maintaining such a relationship, it is in the best interests of the Province and the City to engage in ongoing consultations with each about matters of mutual interest and to do so in accordance with an agreement between the Province and the City.

In introducing Bill 5, it can be assumed that the Province considered these provisions and agreement between the Province and the City as aspirational rather than mandatory.[32]

In the remainder of this section of the article, I describe and then analyze the debates between Members of Provincial Parliament (MPP), focusing on the issue of the reduction of seats for Toronto's City Council, rather than the elimination of regional chairs, except to the extent that the debate on this issue had the potential to interrupt an electoral process. The parliamentary process for Bill 5 took place during the period between 30 July 2018 and 14 August 2018,[33] and was the focus of the oral question period on official debate days, as well as the subject of an opposition day motion. This was a raucous period in the Ontario Legislature. Not only did the Speaker have to stop and leave the question period at one point to restore order among members,

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[30] *Ibid*.

[31] *Ibid* Schedule 3, section 1.

[32] Hogg, *supra* note 23. A two-step process had been used before to get around a prescribed necessity of a referendum (mandatory manner and form) to establish a new tax under the Ontario *Taxpayers Protection Act, 1999*. Hogg explains that the Legislature first amended the *Taxpayers Protection Act, 1999* to eliminate the requirements for a referendum and then, adopted a new Act which proposed the health tax.

[33] Legislative Assembly of Ontario, "Bill 5, Better Local Government Act, 2018" online: *Legislative Assembly of Ontario* < ola.org/en/legislative-business/bills/parliament-42/session-1/bill-5/debates> [perma.cc/4UET-ULUW].

but people were also removed from the gallery, numerous calls for order were issued, and the tone between members was not always polite.

In my analysis, I examine the daily oral question periods from 30 July 2018 to 14 August 2018, which included four days of official debates (August 2, August 7-8, and August 14).The analysis of the question periods and of the debate on the opposition motion day help to clarify the government's objectives in introducing the Bill.

A. OVERVIEW OF THE BILL 5 DEBATES

1. 30 JULY 2018

On the morning of 30 July 2018, the day of the first reading of Bill 5, thirteen of the seventeen oral questions were directed to the Premier and the Minister of Municipal Affairs and Housing, prior to the Bill even being introduced. Five questions came from the opposition and dealt with a variety of themes, including:

- electoral mandate ("He [the Premier] never campaigned on it" (MPPs Horwath, Morrison, and Stiles));[34]
- consultation ("He never consulted on it" (MPP Horwath));[35]
- expertise ("the city spent two years consulting on this issue" (MPP Stiles));[36]
- democracy ("the most antidemocratic action that this province has seen in years";[37] "assault on our democracy";[38] "robs the people of Toronto of their right to decide how many councillors they elect" (MPP Horwath));[39] and
- impact on candidates for Toronto's City Council ("hundreds of candidates already registered, signs that have been purchased" (MPP Hunter);[40] "campaigns have been underway for months" (MPP Singh)).[41]

On mandate, specifically, the government's response was to the effect that they had been elected to "reduce the size and cost of government" (Premier Ford, MPP Baber, Minister Clark, and MPP Martin),[42] claiming that the "people want less government."[43] The Premier also added: "when I was down at city council, I put it to a vote. I spoke a hundred times about reducing the size and cost of government."[44] Other arguments brought forward included:

[34] Ontario, Legislative Assembly "Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996," 1st reading, *Official Report of Debates (Hansard)*, 42-1, No 11 (30 July 2018) at 404 (Andrea Horwath).
[35] *Ibid*.
[36] *Ibid* at 412 (Marit Stiles).
[37] *Ibid* at 404 (Andrea Horwath).
[38] *Ibid*.
[39] *Ibid.*
[40] *Ibid* at 408 (Mitzie Hunter).
[41] *Ibid* at 412 (Gurratan Singh).
[42] *Ibid* at 407 (Hon Steve Clark); *Ibid* at 438 (Hon Doug Ford).
[43] *Ibid* at 405 (Hon Doug Ford).
[44] *Ibid* at 406 (Hon Doug Ford).

- reduction in size of Toronto's City Council, which, it was stated, was "going to save the taxpayers $25 million" (Premier Ford and Minister Clark);[45] and
- reduction in dysfunction at the City ("every single person I spoke to in Toronto said that city hall is dysfunctional … [i]t has not even put a shovel in the ground for transit in over 20 years" (Premier Ford)).[46]

Minister Clark then described his intention for administrative adaptation:

> I understand that the municipal election period is already under way. Voting day is just three months away. That's why my ministry intends to work with the city to *mitigate operational issues* under this proposed legislation and to allow candidates to develop revised plans. We're going to be sitting down with the clerk's office. We're going to be extending the nomination period for those council and school board candidates to September 14.[47]

Throughout the morning session tensions were high, and people often had to be reminded to take their seats.

In the afternoon session, during member statements (where individual MPPs have an opportunity to make a ninety second statement), the issues of mandate, consultation, and impact on democracy were raised again. For example, MPP and former Premier of Ontario, Kathleen Wynne, argued that "[w]hatever you believe about the ideal number of councillors for Toronto, Mr. Speaker, the way Premier Ford is treating Toronto is wrong."[48] Six petitions were presented that afternoon before the Bill was formally introduced.[49] The first reading of Bill 5 required a vote, in which sixty MPPs voted in favour of the Bill and forty against.

2. 31 JULY 2018

On day two, reasoned amendments were filed to delay the discussion of Bill 5. Seven out of sixteen questions were dedicated to the issue. Four questions came from the opposition and three from government members. Similar themes as the day before were raised, such as:

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[45] *Ibid* at 405 (Hon Doug Ford).
[46] *Ibid* at 404 (Hon Doug Ford).
[47] *Ibid* at 406 (Hon Steve Clark) [emphasis added].
[48] *Ibid* at 415 (Kathleen Wynne).
[49] *Ibid* at 418. Throughout the period (31 July 2018 to 14 August 2018), over fifteen petitions were filed, with essentially the same wording:

> "To the Legislative Assembly of Ontario:
> "Whereas Doug Ford's decision to reduce Toronto's wards from 47 to 25 was made without any public consultation;
> "Whereas Doug Ford's meddling in municipal elections is an abuse of power;
> "Whereas Doug Ford is cancelling democratic elections of some regional chairs;
> "Therefore we, the undersigned, petition the Legislative Assembly of Ontario to immediately reverse Doug Ford's unilateral decision to dismantle Toronto city hall and cancel regional chair elections; to maintain the existing Toronto municipal boundaries; and ensure that the provincial government does not interfere with the upcoming Toronto municipal election for Ford's political gain."

Though the government is required to respond to petitions within twenty-four sitting days of the petition, the delay to respond in this case went beyond the adoption of Bill 5.

- mandate ("The Premier's Secret Plot" (MPP Horwath));[50] and
- democracy ("cancelling elections that were already under way";[51] "what his [the Premier's] decision is all about is election-rigging" (MPP Horwath; declared out of order);[52] "less council seats will mean worse service, worse support" (MPP Stiles)).[53]

The government's response, though, was more aggressive ("[the Leader of the opposition] only cares about protecting a bunch of politicians' jobs";[54] "The Leader of the Opposition is worried about … [Toronto city councillors] … taking the Leader of the Oppositions' job").[55] It reinforced that it had a mandate that came from being elected, and believed in streamlining government.

New arguments were put forth by the government that Bill 5 would enable better voter parity through the reduction to twenty-five wards. Responding to the reason the City had instituted an increase to forty-seven wards in 2016[56]—to achieve voter parity over time—the government argued that "you don't let a group of politicians decide how many of them should keep their jobs,"[57] suggesting that City Council was ill-placed to determine the appropriate number of councillors.

Tensions were running high again as, halfway through question period, the government took the position that the Premier and the Ministers would refuse to answer questions from the official opposition because an opposition member had allegedly mocked a government member. Though the Speaker had not heard the mocking comment, five questions and their supplementaries from the opposition were refused.

Late in the day, the response to the previous days' notice of dissatisfaction allowed an opposition member to raise again the issue of "mandate":

> I printed out a copy of his [Premier Ford's] plan for the people … I went through this document line by line, as the Premier is so apt to say, and—surprise, surprise—there is not a single mention of slashing Toronto city council seats, not a single mention of meddling in elections of any kind, and certainly not a single mention of reducing the number of elected officials anywhere in this province. So, no, the Premier did not campaign on this; no, he does not have the mandate of the people to do this. In fact, the reason he could not answer my question on Monday is because it's not anywhere to be found in his eight-page plan. As a new member to this chamber, I am truly astonished I am here today to defend the basic principles of democracy. Yet here we are. What I've come to learn in the last few days is that democracy is neither strong nor impermeable. It is, in fact, as delicate as fine china and must be handled with care.

[50] Ontario, Legislative Assembly "Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996," *Official Report of Debates (Hansard)*, 42-1, No 12 (31 July 2018) at 468 (Andrea Horwath).
[51] *Ibid* at 467 (Andrea Horwath).
[52] *Ibid* at 468 (Andrea Horwath). This was declared out of order.
[53] *Ibid* at 479 (Marit Stiles).
[54] *Ibid* at 467 (Hon Doug Ford).
[55] *Ibid* at 469 (Hon Doug Ford).
[56] The Toronto Ward Boundary Review began in 2013 and aimed to respond to criticisms of a lack of parity among voters. The recommendations of the report were approved by Toronto City Council in 2016. For an exploration of the purpose of the review and the constraints under which it had to operate, see Alexandra Flynn, "Operative Subsidiarity and Municipal Authority: The Case of Toronto's Ward Boundary Review" (2019) 56:2 Osgoode Hall LJ 271.
[57] *Ibid* at 469 (Hon Steve Clark).

> If it is not handled appropriately by the elected representatives charged with protecting it, much like a small teacup with a chipped rim, the structural integrity of our democracy becomes weakened and its ability to serve the people ceases to exist.[58]

The response from the government, here, was to first attack the NDP's platform, and then restate that a main priority of their June provincial campaign was to reduce "the size and cost of government," which should have been understood as including a reduction in the number of councillors at the municipal level (MPP Lecce).[59]

3. 1 AUGUST 2018

The question period on day three began with a plea for decorum on the part of the Speaker. The Premier was not present for the question period. Three out of fifteen questions focused on Bill 5 and raised concerns about mandate ("running an entire election campaign with a hidden agenda is fundamentally at odds with our democracy" (MPP Horwath)),[60] democracy ("[i]t is anti-democratic to cancel elections. It is anti-democratic to alter elections while they're in full swing"),[61] and a lack of consultations (MPP Tabuns).

The government's response again was that the election had been about "reducing the size and cost of government" and that eliminating councillors would lead to quicker decisions: "An oversized council makes it almost impossible to make those streamlined decisions that are in Torontonian's best interests."[62] Further, "[b]igger councils are not necessarily better."[63]

The interference with the electoral process was addressed by repeating the changing of nomination dates and maintaining the election date for Toronto's City Council as 22 October 2018.

4. 2 AUGUST 2018

Day four began with the gallery full of spectators for oral questions, as the second reading debate commenced. There were questions raised on Bill 5 and its substance, specifically related to reducing the number of councillors, and the resulting impact on access to elected officials for citizens: "Supersized wards and fewer councillors mean less opportunity for residents to meet with their city councillor and to shape the decisions that this city makes" (MPP Stiles).[64] Despite some discussion on citizen impact, mandate continued to be the focus of the opposition: "This is a plot the Premier never campaigned on—not one day; not one sentence … he has now no mandate to

[58] *Ibid* at 505 (Suze Morrison).
[59] *Ibid* at 506 (Stephen Lecce).
[60] Ontario, Legislative Assembly "Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996," *Official Report of Debates (Hansard),* 42-1, No 13 (1 August 2018) at 521 (Andrea Horwath).
[61] *Ibid* at 527 (Peter Tabuns).
[62] *Ibid* at 521 (Hon Steve Clark).
[63] *Ibid* at 527 (Hon Steve Clark).
[64] Ontario, Legislative Assembly "Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996," 2nd reading, *Official Report of Debates (Hansard),* 42-1, No 14 (2 August 2018) at 571 (Marit Stiles).

impose his will on the city of Toronto" (MPP Tabuns).[65] MPP Stiles also made an argument about the Premier attempting to "take control of city hall through the back door."[66]

The issue of consultations was also raised: "Who would argue with that? Put up your hands if you don't think there should be a system of consultation and co-operation. Come on. I look forward to people saying that that's bad news. I generally think that in dealing with municipalities, provincial government should work with them in a consultative and co-operative way" (MPP Tabuns).[67]

The Premier framed his response to MPP Tabuns in terms of an opposition between Big and Small government ideologies, stating that "I know that the member for Toronto-Danforth loves big government and loves wasting money," and "… wants to protect a bunch of downtown politicians" and "political cronies," but "[w]e [the government] aren't going to protect your political cronies. We aren't going to protect more politicians."[68] Eventually, because of disruption, spectators were escorted out of the building.

Thursday afternoons at the Ontario Legislature are typically devoted to members' public business, and on this Thursday the opposition presented the following motion:

> That, in the opinion of this House, the government of Ontario should not meddle in municipal or regional elections and should withdraw Bill 5 as the government did not campaign on interfering in elections in Toronto, Muskoka, Peel, York and Niagara and changing the rules of a democratic election in the middle of a campaign period is undemocratic, un-Ontarian, and un-Canadian; and fails to reflect widely held beliefs that decisions about our democracy should engage citizens so they have their say about any changes to the electoral processes.[69]

The debate on the motion lasted about one hour. The themes included the wisdom of increasing the size of wards and its impact on access to politicians and to representation, the absence of mandate, and the lack of respect for democracy. Accordingly, two opposition members argued that,

> If the provincial government wants to start a conversation about how to improve municipal government, I'm all for that. But let's follow a proper process in doing so. The way it's being done right now is disrespectful of democracy and it's disrespectful to the people of Toronto and the regions. These actions are really what you might expect to see on the evening news in reference to a tinpot dictator, not the Premier of Ontario. It's not what I would expect to see in this House, in this province and in this country (MPP Schreiner).[70]
>
> …
>
> It is absolutely reckless of this government to storm into the city of Toronto weeks before an election and pull the rug out from everyone's feet and change the rules in the

[65] *Ibid* at 571 (Peter Tabuns).
[66] *Ibid* at 571 (Marit Stiles).
[67] *Ibid* at 618 (Peter Tabuns).
[68] *Ibid* at 571 (Hon Doug Ford).
[69] *Ibid* at 586 (Andrea Horwath).
[70] *Ibid* at 589 (Mike Schreiner).

> middle of the game. We are setting the city—my city, the city that raised me—up for failure, and it's deplorable. It is not reasonable to ask the city to reboot its election process when they're halfway to the finish line (MPP Morrison).[71]

The government's response to these arguments was to point out that polls in 2014 indicated support for the idea of reducing the number of councillors.

Following the defeat of the opposition motion, Minister Clark began the debate on Bill 5:

> … we are committed to finding efficiencies in local government and to listening to concerns raised by the people of Ontario.
>
> What's more, we are acting on these concerns. We are taking action to address issues that have been ignored far too long. This is a timely piece of legislation. The 2018 municipal elections will be held across Ontario on Monday, October 22. The Better Local Government Act, 2018, is the action we are taking to address two of the issues that involve elected municipal positions. It is intended to institute a series of reforms to municipal government in the city of Toronto, as well as regional governments of York, Peel, Niagara and the district of Muskoka.
>
> …
>
> We recognize that some candidates have already filed their nominations to run in the current ward system. If our legislation is passed, to help those candidates transition to the new wards, we would make regulations for that purpose. The regulations would address how their campaign contributions are transferred to their new campaigns, if they choose to run in the new wards or school board electoral areas. There are no changes to nomination dates for the role of head of council, the mayor of Toronto. That date was July 27, and nominations closed, as most people know, last Friday.
>
> …
>
> The current size of Toronto city council hinders decision-making. Debates are time-consuming, inefficient and costly.
>
> …
>
> Third, it would result in a fair vote for residents, which was the very reason Toronto itself undertook a review of its ward boundaries. The Toronto councillors I referred to earlier reminded everyone that the Supreme Court of Canada said that voter parity is a prime condition of effective representation. They gave examples of the current ward system, where there are more than 80,000 residents in one ward and 35,000 in another. They acknowledge that this voter disparity is the result of self-interest, and that the federal and provincial electoral district process is better because it is an independent process which should apply to Toronto as well. I want to repeat that, Madam Speaker: The wards we are proposing are arrived at through an independent process.[72]

[71] *Ibid* at 591 (Suze Morrison).
[72] *Ibid* at 605–07 (Hon Steve Clark).

The government again tried to diffuse the concerns over mandate by noting that the Premier had mentioned the issue while he was a city councillor (MPP Hogarth).[73] Minister Clark then announced a consultation on the issue of regional chairs.[74]

5. 7 AUGUST 2018

At the question period on day five, the main issue raised was whether other municipalities would be affected by the amendments made through the Bill. The second reading debate continued into the afternoon, where the opposition highlighted the seriousness of the process followed by the City of Toronto:

> The city of Toronto actually went through this process, Speaker. It was an extensive four-year process that resulted in an agreement that the number of councillors should be increased, from 44 to 47. One of the reasons why this is so important is because we know that women have a very difficult time getting into elected positions in municipal government. Increasing the size of council, ensuring that the number of councillors is appropriate for the number of people who are represented in any community, is critical to enable democratic representation (MPP Sattler).[75]

Some government MPPs seemed to refer to the fact that the "[p]olitics of who would win the elections" was what was driving the opposition (MPP Calandra).[76] Later, the issue of voter parity was raised again.[77]

6. 8 AUGUST 2018

On day six, the second reading of Bill 5 continued. Other questions arose from the opposition, including: Is reducing the number of councillors going to facilitate developers' access? Is it appropriate to override municipal decision-making? And, is excluding the City from deciding its own governance appropriate? (MPP Bisson).[78]

On the issue of consultation, MPP Armstrong argued that "[d]emocracy needs to happen. Representation needs to be had. People are feeling that if you are going to force this legislation and change the level of representation on them, they should have a say, and rightfully so."[79] Speaking directly to the government, MPP Hassan added that "… you are imposing something that you have not consulted the people of Toronto on."[80]

On interference in elections, various members of the opposition had the following to say:

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[73] *Ibid* at 611 (Christine Hogarth).
[74] *Ibid* at 613 (Hon Steve Clark).
[75] Ontario, Legislative Assembly "Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996," 2nd reading, *Official Report of Debates (Hansard),* 42-1, No 15 (7 August 2018) at 651 (Peggy Sattler).
[76] *Ibid* at 655 (Paul Calandra).
[77] *Ibid* at 657 (Kaleed Rasheed).
[78] Ontario, Legislative Assembly "Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996," 2nd reading, *Official Report of Debates (Hansard),* 42-1, No 16 (8 August 2018) at 689 (Gilles Bisson) [Bill 5 Debate August 8].
[79] *Ibid* at 689 (Teresa J Armstrong).
[80] *Ibid* at 717 (Faisal Hassan).

> I've never disputed the number—if it's 25, if it's double that, if it's 35. I think that's a healthy conversation in a democracy to have, a conversation about the representation number for a specific body. We just went through that process here in the Ontario Legislature. I just have to remind members that a lot of the members who are sitting here today are here because of the expansion of seats in this very House. On one side, we hear the Premier and the government talking about how less government is more efficient. But we just went through an election where we actually expanded the number of seats in this Legislature.
>
> I didn't believe that it was actually going to take place. I was actually shocked when I did find out that it was going to take place during an election. It sent our city into chaos. There are a lot of people out there who have gone and raised money, who have connected with community groups, who have knocked on doors in a specific area, and now they have to rethink their strategy. There are sitting councillors who work together in their communities who are now battling in their local communities. I think it's irresponsible for any government to change the rules during an actual election (MPP Coteau).[81]
>
> …
>
> My friend has described the legal nature upon which this decision exists. I'll talk about another legal principle: The legal principle of the "reasonable person," that we should look at what a reasonable person would do in these kinds of circumstances. What I put forward to you, Mr. Speaker, is that a reasonable person would not make these decisions on the eve of a deadline in which people have already been campaigning and going door-to-door in terms of the wards that they were trying to represent. A reasonable person would not do it in this kind of manner (MPP Singh).[82]
>
> …
>
> We believe that there is a time and a place for healthy debate, and I think that that debate is so important when you are talking about the integrity and the dignity of our electoral institutions (MPP Fife).[83]

Members of the opposition not only provided comments on election interference, but also spoke at length about the issue of mandate:

> What we do know is that they did not campaign on this matter. There was nothing in their campaign platform to reduce city council from 47 to 25, and that the king of consultation, the Premier—the self-avowed, self-professed king of consultation—did not consult on this matter before cutting city council down. And when we look at the manner in which this was rolled out, we didn't see this was something that, upon being elected, the Premier said, "This is a priority that we're going to move forward." We didn't see, in the following weeks, that this was something that was mentioned or

[81] *Ibid* at 701 (Michael Coteau).
[82] *Ibid* at 709 (Gurratan Singh).
[83] *Ibid* at 711 (Catherine Fife).

> something that was signaled would be happening. Instead, on the eve of the deadline—we see this as a "gotcha" moment. This was something that took this province—not just this province but this country—by surprise. And this is something that immediately was criticized as such (MPP Singh).[84]
>
> …
>
> We on this side of the House view democratic processes with great integrity (MPP Fife).[85]
>
> …
>
> All we've heard from this Ford government is: "Less politicians. Nobody wants more politicians." It's so ironic, don't you think, that this Premier, whose father was a politician, who himself is a politician, whose brother is a politician, whose nephew is a politician—that these words come out of his mouth when his family is fully engaged in the political arena? And he calls for less politicians (MPP Fife).[86]

To undermine the cost savings argument advanced by the government, MPP Fife quoted a Fraser Institute article, which stated that,

> … reducing the number of seats in council—while perhaps a strong symbol—is not an effective way to achieve' the [goal of efficiencies]. 'In fact, it may grow the size of government, consume more taxpayer money and reduce democratic accountability to boot.
>
> We know what happened when the provincial government forced amalgamation on Toronto two decades ago. If Ontario's new government wants to avoid those same mistakes, for the sake of taxpayers and their families, it should take a sober second look at its latest cost-cutting plan.[87]

Later in the debate, MPP Lindo expressed concern over the impact of Bill 5 on candidates and overall transparency:

> Yesterday I was painstakingly reading through Bill 5, and the only thing I could think about was 1984. There were so many places within this bill where we were being asked—actually, obligated—to pretend that an election had not already started. We were being obligated to pretend that people hadn't already put their names forward and started their campaigns. We were being asked to pretend that monetary loss would now be endured by people who had finally had the courage to put their names forward.[88]

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[84] *Ibid* at 709 (Gurratan Signh).
[85] *Ibid* at 711 (Catherine Fife).
[86] *Ibid*.
[87] *Ibid*, citing Josef Filipowicz, "Fewer elected officials – not a good way for Toronto City Hall to save money" (1 August 2018), online: *Fraser Institute* <www.fraserinstitute.org/article/fewer-elected-officials-not-a-good-way-for-toronto-city-hall-to-save-money> [perma.cc/PVT5-PQNR].
[88] Bill 5 Debate August 8, *supra* note 78 at 718 (Laura Mae Lindo).

That this impact would be particularly severe for women and racialized candidates was also discussed by MPP Lindo.[89] Finally, members of the opposition made several suggestions that the changes be delayed until the next municipal elections.

On the government side the arguments too focused on a wide-range of issues. First, on the issue of mandate Minister MacLeod stated that, "[w]e have a mandate. The Premier of Ontario has been very clear that he has had a desire to have 25 city councillors in the city of Toronto for a very long time. It's not a secret. It's not something he has never spoken about. It's something he actually did when he was at city hall as a Toronto city councillor."[90]

The government then shifted its focus to delegitimizing the opposition:

> We know that the real reason they're so up in arms is because they want to defend their activist friends. They want to defend their activist friends, who will not get a mandate from the people in the same manner we just got a mandate from Ontarians in the last election. Their activist friends are angry because they know that when they actually go to the people, when they have to get organized, when they have to take it to the people of the city, they'll categorically reject them, the same way they categorically rejected the NDP platform in the last election, Mr. Speaker. That's the real issue here (MPP Piccini).[91]

In a further attempt to delegitimize the opposition, the government commented on the "dysfunction" at the City, with MPP Babikian stating that, "… the official opposition and its leader have clearly advocated for the dysfunctional status quo. Why they believe in a dysfunctional local government for the people of Toronto is beyond me. This is an insult to the people of Scarborough."[92]

7. 9 AUGUST 2018

On day seven, a time allocation motion was introduced by government-side MPP Todd Smith:

> I move that, pursuant to standing order 47 and notwithstanding any other standing order or special order of the House relating to Bill 5, … when Bill 5 is next called as a government order, the Speaker shall put every question necessary to dispose of the second reading stage of the bill, without further debate or amendment, and at such time the bill shall be ordered for third reading, which order may be called that same day; and
>
> That, when the order for third reading of the bill is called, one hour shall be allotted to the third reading stage of the bill, with 30 minutes apportioned to the government, 10 minutes to Her Majesty's loyal opposition, 10 minutes to the Liberal Party independent members and 10 minutes apportioned to the Green Party independent member. At the end of this time, the Speaker shall interrupt the proceedings and shall put every

[89] *Ibid.*
[90] *Ibid* at 721 (Hon Lisa MacLeod).
[91] *Ibid* at 690 (David Piccini).
[92] *Ibid* at 716 (Aris Babikian).

> question necessary to dispose of this stage of the bill without further debate or amendment; and
>
> That, … no deferral of the second reading or third reading vote shall be permitted…[93]

This was followed by strong opposition to the motion from MPP Tabuns:

> Some 2.7 million people live in the city of Toronto, and they will not be afforded even a minute—not 30 seconds, not a second—to speak in this building to this bill. Their interests are before us. Their interests are being debated. But they will not be allowed to have even one person, one citizen, come and speak before us. Not one. That is outrageous.
>
> …
>
> But in this House—built to represent the people of Ontario, meant to act democratically—to completely cut out the people of Toronto from any debate whatsoever is outrageous. The city of Toronto went through a multi-year process of consultations on how they would elect their representatives, their councillors. That process, set in place by former mayor Rob Ford, allowed for consultation across the city. It was a process that was challenged at the Ontario Municipal Board and was upheld at the Ontario Municipal Board. It was a legitimate process of consultation.
>
> This government, this Conservative government, is throwing all that consultation out the window, saying, in effect, that the people of Toronto have no right to speak, because they have been deprived of that right; saying that their opinion on how they should be governed is of no consequence; and opening the way to a truncated debate—and I'm being generous—on the bill itself.
>
> …
>
> So consultation is important to you? What about the people of the city of Toronto, 2.7 million people, who will not be allowed to come before a committee hearing and put out their argument? Because there won't be a committee hearing. There will not be a single minute of committee hearings. What about the potential for legislators to actually debate the bill clause-by-clause, go through, look for the problems and correct them? No; none of that.
>
> For those of you who've been here for a while and those who are new, I'll note that in committee, often governments correct bills where they see they have made mistakes. That's the way things are. No legislator is perfect; no legislation writer is perfect. But there will not be that corrective methodology. In fact, what we will get is an approach that gives the minister the power to rewrite the legislation without coming back to this House. That alone is extraordinary.

[93] Ontario, Legislative Assembly "Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996," 2nd reading, *Official Report of Debates (Hansard),* 42-1, No 17 (9 August 2018) at 723 (Hon Todd Smith) [Bill 5 Debates August 9].

> For those who are not familiar with the process, government sets a framework of laws, and then, within that, ministers get to write more detailed rules called regulations. Typically, if a minister writes a regulation that's outside the framework of those laws, that regulation is deemed void, invalid and can be challenged in court and thrown out. In this case, we, the legislators, will have our laws thrown out by the minister if he so decides. That is extraordinary. That is completely extraordinary.
>
> So on top of no public consultation, on top of ramming this through, on top of ignoring a multi-year consultative process in the city of Toronto, this government is putting forward a law that can be amended by the minister with no reference to the legislation. That should give everyone pause. You should be thinking about that, because frankly, if you move from this Legislature setting laws to one person setting laws, we have a real problem in this society.
>
> …
>
> They will not be allowed to speak before you, legislators. They will not be allowed to make their arguments. They are being cut out. On that basis alone, this time allocation motion should be defeated—on that basis alone.
>
> I'll say beyond that, in this democracy, for a decision of this magnitude to have 10 minutes of debate per opposition group in third reading is outrageous. This time allocation motion must be rejected.[94]

Similarly, MPP Bisson, for the opposition, argued that,

> Listen: If the people of Toronto want to change the size of the council, that's their decision. It's not a decision that we should be making. Yes, we have the authority, but it's the decision of the people of Toronto, just as, in the city of Timmins, they decided the size of their council on numerous occasions. They decided if they wanted to be a ward or an at-large system. Those were decisions that the ratepayers, the voters, of the city of Timmins had to make, and it was done by us. It was done by the people of Timmins and done by our municipal council.
>
> This government has decided, "Nah. We're smarter than all you people living in Toronto. We know what's best for you." This is Uncle Joe. Remember Uncle Joe in the Soviet Union—Joseph Stalin, if you don't remember his name. This is the kind of stuff this is. This is autocracy from the top. This is the person from the top trying to tell the little serfs at the bottom what's good for them. They say, "Oh, we won a majority."
>
> Yes, you won a majority government; nobody argues that. I very much respect the British parliamentary system that says that if you win more seats than the other party, you get to form the government and you get to make the decisions. But you have a responsibility as a government to follow the process and to allow people to have their say. The fact you're not allowing the public of Toronto, who either support this bill or

[94] *Ibid* at 723–25 (Peter Tabuns).

> don't support this bill, to come before a committee to say what they have to say about it says that this is a throwback to the old communist days of the Soviet Union. This is essentially what it is.
>
> … But what I expect, as a citizen of this province and as a legislator, is that you're going to respect the process and allow the public to have their say.
>
> …
>
> I challenge any government member to get up and debate this motion. If you guys think it's a good idea that the public doesn't have an opportunity to come before committee and do what it has to do when it comes to pronouncing itself on this legislation, then get up and state your case. You tell us why democracy shouldn't work … There's a little thing in the British parliamentary system called democracy, and we have a committee process. The very fact that this government is not prepared, saying it's a government of the people, to allow them to come before a committee to pronounce themselves on this bill—I'm sure you'll find people who will come and speak to it and I'm sure you'll find a lot of people who come to speak against it, but at least you will have heard what the public has to say.[95]

MPP Bisson then moved an amendment to the time allocation motion to allow for committee hearings.[96]

During the question period, Premier Ford was present, and questions were directed to the lack of mandate, lack of consultations, and shortcomings of the parliamentary process:

> On this bill, you have been anything but clear. You never raised it in the last election once. Nobody saw this thing coming. All of a sudden, it got announced, one day out of the blue. You're saying that you're not going to allow the people of this province and the people of these affected cities to come before public committee and have their say. You can't pretend to be a government of the people when you won't open the front door of the Legislature and allow the people to come in and present at committee.
>
> Will you open the door and will you allow the people into this committee structure to have their say? (MPP Bisson).[97]

The response from the government to the concerns raised by the opposition was dismissive at times: "Speaker, through you to the member: It's pretty rich coming from the NDP, who just ran a campaign that was anti-police, anti-veteran, anti-poppy. It's pretty rich coming from this opposition, when they continue to have a radical and offensive agenda" (Minister Clark).[98] Minister Clark then went on to suggest that Toronto Council is unworkable: "Like the NDP, if you give the Liberals a chance, they'll always increase the size and cost of government. Over here,

[95] *Ibid* at 725–26 (Gilles Bisson).
[96] *Ibid* at 726–27 (Gilles Bisson) ("That the Standing Committee on General Government be authorized to meet on Monday, August 20, 2018, from 2 p.m. to 8 p.m. and Wednesday, August 22, from 2 p.m. to 8 p.m. for the purpose of public hearings on the bill; and … That the committee shall report the bill to the House no later than Thursday, August 30, 2018.")
[97] Bill 5 Debates August 9, *supra* note 93 at 732 (Gilles Bisson).
[98] *Ibid* at 732 (Hon Steve Clark).

we're respecting taxpayers, and I'm proud. An unmanageable, unaffordable 47-member council is just another Liberal mess that we're going to clean up."[99]

Overall, the question period was quite raucous with many interjections. A few new justifications were proposed by the government side, among them, that the earlier process of raising the number of wards to forty-seven city councillors lacked consultations (Minister Clark, MPP Mitas).[100]

8. 13 AUGUST 2018

On day eight, at the question period, Premier Ford was present, and the questions focused again on the legitimacy of the government's mandate in introducing Bill 5. According to MPP Horwath,

> … the Premier did not run on an election platform to meddle in democratic elections. He did not run on a plan to meddle in democratic elections—and that's the worrisome thing: He doesn't believe that the people's right to vote for their representatives should be protected.
>
> I do think they should be protected. I didn't vote for Joe Cressy [Toronto City Councillor] and I didn't vote for Michael Layton [Toronto City Councillor], but people certainly did, and they deserve to have the opportunity to vote for their elected representatives.
>
> Not a single member of his caucus actually ran on a plan to meddle in democratic elections. The people of Ontario are telling him clearly to stop election meddling. Will he?[101]

Premier Ford countered that "… we [the government] ran on reducing the size and the cost of government. We ran on making sure we respected the taxpayers."[102] He went on to say that "[a]ll the Leader of the Opposition wants to do is get more politicians to do the bidding of her downtown NDP councillors, Joe Cressy, Mike Layton and the rest of the cronies downtown."[103]

Questions from the government side, specifically from MPP Babikian, focused on the lack of consultation in the process of raising the number of city councillors.[104] In response, Minister Clark said that "[t]he idea that the boundary review had tremendous public support is a myth."[105] Rather, it served the interest of incumbent councillors, and *not* the public.[106]

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[99] *Ibid* at 736 (Hon Steve Clark).
[100] *Ibid* at 736 (Hon Steve Clark); *Ibid* at 736 (Christina Maria Mitas).
[101] Ontario, Legislative Assembly "Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996," 2nd reading, *Official Report of Debates (Hansard),* 42-1, No 18 (13 August 2018) at 770 (Andrea Horwath).
[102] *Ibid* at 770 (Hon Doug Ford).
[103] *Ibid.*
[104] *Ibid* at 776 (Aris Babikian).
[105] *Ibid* at 776 (Hon Steve Clark).
[106] *Ibid* [emphasis added].

9. 14 AUGUST 2018

By day nine, the final day of debate, questions related to "meddling during elections" were (again) responded to by the government by stating that "[t]he Opposition just doesn't understand what people want,"[107] and that the Bill is good for Toronto and will ensure voter parity. The amendment to the time allocation motion to allow for committee hearings was defeated, and the main time allocation motion was passed.

Following this, the second reading of the Bill passed and the third reading began. Here, a new argument was made by the government, who said that "[t]he new system will be simpler for voters."[108] A reference was also made to the need for voter parity and the power of incumbent City councillors to prevent change.[109] In response, the opposition reiterated its objections on mandate, consultation, democracy, and parliamentary process:

> We all know what Bill 5 is. Bill 5 is a vindictive law and a blatant abuse of power by this new Premier … [and] we are deeply saddened that this government chose to deny Ontarians the right to be heard.
>
> Not only is Bill 5 meddling with elections that are already under way, something that is completely outrageous and completely foreign to a long-standing democracy like we have in Ontario and like we have in Canada—I mean, it is really quite shocking that a government thinks that its responsibility is to take away the power of voters in the midst of an election campaign. It is absolutely astounding.
>
> …
>
> The way that Toronto is governed, the size of city council and the number of wards in this city are decisions that belong to the people who live here.
>
> …
>
> Now, there are many countries around the world that struggle to find the path to democracy. Our Premier is taking us off the path to democracy. Our Premier is taking away the rights of people to vote. It is unbelievable, Speaker (MPP Horwath).[110]

Interference in elections was also raised by the Green Party and the Liberal Party. After a one hour debate, Bill 5 was adopted without amendments seventy-one to thirty-nine.

B. SUMMARY OF THE DEBATES

In summary, the debate focused primarily on the issue of *mandate*, that is, whether electors voted for the policy change, in light of the fact that it had never been mentioned during the electoral campaign, which had taken place only a few months before. The government's response was to

[107] Ontario, Legislative Assembly "Bill 5, An Act to amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996," 3rd reading, *Official Report of Debates (Hansard)*, 42-1, No 19 (14 August 2018) at 803 (Hon Doug Ford).
[108] *Ibid* at 821 (Hon Steve Clark).
[109] *Ibid* at 823 (Hon Steve Clark).
[110] *Ibid* at 825–26 (Andrea Horwath).

insist that a mandate to "reduce the size and costs of government" implied a reduction of the number of politicians. The government's position was that people should have known Premier Ford's views on Toronto's City Council because of his record during the time that he was a City Councillor. The electorate ought not to be surprised.

On the issue of *expertise*, the government's rhetoric evolved over the course of the debate days. Initially, it focused on the estimated savings of twenty-five million dollars. However, after the publication of the Fraser Institute study, which found that cutting the number of city councillors would not achieve increased economic efficiency, the government turned its focus to challenging the methodology of an earlier study undertaken by the City of Toronto, which informed its decision to increase the number of wards to forty-seven. Here, the government criticized the City's process for not consulting with enough people. This left no independent expert report on governance at Toronto's City Council—there was none for the twenty-five wards being proposed by the government, and only a damaged one (according to the government) for the forty-seven wards. As a result, there was little discussion during the debates of an evidence-based rationale for the policy change to be actualized through Bill 5.

On the *definition of rights*, the debate was emotional. Several arguments on both sides could be framed as rights violations:

1. INTERFERENCE WITH THE ELECTORAL PROCESS

Around the world, the pressure to ensure a stable and predictable electoral process period is deeply connected to the desire to ensure legitimate democratic outcomes. The United Nations insists that "postponement of scheduled elections necessitated by public emergency may be permitted in certain limited circumstances, but only if and to the extent strictly required by the exigencies of the situation," and that transparency surrounding electoral rules is paramount.[111] My own research through the Legislative Library of Ontario did not show that interference during an electoral period has ever happened in Canada before further affirming that, in introducing Bill 5, the Government of Ontario seemed to be oblivious to its impact on the sacredness of the electoral period. The obligation for a stable and undisturbed process is explained by electoral observers who suggest that any interference with the electoral period raises the prospect of rules being changed to accommodate one candidate, thereby delegitimizing the process.

In the debates, the provincial government did not respond to this argument. The serious impact that the interference could have on the legitimacy of the elections or the government's responsibility to protect a stable and transparent electoral process were never addressed. The Minister assured the House that through his regulatory power, he would work with the City of Toronto to implement good transition rules. Though the date of the election was not changed, the nomination process was completely revamped. Ultimately, the Minister's view was that the impact on the electoral process was "administrative" and could be remedied by the postponement of the nomination deadline.

[111] United Nations, "Human Rights and Elections A Handbook on the Legal, Technical and Human Rights Aspects of Elections" at para 73, online (pdf): *Burma Library* <www.burmalibrary.org/docs08/UN-Election_handbook.pdf> [perma.cc/66WC-VWGN]; see also paras 52ff on states of emergency.

2. IMPACT ON CANDIDATES

The issue of impact on candidates, that is, the fact that many had spent money, devised a strategy, and connected with voters in a ward, was raised by several opposition MPPs. The Minister's response was to refer to his regulatory power to effect a smooth transition. The absence of committee hearings may also account for the abstract understanding of the injury to candidates on the part of the government, and its lack of concern for it. It is unclear whether an administrative response that includes a new nomination deadline, requires new notification of intent, with a deemed withdrawal in case of failure to abide by the new notification, responds well to the loss of democratic and participatory rights of would-be candidates. The government was not really pushed to do more.

3. IMPACT ON DIVERSITY

A few members noted that the increased number of wards had been proposed with a view to increasing diversity of representation at Toronto's City Council. There was no engagement on this issue on the part of the government.

4. IMPACT ON VOTER PARITY

The ward boundaries review had been ordered to address the issue of voter parity, that is, to ensure that wards would have the roughly same number of electors. The review aimed to achieve better parity over time, based on growth predictions. The government's argument was that voter parity would be ensured more rapidly by the twenty-five wards rule. In a way, the government was suggesting that voter parity was of a higher order than impact on freedom of political expression of candidates or the integrity of the electoral period, even if this does not align with the state of the law.[112] Indeed, section 3 *Charter* jurisprudence speaks to a right to effective representation for which voter parity is but one element.

5. IMPACT ON REPRESENTATION

Some members of the opposition criticized the government on the substance of its proposal, not just its timing, or lack of consultations, or disrespect for parliamentary rules. The argument was that reducing the number of councillors reduced access for electors to their representatives. The government did engage with that argument to highlight its vow to have generally fewer politicians, and shorter debates at City Hall.

On *consultations*, or the provisions of the *City of Toronto Act, 2006* which mandate consultations, the government was challenged without real engagement on the terms of the Act. The moral case for consultation was made, but not the legal one. The government's response was to pivot to its electoral win, as a way to supplant consultation, and the failure of previous consultation processes.

On *parliamentary process*, the government was seeking to work quickly. The election was only three months away. The municipal election process is spelled out in the *Municipal Elections Act, 1996* and is longer than provincial or federal processes because it is expected to be managed

[112] See *Reference re Prov Electoral Boundaries (Sask),* [1991] 2 SCR 158; see also Dawood, *supra* note 7 at 726.

mostly by volunteers. The government used its power to do away with traditional parliamentary process without really defining the "emergency." Though the Minister was clear that he believed that a "streamlined Council" would be better than an expanded council, he was unclear about whether, and why, it was necessary to proceed that quickly through the parliamentary process. Although a committee review adds days to the process, its usefulness is not only in allowing affected citizens to express their views, but in that it also provides for a more in-depth study of the provisions of the bill itself. For example, clarification could have been brought as to whether the language of the regulatory power in Bill 5, specifically, was too broad, or whether the deemed withdrawal of nomination was at all appropriate. From a rights perspective, legislative language matters, but it was impossible to obtain an explanation for the choices made by the government.

On *partisan incentives*, several MPPs and Premier Ford did refer to ulterior and more partisan motivations in agreeing to or opposing Bill 5. There was even mention of possible local election rigging. However, because the Ontario Legislature's Rules of Debate & Decorum prohibit imputing motives or generally disrespectful language, many of the questions on that set of issues were ruled inadmissible.

In the next section, I review the deference framework summarized in Part I and apply it to the legislative debates reviewed here.

III. DEFERENCE AND LEGITIMACY

In this section, I want to address two points. First, applying my initial six-point framework that integrates the insights of Kavanagh and Dawood, I consider what type of deference should be granted to Bill 5 by courts. Second, I will test whether or not this framework sheds any light on the validity of the approach proposed by Kavanagh that the judicial branch should feel moderately empowered to review legislative debates to determine the level of deference that it ought to afford to different legislative interventions, and Dawood's view that "partisan" proposals which seek to tinker with the electoral process should be ruled constitutionally impermissible.

A. DEFERENCE TOWARD BILL 5

The six-point framework provided in Part I suggests that deference is not warranted on "rights definitions" (point 1), "manner and form" (point 2), on "partisan self-entrenchment motivations" (point 3), but is warranted for complex multifaceted issues when informed by governmental expertise (point 4), debates with "*focus*, *deliberation* and *participation*" as defined by Kavanagh (point 5), and ultimately to voters' intentions (point 6).

Applying that framework here, the review of the debates surrounding the adoption of Bill 5 reveals that the opposition raised issues of rights violations, but many of the arguments were ignored by the government, who defined them as administrative complications, or ignored them completely, in particular, the impact on women and racialized candidates. It could be argued that the debate pitted "voter parity" against the "integrity of the electoral process," in that government MPPs preferred immediate parity even if it was achieved at the cost of interference with an ongoing electoral process and had a serious impact on candidates and their ability to run.

Though the debate never progressed to a sophisticated discussion on the rights involved or potentially affected, the discussion between members suggests that they all considered democratic rights—at the very least—to be at stake. The fact that municipal elections are not mentioned in section 3 of the *Charter* did not mean that the Ontario Legislature ignored democratic theory when

adopting the *Municipal Elections Act, 1996* to organize municipal elections. In my view, this is significant: even if the government of Ontario now argues that it has the power to do away with municipal elections, or that no democratic rights are at issue, the parliamentary debates around Bill 5 demonstrate that democratic rights were assumed to be involved. Members knew that the *Municipal Elections Act, 1996* had not been simply amended, and that to the extent that it was still in force, municipal elections had to be democratic.

Regarding the second point, the issue of the wording of the consultation requirements in the *City of Toronto Act, 2006* was raised only a few times, although the spirit of a duty to consult was advocated on numerous occasions.

Third, occasional references to partisan objectives are insufficient to establish a direct partisan self-entrenchment. There were some references to eliminating some left-leaning members from politics and government more generally. In general, provincial and federal political parties support the election of municipal councillors who are either members of their party or politically identified with them. They do so in order to support their long-term partisan electoral infrastructure, such volunteer recruitment.

Fourth, the issue of the appropriate governance model for a city the size of Toronto raises a range of complex factors. However, in the present context, the government had no study to support its recommendations for a decrease in the number of wards. The lengthy study done over four years by the City of Toronto had led to a completely different conclusion. The provincial government eventually attempted to undermine the process and conclusions from the City of Toronto's review that had suggested an increase to forty-seven wards. In the end, we are left with little evidence to support the government's choice. Faced with this lack of evidence, one might suggest that maintaining the status quo until proper analysis is done is the wiser choice. The government's proposal was that anything would be better than the status quo and suggested that action without evidence was warranted.

Fifth, the use of Kavanagh's work to review the parliamentary debates around Bill 5 is helpful. In my view, the lack of engagement on the rights issue, the truncated debate and the absence of committee review and of citizens' participation suggests that, under her analysis, little deference should be afforded to Bill 5. Indeed, there is a way in which the debate could have been more focused, deliberate, and offer some participatory possibilities. Time was certainly of the essence. Though a minimal committee review would not have satisfied the opposition, it might have provided some comfort to the public. At a minimum, the government could have engaged more fully in the debate about the alternatives that it had considered, and the seriousness with which it considered the impact on the electoral process. In part, because this was a new government that was still using its "electoral voice," and was engaged fully in partisan rhetoric, it felt no need to provide a rationale for its choices in introducing Bill 5.

Sixth, and finally, the issue of respect for voter's intentions was an issue that garnered a lot of attention. From a deference analysis point of view, the issue is not whether the Ford government had a mandate to change the rules of the City of Toronto's elections, but rather whether respect for electoral choices warrants deferring to the government for its choices. In my view, it is difficult to conclude that deference is warranted here in light of the insistence in the *Reference Re Secession of Quebec* for a "clear" question to be voted on in the first place. The issue was not discussed during the provincial electoral campaign and did not appear in campaign materials. To defer fully to a legislature that is voting to implement a government's program would require a minimum of transparency toward the electorate. Deference could not truncate the need to respect democratic rights.

In my view, even if we accept that the Ford government analyzed options and chose to value voter parity as opposed to the integrity of the electoral process and candidates' political expression rights, we would be hard-pressed to find that the legislative debate met the criteria of "*focus*, *deliberation* and *participation*" enunciated by Kavanagh.

In the next section, I provide a few conclusions as to the value of the exercise of analyzing legislative debates to inform a deference analysis.

B. THE PROPER FRAMEWORK FOR DEFERENCE?

Kavanagh's work begins by questioning whether the traditional reluctance of British courts to look at parliamentary debates should be maintained. She concludes that a mild form of review of parliamentary debates may be warranted to determine whether parliament took rights seriously. My analysis reveals that the task of deciphering policy analysis from legislative debates is not easy. Legislatures are unruly. Arguments range from the personal to the philosophical; there is little discipline in attempting to resolve differences of opinions or narrow debates; and debaters speak to the camera without engaging with each other. The early days of any legislature are particularly boisterous, but the task is arduous at any time.

In reviewing the six-point framework proposed in Part I, I would conclude that courts should never abandon their duty to define rights and the scope of *Charter* protection. Although legislatures have a duty to observe and protect rights, the nature of parliamentary debates obscures this task. As a result, the protection of rights is rarely the focus of the debate, as was demonstrated in the debate around Bill 5.

Second, much more work is needed on the issue of the "manner and form" of parliamentary restraints: the current state of the law seems to undermine the ability to rely on statutory wording that mandates a particular "manner and form." A statutory commitment to consultations ought not to be ignored. There are good reasons why parliaments should be sovereign in order to react to change and reflect voters' intentions. Nevertheless, it becomes impossible to govern, and no reliance can be put on intergovernmental arrangements, if "manner and form" provisions are systematically undermined. In the case of the *Better Local Government Act, 2018*, statutory language was ignored and the provisions mandating co-operation and consultation were completely disregarded by the provincial government. This has led to demands for better constitutional protection for municipalities.[113]

Third, Dawood's suggestion that partisan self-entrenchment rule-making should not be tolerated offers much promise. Again, the burden of determining whether policy changes are motivated, solely or in part, by partisan self-entrenchment may be difficult to prove. Not all politicians may be crass enough to admit to such motivation. However, I completely agree with her that signals from the courts as to the importance of maintaining and protecting a right to fair elections and a fair election process are paramount.

Fourth, as discussed, the issue of expertise, or lack thereof, is one that courts should consider. In my view, section 1 of the *Charter* should provide a "right to rationality" and to evidence-based decision-making.[114] There are certainly cases for which there is no data, or on

[113] Many scholars are now engaged with this issue: See *e.g.* Good, *supra* note 2.

[114] See Nathalie Des Rosiers, "Réflexions Critiques sur les Implications de la Fraternité" in Michel Morin et al, eds, *Responsabilité, Fraternité et Développement Durable en Droit – En Mémoire de L'Honorable Charles Doherty Gonthier* (Montreal: Lexis Nexis, 2012) 493; Nathalie Des Rosiers, "Section 1 of the Charter: An Instrument of

which scholarship is uncertain and contradictory and governments are proceeding in a context of uncertainty. Generally, courts exercise deference in those types of cases if the uncertainty cannot be resolved. However, where work has been done on the issue, it should be considered by the courts. Despite the limitations of social sciences, expert evidence and related studies, specifically, should be an element in the determination of whether deference is warranted. In the case where evidence and expertise are ignored or discarded, it seems to undermine the purpose of section 1 under the *Charter* to exercise deference and support irrational action.

Fifth, I find Kavanagh's analysis useful. I hope that courts will send a signal that deference is owed only when governments and legislatures take rights seriously and provide a rationale for their choices. This may create the right incentives for parliamentarians, particularly government members, to focus their interventions and address *Charter* concerns in a proactive manner.

Finally, a signal from courts that transparency in electoral promises matters would be welcomed by all. Deference may be warranted only if voters had a real choice on the matter, and that the issue was squarely on the agenda. However, elections should never be a complete determinant of deference because of the courts' duty to protect minorities and the way in which electoral politics may target various minorities.

The use of parliamentary debates as a source of information is always fraught with difficulty. It must be used with caution. No one should presume that the voice of one, a minister or even a premier, represents the will of all, nor that the words of parliamentarians can supersede legislative language, which is the true form in which the legislature expresses itself. Kavanagh suggests that it is important to distinguish between the quality of the decision-making process and the quality of the individual reasoning, the former being the matter that courts should assess, rather than the latter.[115] In my view, this review and analysis of the parliamentary debates on Bill 5 may be helpful to parliamentarians generally as they reflect on how to perform their duties in the legislature.

IV. CONCLUSION

This article sought to analyze the legislative debates on Ontario's Bill 5, now the *Better Local Government Act, 2018*, through the prism of the reasons why deference should be conferred on choices made by legislatures. After briefly reviewing the case law and related literature on the issue of deference, I added two more recent suggestions to the traditional analysis. First, drawing on work by Kavanagh, this article took up the suggestion that the level of deference that courts grant should depend on the manner in which the human rights issues were discussed in parliament. If there was a focused debate, where the human rights question was squarely addressed, fully debated, and with relevant views and aspects adequately represented, it would be more appropriate for courts to defer to parliamentary choices. The contrary is equally true: where the human rights issue is not fully addressed, nor debated, and not all points of view are expressed, then little deference should be given. Applying this analytical framework, my analysis of the 2018 parliamentary debates on Bill 5 leads me to the conclusion that deference should not be accorded. Although some of the potential rights violations were identified, the debate did not fully engage such issues. Because of time constraints, the range of views expressed were curtailed and no

Democratic Accountability" in Peter Biro, ed, *Constitutional Democracy Under Stress a Time for Heroic Citizenship* (Oakville: Mosaic Press, 2020) 83.

[115] Kavanagh, *supra* note 6 at 479.

committee review was permitted and this undermined the capacity to fully appreciate the impact of the legislation.

Second, I used Dawood's analysis of the "law of democracy" to identify whether partisan objectives could justify a low deference score. In my analysis, the partisan issues were not fully explored. They were raised, but because of time constraints, it was difficult to understand fully the impact of the proposed changes on electoral strategy.

The debates over the legitimacy of judicial review will continue, and are very healthy in a democracy always concerned to better itself. It is crucial that we continue to reflect on the reasons why, and the analysis through which courts should exercise restraint and defer to legislatures or parliament. This was the purpose of this case study. It is only by analyzing the strengths and weaknesses of our institutions that we can ensure the meaningful protection of rights and liberties. This is particularly the case when dealing with democratic processes as the stakes are high. If the Province of Ontario is right that "municipalities are creatures of the province, and that it can do away with municipal elections,"[116] it could nevertheless be that once it has decided to allow for elections, it has a duty to respect and protect the fairness of the electoral process. Having chosen to continue to have municipal elections, it must ensure fair elections.

[116] *Supra*, note 2 and in particular, *Lynch v Canada North-West Land Co*. and *Ladore v Bennett*.