

Court File No. CV-18-006037970000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CITY OF TORONTO

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

MOTION RECORD

(Motion by the Toronto District School Board seeking Leave to Intervene)

August 24, 2018

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

Patrick Cotter
LSUC No. 40809E

Tel: (416) 397-3565
Fax: (416) 393-8973
Email: Patrick.cotter@tdsb.on.ca

Lawyer for the Respondent
Toronto District School Board

TO: **MINISTRY OF THE ATTORNEY GENERAL OF ONTARIO**

Crown Law Office – Civil
McMurtry-Scott Building
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

Robin Basu (LSO No. 32742K)
Yashoda Ranganathan (LSO No. 57236E)
(416) 326-4476 (t)

Robin.basu@ontario.ca
Yashoda.Ranganathan@ontario.ca

Lawyers for the Attorney General of Ontario

AND TO: **CITY OF TORONTO**

Metro Hall, Stn. 1260, Legal Services
55 John Street, 26th Floor
Toronto, ON M5V 3C6

Diana W. Dimmer (LSO No. 24932L)
Glenn K. L. Chu (LSO No. 40392L)
Philip Chan (LSO No. 68681S)

(416) 392-7229 (t)

Lawyers for the City of Toronto

AND TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**

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

Donald K. Eady (LSO No. 30635P)
Caroline V. (Nini) Jones (LSO No. 43956J)
Jodi Martin (LSO No. 54966V)

Don.cady@paliareroland.com
Nini.jones@paliareroland.com
Jodi.martin@paliareroland.com

Lawyers for the Intervenor

AND TO: **DLA PIPER (CANADA)**
1 First Canadian Plan, Suite 6000
P.O. Box 367
100 King Street West
Toronto, ON M5X 1E2

Derek Bell (LSO No. 43420J)
Ashley Boyes (LSO No. 74477G)

Derek.bell@dlapiper.com
Ashley.boyes@dlapiper.com

Lawyers for the Intervenor

INDEX

Tab

- 1 Notice of Motion for Leave to Intervene
- 2 Affidavit of Andrew Gowdy sworn August 24, 2018

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CITY OF TORONTO

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

NOTICE OF MOTION

(Motion by the Toronto District School Board seeking Leave to Intervene)

The Toronto District School Board (the "TDSB") will make a motion to the Court on Monday, August 27, 2018, at 10:00 a.m., or soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

___ in writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);

___ in writing as an opposed motion under subrule 37.12.1 (4);

X orally.

THE MOTION IS FOR:

- (a) An order granting the TDSB leave to intervene in this proceeding on the following terms:

- (i) TDSB shall be entitled to serve and file the affidavit of Andrew Gowdy sworn August 24th , 2018, filed in support of the within motion, as evidence in the application;
- (ii) TDSB shall be entitled to serve and file a factum not exceeding twenty (20) pages in length on or before August 28, 2018;
- (iii) TDSB shall be entitled to make oral submissions at the hearing of this application not to exceed 15 minutes (15) or as otherwise may be deemed appropriate by the Judge hearing the application;
- (iv) TDSB shall not be entitled to raise new issues on the application except:
 1. The TDSB shall be entitled to request an Order in its Factum that, in the event that the *Better Local Government Act, 2018*, S.O. 2018, c. 11 is struck out in whole or in part, the companion provisions of Ontario Regulation 391/18 and Ontario Regulation 412/00 made under the *Education Act* be quashed on the basis that they were made only to align the TDSB's boundaries with the 25 ward boundaries mandated by the provisions of the *Better Local Government Act, 2018*, S.O. 2018, c. 11; and
 2. The TDSB shall be entitled to request a Declaration in its Factum that, by virtue of the provisions of section 58.1(4) of the *Education Act*, Ontario Regulation 391/18 made under the *Education Act* amending Ontario Regulation 412/00 does not apply to the current election, which is already underway but only to the "next regular election or any by-election proceeding that next regular election"

as expressly stated in section 58.1(4) of the *Education Act* and, therefore, any steps taken by the Ministry of Education or the TDSB at the direction of the Ministry of Education pursuant to the amendments to Regulation 412/00 are a nullity;

- (v) Costs of this motion and the application shall not be awarded to or against the TDSB; and
- (b) An order abridging the time for service of this motion;
- (c) An order dispensing with formal service and validating service by email; and
- (d) Such further and other relief that this Honourable Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. The TDSB is required to align its electoral boundaries with municipal ward boundaries in the City of Toronto.
2. On February 7, 2018, after months of consultations, the TDSB approved new trustee ward boundaries to align with the City of Toronto's decision to increase the number of councillors from 44 to 47.
3. In order to comply with the provisions of Ontario Regulation 412/00, staff submitted a report to the Board for its regular meeting on March 21, 2018, to implement the realignment of the Trustee wards by having the Board confirm the number of trustees and their distribution and confirm that same will be sent to the Minister of Education, the school board election clerk, and the secretary of all other school boards in the City of Toronto by no later April 3, 2018, as mandated by Ontario Regulation

412/00. The report includes the electoral population and electoral quotients by Municipal Ward and Trustee Ward as mandated by Ontario Regulation 412/00.

4. The TDSB is mandated to complete this analysis and take the steps referenced above prior to the election. As such, these changes were in effect prior to the start of the municipal and school board election - before the opening of candidate nominations and the start of the campaign period for the Municipal Election being held on October 22, 2018.

5. On July 27, 2018, the government of Ontario announced its intention to introduce legislation to reduce the number of municipal councillors from 47 to 25 to align with the current provincial and federal ridings for the 2018 election.

6. On July 30, 2018, *Bill 5, the Better Local Government Act, 2018*, was introduced in the Ontario Legislature. The *Better Local Government Act, 2018*, S.O. 2018, c. 11 was subsequently passed, received Royal Assent, and became law on August 14, 2018.

7. By Ontario Regulation 391/18, complementary amendments were made to Ontario Regulation 412/00 under the *Education Act* requiring that the TDSB realign its trustee ward boundaries to the 25 provincial/federal boundaries in the City of Toronto.

8. The government of Ontario mandated that the TDSB communicate its intended determination (number) and distribution (geographic allocation) to the Minister of Education by August 14, 2018.

9. The timelines imposed by the government of Ontario did not provide the TDSB with any opportunity to conduct public consultation on the changes to trustee ward boundaries. The months-long consultation undertaken by the TDSB that resulted in the new trustee ward boundaries adopted in February, 2018, was effectively rendered meaningless.

10. The TDSB made every effort to comply (and is in compliance) with the amendments to Regulation 412/00.

11. The TDSB realigned the ward boundaries such that several trustees would be representing different electoral communities.

12. In the event that the City is successful in the application such that the number of City Councillors is 47, the TDSB could revert to the trustee ward boundaries adopted by the TDSB in February, 2018.

13. The arguments to be advanced by the TDSB will focus on the impact on the TDSB and are not likely to tread the same ground as the arguments to be made by the City. The TDSB seeks to assist the court in adjudicating the matters at issue in this proceeding by lending its perspective.

14. Rule 13 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194.

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

1. The affidavit of Andrew Gowdy, sworn August 24, 2018;
2. Such further and other evidence as counsel may advise and this Honourable Court may permit

August 24, 2018

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

Patrick Cotter
LSUC No. 40809E

Tel: (416) 397-3565
Fax: (416) 393-8973
Email: Patrick.cotter@tdsb.on.ca

Lawyer for the Respondent
Toronto District School Board

AND TO: MINISTRY OF THE ATTORNEY GENERAL OF ONTARIO

Crown Law Office – Civil
McMurtry-Scott Building
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

Robin Basu (LSO No. 32742K)
Yashoda Ranganathan (LSO No. 57236E)
(416) 326-4476 (t)

Robin.basu@ontario.ca
Yashoda.Ranganathan@ontario.ca

Lawyers for the Attorney General of Ontario

AND TO: CITY OF TORONTO

Metro Hall, Stn. 1260, Legal Services
55 John Street, 26th Floor
Toronto, ON M5V 3C6

Diana W. Dimmer (LSO No. 24932L)
Glenn K. L. Chu (LSO No. 40392L)
Philip Chan (LSO No. 68681S)

(416) 392-7229 (t)

Lawyers for the City of Toronto

CITY OF TORONTO
Applicant

and

ATTORNEY GENERAL OF ONTARIO
Respondent
Court File No. CV-18-00603797-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

**(Motion for Leave to Intervene,
Returnable August 24, 2018)**

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

Patrick Cotter
LSUC No. 40809E

Tel: (416) 397-3565
Fax: (416) 393-8973

Email: Patrick.cotter@tdsb.on.ca
Lawyer for the Respondent
Toronto District School Board



TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CITY OF TORONTO

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Respondent

**AFFIDAVIT OF ANDREW GOWDY
SWORN AUGUST 24, 2018**

I, ANDREW GOWDY, of the City of Toronto, in the province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

1. I am the System Planning Officer at the Toronto District School Board (“TDSB”) responsible for, amongst other things, analysis of pupil enrolment and accommodation and related matters. I was tasked with taking the staff lead, along with the Executive Officer of Governance and Board Services, on developing the analysis and options for the realignment of the trustee ward boundaries as described below. As such, I have knowledge of the matters disclosed in this affidavit.

2. At the TDSB Board meeting held on February 7, 2018, the Board considered options for realignment of trustee ward boundaries to align the TDSB ward boundaries with the City of Toronto’s decision to increase the number of councillors from 44 to 47. In doing so, the Board of Trustees considered a staff report dated January 10, 2018, a copy

of which is attached hereto and marked as Exhibit "A", which laid out options for realignment (the "Report"). The Report was submitted following months of consultations.

3. The Board adopted Option 5 laid out in the Report.

4. In order to comply with the provisions of Ontario Regulation 412/00 under the *Education Act*, staff submitted a report to the Board for its regular meeting on March 21, 2018, a copy of which is attached hereto and marked as Exhibit "B", to implement the realignment of the Trustee wards as laid out in Option 5 of the Report by having the Board confirm the number of trustees and their distribution and confirm that same will be sent to the Minister of Education, the school board election clerk, and the secretary of all other school boards in the City of Toronto no later than April 3, 2018, as mandated by Ontario Regulation 412/00. The Report includes the electoral population and electoral quotients by Municipal Ward and Trustee Ward as mandated by Ontario Regulation 412/00.

5. The TDSB is required to complete this analysis and take the steps referenced above prior to the election. As such, these changes were in effect prior to the start of the municipal and school board election - before the opening of candidate nominations and the start of the campaign period for the Municipal Election being held on October 22, 2018.

6. On July 27, 2018, the government of Ontario announced its intention to

introduce legislation to reduce the number of municipal councillors from 47 to 25 to align with the current provincial and federal ridings for the 2018 election.

7. On July 30, 2018, *Bill 5, the Better Local Government Act, 2018*, was introduced in the Ontario Legislature. The *Better Local Government Act, 2018*, S.O. 2018, c. 11 was subsequently passed, received Royal Assent, and became law on August 14, 2018.

8. Complementary amendments were made to Ontario Regulation 412/00 under the *Education Act* requiring that the TDSB realign its trustee ward boundaries to the (25) provincial/federal boundaries in the City of Toronto.

9. The government of Ontario mandated that School Boards in Toronto communicate their intended determination (number) and distribution (geographic allocation) to the Minister of Education by August 14, 2018. A copy of the letter from the Ministry of Education to the School Boards in Toronto dated July 30, 2018, is attached hereto and marked as Exhibit "C".

10. The timelines imposed by the government of Ontario did not provide the TDSB with any opportunity to conduct consultations on the changes to trustee ward boundaries. The months-long consultation undertaken by the TDSB that resulted in the new trustee ward boundaries adopted in February, 2018, was effectively rendered meaningless.

11. The TDSB made every effort to comply (and is in compliance) with the amendments to Regulation 412/00. A copy of the staff report dated August 9, 2018, to a Special Committee of Whole Board, which I co-authored, is attached hereto and marked as Exhibit "D".

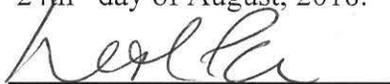
12. Option 1.1 in the report called for changes to comply with Regulation 412/00. It realigned the ward boundaries such that several trustees would be representing different communities. A copy of the Decision of the Board adopting Option 1.1 is attached hereto and marked as Exhibit "E".

13. In the event that the *Better Local Government Act, 2018*, S.O. 2018, c. 11 is struck in whole or in part such that the number of City Councillors is 47, the TDSB could revert to the trustee ward boundaries adopted by the TDSB in February, 2018.

14. If the TDSB is granted leave, the arguments to be advanced by the TDSB will focus on the impact on the TDSB and are not likely to tread the same ground as the arguments to be made by the City.

15. I make this affidavit in support of the motion for leave to intervene, and for use on the application if leave is granted, and for no other or improper purpose.

SWORN before me at the)
City of Toronto, in the)
Province of Ontario, this)
24th day of August, 2018.)


LEOLA-PON 52354E


ANDREW GOWDY