

**Source name**

The Globe and Mail (web site)

**Source type**

Press • Online Press

**Periodicity**

Continuously

**Geographical coverage**

National

**Origin**

Toronto, Ontario, Canada

The Globe and Mail (web site) • 893 words

# Supreme Court upholds Ontario law that cut Toronto city council during 2018 election

Justices are said to have exchanged sharp words regarding whether 'democracy' as an unwritten principle can be used to strike down legislation

*Sean Fine*

The Supreme Court of Canada says it cannot use unwritten constitutional principles such as "democracy" to strike down an Ontario law that reduced the size of Toronto council in the middle of an election campaign.

In upholding the Ford government's authority to change council's structure during the 2018 municipal elections, the 5-4 ruling exposed deep fault lines on the country's highest court. Legal observers characterized the at-times sharp words that went back and forth between the majority and minority as a U.S.-style debate over how closely judges should stick to the text of the Canadian Constitution.

The issue at the heart of the ruling had long since been moot. Ontario's Progressive Conservative government had reduced the size of Toronto City Council to 25 wards from 47. The campaign had been under way for 3½ months, and nominations had closed. The city, and groups of individuals, challenged the reductions in Ontario Superior Court, saying they violated the protection of free speech in the Charter of Rights and Freedoms, and also violated a principle not expressly stated - that of democracy.

Cities may be 'creatures' of the provinces. But Ford's slashing of Toronto city council is still an insult

City Space podcast: Season 1

The city initially won, but the Ontario Court of Appeal stayed the ruling, and the election went on under the revised rules. The appeal court ultimately upheld the law, 3-2.

But the case presented the Supreme Court with an opportunity to decide how to read the text of the 1982 Charter of Rights and Freedoms, and the founding 1867 Constitution - and what to do when a law runs afoul (in the view of some) of unwritten norms.

The 1867 Constitution explicitly gives provinces authority over municipalities. The Charter's Section 3 gives every citizen the right to vote federally and provincially - but doesn't mention the municipalities. That left Section 2, freedom of speech, and the unwritten principles for the judges to consider.

On free speech, the majority - in a ruling co-authored by Chief Justice Richard Wagner and Justice Russell Brown - said there was no violation. They said the candidates still had 69 days to reorient and express themselves, more than

© 2021 The Globe and Mail. All rights reserved. The present document and its usage are protected under international copyright laws and conventions.

**PubliC** Certificate issued on December 3, 2021 to English Account NG C3 for personal and temporary display.  
news-20211001-GMB-rtgam\*220211001\*2composer\_zwkgp4abjrh37fswvd wfhkh5i

in some federal or provincial elections. (The other three judges in the majority were Justice Malcolm Rowe, Justice Suzanne Côté and Justice Michael Moldaver.)

The dissenters - led by Justice Rosalie Abella, who retired in July but has six months to participate in decisions - shot back: "Elections are to democracy what breathing is to life, and fair elections are what breathe life into healthy democracies." (The three who joined Justice Abella's dissent were Justice Nicholas Kasirer, Justice Andromache Karakatsanis and Justice Sheilah Martin.)

Justice Abella added: "The timing ... breathed instability into the election, undermining the ability of candidates and voters in their wards to meaningfully discuss and inform one another of their views on matters of local concern."

Unwritten constitutional principles have long been a bone of contention between conservatives and liberals. The Supreme Court, in its 1998 ruling on the rules for Quebec secession, cited four main ones - federalism, democracy, constitutionalism and the rule of law, and respect for minorities - and said they have "full legal force."

But the majority in the current case said "full legal force" doesn't include the power to strike down laws. It is "inconceivable that legislation which is repugnant to our 'basic constitutional structure'" - a phrase used by Justice Abella - "would not infringe the Constitution itself," they said.

And referring to Justice Abella, they said: "She is in substance inviting judicial invalidation of legislation in a manner that is wholly untethered from that structure."

Justice Abella, referring to the oft-stated view that the Canadian Constitution is a "living tree," said: "Unwritten constitutional principles are a key part of what makes the tree grow."

Jason Madden, a lawyer representing Métis groups that intervened in the case, had argued that "the honour of the Crown" is an unwritten constitutional principle that may be used to strike down laws. The Supreme Court majority held out the possibility that it is the only one that can be used this way.

Mr. Madden said he was pleased by that part of the court's ruling, but added in an e-mail: "The majority adopted an increased focus on the express text of the Constitution that is more like an American approach to these issues than what previous Supreme Court of Canada judgements have emphasized."

Vanessa MacDonnell, a professor at the University of Ottawa Faculty of Law, said the majority had endorsed a "narrower Constitution, and less work for the court to do, and a bigger political space. And in that political space, the province is allowed to interfere with a municipal election."

Steve Clark, Ontario's Minister of Municipal Affairs, said he was pleased with the ruling, while the province's New Democrat Leader, Andrea Horwath, said it doesn't make the province's actions right. The City of Toronto's lawyers said they were still reviewing the decision.

Follow this link to view this story on globeandmail.com: Supreme Court upholds Ontario law that cut Toronto city council during 2018 election

**This article appeared in The Globe and Mail (web site)**

<https://www.theglobeandmail.com/canada/article-supreme-court-upholds-provincial-law-that-cut-toronto-city-council/>