

Reply should be directed to the attention of:
Canadian Environmental Law Association
Suite 1500, 55 University Ave.
Toronto, ON
M5J 2H7

Attention: Ms. Theresa McClenaghan (theresa@cela.ca)

September 17, 2018

The Honourable Caroline Mulroney
720 Bay Street, 11th Floor
Ministry of the Attorney General
Toronto, Ontario, M7A 2S9
caroline.mulroney@pc.ola.org

Re: Joint Letter from Community Legal Clinic Directors Regarding Use of
Notwithstanding Clause

We write collectively as leaders of Ontario's community legal clinics. In our clinics we represent some of the most vulnerable people in Ontario society. We are writing to you to express our extremely serious concern with the government's introduction of legislation that includes a provision relying on the "notwithstanding clause" of the Canadian Charter of Rights and Freedoms in Bill 31, the proposed Efficient Local Government Act.

We are not here expressing any opinion about the size of the Toronto city council addressed in the subject matter of the Bill, nor do we dispute that the province clearly has statutory authority over municipalities. However, what we are extremely concerned about, and wish to communicate to you in your role as the Attorney General of Ontario, is the unprecedented use of the notwithstanding clause in such a matter as this.

Bill 31 provides as follows:

" Application of Charter and Human Rights Code to certain amendments Charter
456.1 (1) Pursuant to subsection 33 (1) of the Canadian Charter of Rights and
Freedoms, the amendments to this Act made by Schedule 1 to the Efficient Local
Government Act, 2018 **are declared to operate notwithstanding sections 2
and 7 to 15 of the Canadian Charter of Rights and Freedoms.**

Same, regulations

(2) For greater certainty, subsection (1) applies to regulations made under
section 128 or 135.

Human Rights Code

(3) The amendments to this Act made by Schedule 1 to the Efficient Local Government Act, 2018 apply despite the Human Rights Code." (emphasis added).

Section 33(1) of the 1982 Canadian Charter of Rights and Freedoms was intended to provide rare and exceptional circumstances to a government when a matter of such public urgency and priority resulted in the necessity of compromising Charter protected rights of its citizens. To use an example, during wartime a government might opt to restrict some of the fundamental freedoms of its citizens in case of some exceptional threat, but even then, we would argue, only in extremely rare circumstances, and after substantial debate.

In our collective view, the structure of a city council is in no way the type of rationale that justifies the use of the notwithstanding clause. Rather the government can use its ordinary powers to pass relevant legislation especially with a majority, in due course, after normal consultations. The wish to have this change in place on time for elections this fall does not fall into the category of exceptional circumstances that justifies use of the notwithstanding clause.

We understand through the media that the government is giving its members the right to vote independently on this matter. We ask you as Attorney General with responsibility for the Bill, to propose amendments to the Bill to delete the above noted section. We also ask you in your capacity as an MPP to exercise your conscience and legal judgement and to vote against the Bill if it proceeds to final reading with the notwithstanding clause included.

This issue is an extremely significant one; perhaps the most important one you will grapple with in your role as Attorney General, regarding when it is appropriate to decide to override the constitutional liberties and rights provided by the Canadian Charter of Rights and Freedoms.

Government's adherence to the law is an essential aspect of a properly functioning free and democratic society. The rule of law refers to the establishment of individual rights and freedoms and the protection against the manifestation of arbitrary power by the government. It is central to, and provides protection for, democracy. The rule of law checks abuse of power by authorities, empowers citizens with rights, and lends legitimacy to the legal system as a whole. As noted by the Supreme Court in the Quebec secession reference case,

The consent of the governed is a value that is basic to our understanding of a free and democratic society. Yet democracy in any real sense of the word cannot exist without the rule of law. It is the law that creates the framework within which the "sovereign will" is to be ascertained and implemented. To be accorded legitimacy, democratic institutions must rest, ultimately, on a legal foundation. That is, they must allow for the participation of, and accountability to, the people, through public institutions created under the Constitution: *Reference re Secession of Quebec*, [1998] 2 SCR 217, 1998 CanLII 793 (SCC), at para. 67.

We urge you to consider the foregoing and hope you and the government of Ontario will take a different path forward rather than the one represented by the Bill as currently drafted.

Regards,

Theresa McClenaghan
Canadian Environmental Law Association

Avvy Go
Metro Toronto Chinese & Southeast Asian Legal Clinic

Johanna Macdonald
Parkdale Community Legal Services

Marjorie Hiley
Flemingdon Community Legal Services

Lily Manea & Mary Marrone
Income Security Advocacy Centre

Elisabeth Brückmann
West Toronto Community Legal Services

Jo-Anne M. Boulding
Lake Country Community Legal Clinic

Ruth Goba
Black Legal Action Centre

Kari Barry
Algoma Community Legal Clinic

Anthea Millikin
Legal Clinic of Guelph and Wellington County

Kenn Hale
Advocacy Centre for Tenants Ontario

Linda Vannucci
Workers' Health and Safety Legal Clinic

Robert Lattanzio
Arch Disability Law Centre

Shalini Konanur
South Asian Legal Clinic of Ontario

Walter Van de Kleut
Chatham-Kent Legal Clinic

Jack Fleming
North Peel & Dufferin Community Legal Services

Kenneth J. Brooks
Elgin-Oxford Legal Clinic

Lois Cromarty
Northumberland Community Legal Centre

Dennis R. Bailey
Community Legal Clinic of York Region

Sabrina Karmali & Douglas Kwan
Mississauga Community Legal Services

Michele Leering
Community Advocacy & Legal Centre

Shannon Down
Waterloo Region Community Legal Services

Michael Laliberte
Neighbourhood Legal Services (London & Middlesex)

Sarah E. Colquhoun
Kinna-aweya Legal Clinic

Pierre Payeur
Clinique Juridique Grand-Nord Legal Clinic

Michael Shain
Manitoulin Legal Clinic

John McKinnon
Injured Workers Community Legal Clinic

Mary DiNucci
IAVGO Community Legal Clinic

Wendy Atkinson
Kensington-Bellwoods Community Legal Services

Christie McQuarrie
West Scarborough Community Legal Services

Ronald B.F. Cronkhite
The Legal Clinic

Ryan Peck
HIV & AIDS Legal Clinic Ontario

Susan Wankiewicz
Landlord's Self-Help Centre

Charinee De Silva
Downsview Community Legal Services

Andrew Bolter
Community Legal Assistance Sarnia

Seana Moorhead
Grey Bruce Community Legal Clinic

Graham Webb
Advocacy Centre for the Elderly

Renee Griffin
Scarborough Community Legal Services

Hugh Tye
Hamilton Community Legal Clinic

Jack DeKlerk
Neighbourhood Legal Services

Community Legal Clinic Directors c/o Suite 1500, 55 University Ave. Toronto, ON M5J 2H7

Mary Ellen McIntyre
The Centre for Spanish-Speaking Peoples Legal Clinic

Terence Copes
Sudbury Community Legal Clinic

Jamie Hildebrand
Huron/Perth Community Legal Clinic

Publication Number: 1209
ISBN: 978-1-77189-915-4