

## **THE TORONTO PARTY FOR A BETTER CITY**

### **Submission to the Minister of Municipal Affairs and Housing and the Province of Ontario**

#### **Municipal electoral reform**

**Dated July 20, 2015**

#### **Introduction**

1. The purpose of this submission is to provide comment to the Minister of Municipal Affairs and Housing and the Province of Ontario on the issue of municipal electoral reform.
2. As an organization created in October 2006<sup>1</sup> for the purpose of achieving formal recognition for municipal political parties or civic elector organizations in Ontario and the inclusion of party affiliation on municipal election ballots, we have been intimately involved in the municipal electoral process for nearly a decade.
3. In the 2010 municipal election, the Toronto Party ran a dozen candidates and supported an incumbent Toronto City Councillor as a “friend” of the party. Not including the votes of the incumbent councillor, Toronto Party candidates received over 24,000 votes and placed second in some councillor contests.
4. However the failure of the province of Ontario to formally recognize municipal political parties in its municipal legislation and the failure to permit the inclusion of party affiliation on municipal election ballots has inhibited the ability of the Toronto Party to fully express itself and to

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<sup>1</sup> The Toronto Party was subsequently incorporated under the *Corporations Act*.

associate with like-minded Torontonians<sup>2</sup>. In 2014, these failures (or barriers) resulted in the Toronto Party running no candidates. Although the Toronto Party's President ran for public school trustee, he was not permitted by City of Toronto election officials to include party affiliation on the municipal election ballot. City election officials advised that the inclusion of party affiliation was not permitted under the *Municipal Elections Act, 1996* (the "MEA") (or the *City of Toronto Act, 2006* ("COTA")).<sup>3</sup>

5. Based on our experiences with municipal elections, the Toronto Party is a key stakeholder in any electoral reform surrounding the MEA (or COTA).
6. While there are many reforms which could be proposed, the Toronto Party limits this submission to the following four issues:

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<sup>2</sup> For the Toronto Party, the issue of formal recognition and the inclusion of party affiliation on municipal election ballots is not about electoral success or about whether or not there is a "need" for municipal political parties as some commentators might believe. These issues are about fundamental rights of expression and association and whether or not in a free and democratic society there should be barriers in place in our municipal election laws. In Canada, federal and provincial parties are formally recognized by statute and party affiliation is permitted on federal and provincial election ballots. In Quebec and British Columbia, municipal political parties are formally recognized and party affiliation is also permitted on municipal election ballots. Party affiliation on a municipal election is viewed as positive since its inclusion provides important information to electors. Surely with municipal political parties attempting to form in Ontario, the provincial government would be supportive of electors receiving as much information as possible prior to casting their municipal ballot. Ontario's municipal election laws recognize and have codified a broad right to vote in municipal elections. This broad right must include the right of the elector to be fully informed.

<sup>3</sup> The Green Party of Toronto and the Toronto Land Transfer Tax Coalition had similar experiences. The Green Party of Toronto has tried to register as a without share capital corporation under the *Corporations Act*, just like the Toronto Party was able to do, but has been denied to register. The Green Party of Toronto has tried to formally register as a municipal political party under Ontario's Elections Act, but has been denied. The Green Party of Toronto has tried to formally register as a municipal political party with the City of Toronto, but has been denied.

- (a) Ranked ballot voting;
- (b) Formal recognition of municipal political parties and the inclusion of party affiliation of municipal ballots;
- (c) Nomination process; and
- (d) Term limits.

### **Ranked ballot voting**

7. The Toronto Party has carefully considered the view that Ontario should permit municipalities to adopt ranked ballot voting or instant run-off voting for their elections. Notwithstanding that the Toronto Party would theoretically arguably benefit from the use of ranked ballot voting,<sup>4</sup> it opposes such an initiative on the grounds that there has been insufficient study conducted with respect to this system of voting and that Toronto City Council's request to the province that it be permitted to utilize ranked ballot voting was premature, done without adequate public consultation, and that the claims by proponents of ranked ballot voting are inaccurate.<sup>5</sup>
8. The Toronto Party submits that analysis which is only now being done on ranked ballot voting demonstrates that the adoption of ranked ballot voting will disenfranchise low-income voters, minority communities and the elderly. Indeed, a cynic might suggest that ranked ballot voting discriminates

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<sup>4</sup> This submission is premised on the assumption that the provincial government adopt measures to permit the formal recognition of municipal political parties and to permit the inclusion of party affiliation on municipal election ballots.

<sup>5</sup> The Toronto Party notes that if the provincial government believes that ranked ballot voting is a superior method of voting in municipal elections, then it must also be a superior of method of voting in provincial elections and should accordingly be introduced at this level as well.

in favour of the educated-class at the expense of those with lower levels of education.

9. Lastly, ranked ballot voting places democracy in the hands of mathematics, which has been shown to produce some anomalous results.

*Ranked ballot voting is complex and confusing*

10. There can be no dispute that in comparison to the current “first-past-the-post” (“FPTP”) electoral system used by all levels of government in Canada, ranked ballot voting is more complex and tends to lead to voter confusion.
11. This is confirmed in a recent study prepared by Associate Professor Craig Burnett, University of North Carolina at Wilmington and Associate Professor Vladimir Kogan, Ohio State University<sup>6</sup>, wherein it is stated that requiring voters to rank multiple candidates other than simply identifying the one they most prefer is more difficult and confusing for voters. They state that research on decision-making has shown that as the number of choices increases, so does the individuals’ difficulty in making decisions.<sup>7</sup> It is also suggested that making three choices is more difficult on voters and imposes substantially higher information costs than a single choice.

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<sup>6</sup> Craig M. Burnett (University of North Carolina at Wilmington) and Vladimir Kogan (Ohio State University), “Ballot (and Voter) ‘Exhaustion’ Under Instant Runoff Voting: An Examination of Four Ranked-Choice Elections”

<sup>7</sup> In Toronto this is particularly problematic since there has been a propensity for many races to be contested by dozens of candidates in recent elections. In the 2014 Toronto municipal election, there were more than 60 Mayoral candidates. A number of council (and trustee) races were also contested by a high volume of candidates. Accordingly, permitting ranked ballot voting in such circumstances does little to improve democracy. On the contrary, ranked ballot voting arguably causes more harm than good.

12. In an article entitled the “Pros and Cons of Ranked-Choice Voting”, the author states: “...with ranked-choice voting, electors have to be able to list all the candidates in order of their preference. This requires extensive research, especially in less prominent races, *something many voters do not take the time to do.*”<sup>8</sup> (Emphasis added) Of course, proponents may contend that this is the fault of the individual voter or that voter education will cure this problem. However, there is a significant cost to voter education and certainly no guarantee that spending millions on such education will decrease the complexity of voting brought by ranked ballots.<sup>9</sup> Professors Burnett and Kogan describe that the problem of ballot exhaustion caused, among other reasons, by voters failing to fill out a ballot completely occurs with regular frequency, including in San Francisco, “...where voters have been using the IRV method (ranked ballot voting) since 2004, suggests that even substantial amount of public education about the process is unlikely to eliminate this type of voter confusion.”

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<sup>8</sup> Breena Noble, “Pros and Cons of Ranked-Choice Voting”, Newsmax, July 3, 2015. It is certainly arguable that other than Mayoral races, races for City Council (and school trustee) are not very prominent and therefore ranked ballot voting places a high-burden on electors to gather information about the candidates running in their Wards. It is submitted that theoretically this increased burden will cause electors to become disenfranchised.

<sup>9</sup> This cost would be entirely new for Ontario municipalities. Unlike the United States where ranked ballot voting was adopted to replace run-off elections which were held at a later date and therefore was promoted on the grounds that it saved costs, ranked ballot voting in Ontario will not produce any cost savings. Instead, the Toronto Party submits that ranked ballot voting will result in cost increases since municipalities that decide to adopt ranked ballot voting will be required to upgrade their vote counting technology and embark on extensive and costly voter information campaigns.

13. The Toronto Party submits that a more complex system of voting will only serve to disenfranchise minorities, low-income electors<sup>10</sup> and the elderly. In San Francisco, a study determined that Chinese-speaking voters had difficulty understanding ranked choice ballots.<sup>11</sup>
14. The documented confusion that ranked ballot voting inherently brings to an electoral system will also be magnified if adopted in Ontario's municipal election because, among other things, school board elections take place at the same time as city council elections. It is our understanding that school board elections (of which there are four in Toronto) will not be subject to ranked ballot voting, but will remain subject to the FPTP system of voting.
15. In a recent newspaper article, Tony Fallis, Hamilton's manager of elections, identified this problem.<sup>12</sup>
16. The Toronto Party submits that the use of two completely different voting systems will likely frustrate electors and result in further disenfranchisement among an electorate that is already disengaged from municipal politics.
17. The goal of any electoral system should be to encourage enfranchisement. While the FPTP system may not be perfect, it cannot be said that ranked ballot voting is necessarily more superior<sup>13</sup>. Ranked ballot voting is certainly

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<sup>10</sup> Lance Williams, "Low-income voters struggled with ranked-choice voting", California Watch, January 5, 2011

<sup>11</sup> Suzanne Herzel, "Ranked voting troublesome for Chinese: Survey finds S.F. bloc may not have understood process", SFGate.com, November 11, 2004

<sup>12</sup> Kevin Werner, "Ontario's ranked ballot system will 'confuse' Hamilton voters, says manager of elections", Hamilton Community News, June 8, 2015

<sup>13</sup> In a journal article appearing in the William and Mary Law Review, February 2005, Vol. 46, Issue 4, James Langan concluded that any improvement with respect to preferential majorities is only at the margins.

not a cure-all for the perceived ills of democracy and as already discussed can result in disenfranchisement.

- 18.** As stated by Stanford mathematician, Keith Devlin, in November 2011: “A famous 1950 result by the Nobel Prize-winning mathematician Kenneth Arrow, who spent much of his career at Stanford, tells us that there is no voting system that meets all basic democratic requirements.”<sup>14</sup>

*Ranked ballot voting can produce unfair results*

- 19.** Mathematicians and scholars have demonstrated that ranked ballot voting can produce unfair results and ultimately discourage voters. Moreover, there is criticism that contrary to the claims of proponents of ranked ballot voting such a system does not necessarily produce “majority” winners.
- 20.** As a result of “ballot exhaustion” Professors Burnett and Kogan have firmly concluded that *ranked ballot voting “does not ensure that the winning candidate will have received a majority of all votes cast, only a majority of all valid votes in the final round of tallying.”* It is suggested that this reality undermines the democratic legitimacy of ranked ballot voting in the eyes of voters whose ballots become exhausted during the tallying process.
- 21.** Based on analysis of data covering four recent municipal elections in Oakland, San Francisco, Pierce County and San Leandro, Professors Burnett and Kogan have demonstrated that in none of these four elections did the winning Mayor capture the majority of all votes cast in the election. In the

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<sup>14</sup> Louis Bergeron, “Potential for odd outcomes in San Francisco mayoral election with ranked-choice voting system, says Stanford mathematician”, Stanford Report, November 7, 2011

case of San Francisco over 25% of valid first-round ballots did not make the final round of counting.

22. Ranked ballot voting also often results in a candidate who receives the greatest number of first choice ballots not winning and permits a third choice on a ballot to have the equivalent value of a first choice ballot. The Toronto Party submits that this is unfair, and that an electoral system should not permit second, third or more choices to have the equivalent value of a first choice vote. In our view, ranked ballot voting devalues the true intended choice of an elector.

*Claims of ranked ballot proponents are contentious*

23. Proponents of ranked ballot voting have also claimed that this method will discourage negative campaigning. This generalization is contentious.<sup>15</sup>
24. On the contrary, ranked ballot voting encourages independent third party spending in elections. Independent third parties frequently campaign against candidates and thus encourage negative rather positive campaigning. With respect to municipal elections, there are currently no rules in existence to regulate third party advertising or spending.
25. Based on the foregoing, the Toronto Party recommends that the provincial government not amend the MEA (or COTA) to permit the introduction of ranked ballot voting in Ontario municipal elections.

**Other Reforms**

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<sup>15</sup> See Professor Burnett and Professor Kogan at p. 7 in which they reference studies conduct in 2001, 2004 and 2006 that dispute this claim.

26. The Toronto Party submits that there are other significant reforms that the government should seriously consider in its review of the MEA (and COTA). Some of those other reforms are set out below.

*Formal recognition of municipal political parties and party affiliation on ballots*

27. The Toronto Party recommends that the government formally recognize municipal political parties or elector organizations and permit party affiliation to appear on municipal election ballots.
28. We submit that there is not only a need for political parties at the municipal level, but that denying their existence and denying party affiliation on a municipal election ballot breaches rights under the *Canadian Charter of Rights and Freedoms*.<sup>16</sup>
29. Information in the public domain quotes various University Professors and others who agree that it is time for Ontario to recognize municipal political parties. Professors have specifically suggested that formally recognizing municipal political parties will provide electors with useful information and help curtail the growing problem of the power of incumbency that has systemically crept into municipal politics.<sup>17</sup>
30. Meanwhile the ability to include party affiliation on municipal election ballots will provide electors with valuable information about their candidates. Providing electors with as much information as possible is

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<sup>16</sup> The Toronto Party currently has an outstanding Charter application before the Court and therefore will not comment further on its Charter arguments.

<sup>17</sup> Michael Taube, "Toronto should establish parties at municipal level", April 13, 2012, National Post; John C. Barber, "To avoid 'bloodbath' mayoral race, Toronto needs political parties", Toronto Star, November 3, 2013; "Canada's Lousy Mayors", Maclean's, October 14, 2010.

actually consistent with a ranked ballot system of voting wherein voters are essentially asked to make informed choices and to conduct research into their respective candidates before casting a vote.<sup>18</sup>

31. The inclusion of party affiliation on municipal election ballots would also be consistent with the information provided to electors in federal and provincial elections.
32. Indeed, the inclusion of party affiliation on provincial election ballots is of recent vintage. When Ontario's *Election Act* was amended less than 10 years ago a review of Hansard transcripts shows that politicians who debated the Bill viewed the inclusion of party affiliation on provincial election ballots as a positive idea. Accordingly, candidates in municipal elections should be entitled to identify themselves under a party affiliation on municipal election ballots.<sup>19</sup>
33. Aside from simply complying with the *Charter*, formally recognizing municipal political parties and permitting party affiliation on municipal election ballots is generally beneficial to municipal politics. Studies have

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<sup>18</sup> Ontario's *Elections Act* was amended in 2007. The amendments proposed the inclusion of party affiliation on provincial election ballots. Statements recorded verbatim by Hansard show that the inclusion of party affiliation on provincial election ballots was intended to provide valuable information to electors. See: Transcripts of the Standing Committee on the Legislative Assembly, May 17, 2007 and Transcripts of the House Proceeding of the Legislative Assembly, June 4, 2007. The 2007 amendments followed the introduction of a Private Members' Bill in 2004 wherein Members of the Legislative Assembly also spoke about the value of including party affiliation on provincial election ballots.

<sup>19</sup> Municipal political parties or civic elector organizations are formally recognized in both Quebec and British Columbia under respective provincial legislation. Legislation from these provinces can serve as a precedent for the formal recognition of municipal political parties in Ontario and provide a process for the inclusion of party affiliation alongside the name of a candidate.

concluded that the involvement of municipal political parties in election campaigns has the potential to increase voter turnout, to bring greater diversity to the ethnic make-up of city councils and to curtail the “power of incumbency”<sup>20</sup>.

34. The Toronto Party also submits that in cities where municipal political parties hold a majority of council seats there is greater opportunity for effective decision-making, which, in turn, can have positive impacts on a city’s economy.
35. Municipal political parties or civic elector organizations are formally recognized in British Columbia and Quebec. Provisions found in British Columbia legislation can be utilized as a helpful precedent in the drafting of provisions for the MEA or COTA. The relevant provisions can be found in Part 3 of the *Local Government Act*, RSBC 1996, c. 323, s. 3 and Division 6.1 and in Part 1 of the *Vancouver Charter*, SBC 1953, c. 55, s. 7 and Division 6.1.

*Reform to the nomination process*

36. The Toronto Party also recommends that the current nomination process be significantly reformed.
37. Under the current process a candidate is only required to file a form and make a small (refundable) monetary payment in order to run for municipal government. Effectively all municipal candidates are self-nominated.

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<sup>20</sup> See Bruce M. Hicks, “Are Marginalized Communities Disenfranchised? Voter Turnout and Representation in Post-merger Toronto”, Institute for Research on Public Policy, November 2006

- 38.** This self-nomination process results in high volumes of candidates contesting municipal elections. While individuals should be encouraged to participate in the electoral process, we submit that permitting candidates to be self-nominated can have harmful effects on democracy. Our experience is that in races with a significant number of candidates, there is a large potential for “spoiler” candidates to influence the result<sup>21</sup> and for electors to suffer voter fatigue.
- 39.** A significant number of self-nominated candidates do not run serious campaigns.
- 40.** Anecdotal stories suggest that in municipal elections incumbents encourage multiple persons to self-nominate themselves as candidates so that the anti-incumbent vote is widely dispersed rather than concentrated on a serious challenger.
- 41.** Vote-splitting caused by multiple challengers is in our view detrimental to democracy.
- 42.** Accordingly, the Toronto Party submits that prior to being included on a municipal election ballot a candidate must be duly nominated by a reasonable number of valid voters. For example, for Councillor candidates (and school trustee candidates) the signatures of 100 electors in the Ward where the Councillor (or trustee) is running should be required; for Mayor (and other councillor who is elected-at-large), 1,000 signatures should be required.

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<sup>21</sup> It is our understanding that proponents of ranked ballot voting argue that this method of voting reduces the influence of “spoiler” candidates.

43. To achieve the foregoing, the Toronto Party proposes the following two-step process for nominations. The first step, called the “Declaration of Interest” stage, should be completed in the first 90 days of a municipal election year. During this time period, persons interested in running for municipal office would be required to complete and file a “Declaration of Interest” Form, which would be accompanied by a prescribed fee.<sup>22</sup>
44. Upon filing a Declaration of Interest Form, the declarant would have until the end of June in the election year to obtain and file with election officials a prescribed number of signatures of valid electors (as proposed above) for nomination. This stage would be called the “Nomination Period”.
45. During these two periods, “declared” or “nominated” candidates would be entitled to fundraise money and incur election expenses which would ultimately count against the election expense limit of a candidate.
46. Prior to the end of July in an election year, or within 30 days of the filing of a candidate’s “Nomination Form”, any person would be entitled to review such form and be entitled to file with municipal election officials a dispute with respect thereto. Municipal election officials would then be obligated to notify the “nominee” of the dispute and to review the disputed form for the purposes of making a final determination regarding whether a candidate has obtained the necessary signatures for a valid nomination.

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<sup>22</sup> As a guideline, a refundable fee of \$100 could be imposed for Councillor (and school trustee) candidates and \$200 for Mayoral candidates.

47. Where there is no dispute and municipal election officials have accepted the Nomination Form, the candidate shall be deemed to be a Nominated Candidate.
48. In the case of a dispute, municipal election officials would be required to make a final determination by the end of August of an election year.

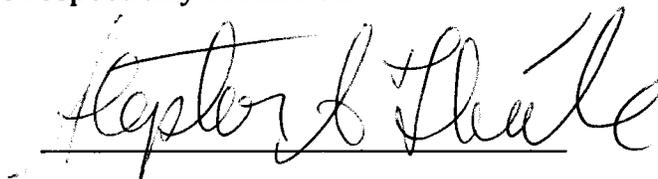
*Term limits should be introduced*

49. Lastly, the Toronto Party recommends that term limits be introduced in municipal elections.
50. Reports in the public domain have documented that many municipal politicians hold office for decades.
51. The Toronto Party believes, as do others, that this is the result of the unfair advantage enjoyed by incumbents as a result of their exclusive ability to spend public money to promote themselves and their activities, and thereby build “name-recognition”, during their four-year terms. Meanwhile, potential challengers are precluded under the current MEA from raising money or incurring “election expenses” prior to being “nominated”. Non-incumbent challengers are obviously unable to access public funds in order to build “name recognition” as well.
52. The Toronto Party recommends a two-term limit for all elected municipal offices.
53. Of course, the formal recognition of municipal political parties and allowing party affiliation on municipal election ballots would reduce the need to introduce “term-limits” since parties could internally impose their own term-

limits on candidates and since well-organized and highly competitive municipal parties would arguably ensure more frequent turn-over in who is elected.

54. It is submitted that term limits are acceptable in free and democratic societies. The most recognized political term limit is the two-term limit imposed on the office of President of the United States. However, term limits are also used to limit the terms of directors in public companies and private regulatory bodies, including, for example, the Law Society of Upper Canada. Term limits represents good corporate (and political) governance.

**All of which is respectfully submitted.**

A handwritten signature in black ink, reading "Stephen Thiele", written over a horizontal line.

**Stephen Thiele, President**

**The Toronto Party for a Better City**