

BROCK'S BANTER: The People's Court

By Brock Weir

You don't have to look very far to find images that are discouraging at best and, at worst, disturbing, or even destructive. Time and again we're bombarded, often from south of our border, with scenes that veer dangerously close to worlds that, just a few short years ago, could only have been described as dystopian.

In some cases, we see hard-won victories threatened by the shadow of possible rollback. We're told by some quarters that what we see with our own eyes is less valuable than what we are told by people who have vested interests in making that so. We find it increasingly hard to get straight answers out of the people who need to answer the most, often being told what it is thought we want to hear rather than what we need to hear to make a thoroughly informed opinion.

Had it not been for the latest turn in the Federal saga over the Trans Mountain Pipeline, Ottawa's powers-that-be, or, one should say, the powers-that-might, would have had you believe that the greatest issue facing our country was, somehow, immigration, rather than a pesky little trade war with our country's biggest trading partner; a little fire started as a diversion thoroughly doused by the judiciary.

Another fire was almost put out early Monday morning when Justice Edward P. Belobaba issued response to a number of injunctions filed by Toronto-area residents against the Ontario Government's Bill 5, the Better Local Government Act. Specifically, as you undoubtedly know by now, the Judge benched the Bill, which had an immediate, albeit temporary, impact on next month's Municipal Election, as far as Toronto is concerned. While the ruling decided the Ford Government 'crossed a line' in changing the rules of the game in the middle of an election season, attempting to slash the size of Toronto Council almost in half, throwing more than 20 hard-fought Council races into complete disarray, it reserved a decision on another crucial issue. The Better Local Government Act not only attempted to slash the size of Toronto Council 'and, in the interests of fairness, might attempt to do so again pending any appeals from the Province' it also put the kibosh on the democratic process in a number of other jurisdictions.

The Bill effectively binned the process instigated under the previous Wynne government that would have allowed voters in York Region, Peel, Muskoka and Niagara to directly elect the heads of their respective Regional Councils.

The passage of that Bill under the previous government was seen as a victory for proponents and defenders of the democratic process who argued that the Region's top job, presently picked by a vote of Regional Council members from any citizen who decides to put his or her name forward for consideration, is 'the most powerful position in the Region' and should be elected directly by the people.

Whether or not the Chair of Regional Council, in the case of York Region, this position is held by former Whitchurch-Stouffville mayor Wayne Emmerson, actually wields significant power is a debate for another day, but what is not debatable is democratic powers were given to the people by one government and taken away by another.

'I make no ruling in the provisions in Bill 5 that change the selection process for the regional chairs in York, Peel, Niagara, and Muskoka from election to appointment,' said the Justice in his decision. 'I recognize Mr. Achampong included a challenge to these provisions in his application and filed a supporting affidavit from the campaign manager of a candidate in York Region. However, the Achampong application asks that Bill 5 be 'stayed' as a remedy that was not requested by any other applicant and is not being granted here because it requires a very different legal analysis. A more complete legal and evidentiary basis would be needed before this court could comfortably consider a challenge to the provisions in Bill 5 that deal with the appointment of the four Regional chairs.'

So, the residents in York Region, Peel, Niagara and Muskoka will have to wait another day, perhaps another four years, to have their voices heard. And all polls indicate that they do want the chance to sound off on who leads their Region.

It has become somewhat traditional in this community to downplay what happens in Toronto, focusing instead on events within own municipal limits, pooh-poohing some of the things the city has to offer while building up many of our own offerings. Rightfully so, of course, but there is reason to care about Justice Belobaba's decision: it underscores the checks and balances we, the public, have at our disposal.

And also, that these checks and balances can be thrown out at the will of the government by invoking the rarely used Notwithstanding Clause.

'The enactment of provincial legislation radically changing the number and size of a city's electoral districts in the middle of the city's election is without parallel in Canadian history,' he ruled. 'Most people would agree that changing the rules in the middle of

the game is profoundly unfair. The question for the court, however, is not whether Bill 5 is unfair. The question is whether the enactment of Bill 5 is unconstitutional.

I am acutely aware of the appropriate role of the court on reviewing duly enacted federal or provincial legislation and the importance of judges exercising judicial deference and restraint. It is only when a democratically elected government has clearly crossed the line that the 'judicial umpire' should intervene. The province has clearly crossed the line.

At first glance, Bill 5, although controversial in content, appears to fall squarely within the Province's legislative competence. Upon closer examination of the surrounding circumstances, however, one discovers at least two constitutional deficiencies that cannot be justified in a free and democratic society. The Bill was enacted in the middle of an ongoing election campaign, it breached the municipal candidate's freedom of expression and, because Bill 5 almost doubled the population size of City wards from an average of 61,000 to an average of 111,000, it breached the municipal voter's right to cast a vote that can result in effective representation. By the middle of the day Monday, however, it was clear this ruling, outlining the democratic rights of people across the Province, and indeed the country were of little consequence to the Progressive Conservatives who like to bill themselves the 'Government of the People.'

They gave themselves a tall order with that brand, and, disappointingly, they seem determined not to live up to it.