

**CITATION:** Singh v. Corporation of the City of Brampton, 2022 ONSC 4059  
**COURT FILE NO.:** CV-22-1712-00  
**DATE:** 2022 07 11

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Harkirat Singh, Applicant

**AND:**

The Corporation of the City of Brampton, Respondent

**BEFORE:** Doi J.

**COUNSEL:** Thomas A. Richardson and Andrea Mannell, for the Applicant

Charles M. Loopstra Q.C. and Jenelle Westworth, for the Respondent

**HEARD:** June 30, 2022

**ENDORSEMENT**

**Overview**

[1] At a Special Meeting held on May 31, 2022, Brampton City Council (“Council”) passed Resolution C168-2022, confirmed by By-law 129A-2022, to conditionally appoint a member to Council to fill a potential vacancy which arose shortly thereafter. The Applicant brought this urgent application to quash the Resolution and By-law for illegality by asserting that both were passed without jurisdiction.

[2] For the reasons that follow, the application is granted.

**Background**

[3] The background facts are not in dispute.

[4] The City of Brampton (“City”) is governed by Council which is comprised of eleven (11) members. On May 31, 2022, the following members were serving on Council:

- a. Mayor Patrick Brown;
- b. Regional Councillor Rowena Santos, Wards 1 and 5;

- c. Regional Councillor Paul Vicente, Wards 1 and 5;
- d. City Councillor Doug Whillans, Wards 2 and 6;
- e. Regional Councillor Michael Palleschi, Wards 2 and 6;
- f. City Councillor Jeff Bowman, Wards 3 and 4;
- g. Regional Councillor Martin Mederios, Wards 3 and 4;
- h. City Councillor Charmaine Williams, Wards 7 and 8;
- i. Regional Councillor Pat Fortini, Wards 7 and 8;
- j. City Councillor Harkirat Singh, Wards 9 and 10; and
- k. Regional Councillor Gurpreet Dhillon, Wards 9 and 10.

[5] One of the members of Council at the time, City Councillor Williams, was the Progressive Conservative Party of Ontario candidate for the riding of Brampton Centre in the 2022 Ontario general election. The election started on May 4, 2022 and ended with voting day on June 2, 2022 (“Election”).

[6] On May 31 2022 (i.e., prior to voting day), Council held a Special Meeting. The meeting agenda included, among other things, Item 5.2 (*Potential Councillor replacement due to provincial election*) to address a potential vacancy on Council that would arise if City Councillor Williams was elected to the Legislative Assembly of Ontario as the Member of Provincial Parliament for Brampton Centre. In advance of the meeting, three individuals sent correspondence to Council to express their willingness to fill a potential vacancy on Council for the remainder of the term if City Councillor Williams was elected to the Legislative Assembly.

[7] During the Special Meeting, Council debated the following motion (C168-2022), as amended, moved by Regional Councillor Fortini and seconded by City Councillor Bowman:

Whereas Brampton taxpayers elect a city and a regional councillor in their Wards;

Whereas representative continuity is important and expected to ensure responsible oversight and stewardship from the beginning to the end of the elected term of office;

Whereas there exists the potential for a city councillor seat vacancy prior to the end of the 2018-2022 term of office for Wards 7&8;

Therefore be it resolved that, in the event the Wards 7&8 City Councillor position becomes vacant, that former City and Regional Councillor Elaine Moore, subject to her declaration of consent being provided to the City Clerk, be appointed to fill the position until the end of the term of office, and that such appointment be effective upon the declaration of vacancy of the said seat.

[8] After the motion was introduced, Council debated the legality of the motion that sought to conditionally appoint a member to Council before a vacancy was declared and whether the motion complied with the *Municipal Act*. The City Solicitor and the City Clerk advised, in open session, that the motion did not comply with the statutory requirements for filling a Council vacancy.

[9] Following debate, Council proceeded to consider the motion. City Councillor Williams participated in the vote on the motion which carried by a recorded vote of 6-5 as follows:

Yea (6): City Councillor Whillans, City Councillor Bowman, Regional Councillor Medeiros, City Councillor Williams, Regional Councillor Fortini, and Regional Councillor Dhillon.

Nay (5): Mayor Brown, Regional Councillor Santos, Regional Councillor Vicente, Regional Councillor Palleschi, and City Councillor Singh.

Before the Special Meeting concluded, Council passed By-law 129A-2022 (“By-law”) to confirm the proceedings at the meeting including the resolution for the motion, being Resolution C168-2022 (“Resolution”).

[10] On June 2, 2022, City Councillor Williams won her riding in the Election and was declared the Member of Provincial Parliament-elect for Brampton Centre.

[11] On June 6, 2022, the City Clerk received a consent from Elaine Moore in which she advised of her agreement to assume the role of city councillor upon a declaration of vacancy by Council.

[12] By letter dated June 7, 2022, City Councillor Williams resigned from her position on Council effective 11:59 pm on June 8, 2022.

[13] Following City Councillor William's resignation, a fourth individual submitted written correspondence to Council to express an interest in filling the vacancy created by the resignation.

[14] On June 18, 2022, the Return of Members was published in The Ontario Gazette, Vol. 155-25, which gave Parliamentary notice of Ms. Williams' election to the Legislative Assembly.

[15] After City Councillor Williams' resignation took effect, the next Council meeting was to take place on June 15, 2022. Item 10.2.1 to the revised agenda for that meeting was a Staff Report entitled "*Declaration of Vacant Council Office under Section 262(1) of the Municipal Act, 2001*" dated June 8, 2022 which made the following recommendations:

1. That the report re: Declaration of Vacant Council Office under Section 262(1) of the Municipal Act, 2001, to the City Council Meeting of June 15, 2022 be received; [and]
2. That as a result of City Councillor Charmaine Williams being elected to the provincial assembly as a Member of Provincial Parliament on June 2, 2022, and her resignation filed with the Clerk (effective June 8, 2022, at 11:59 pm), Brampton City Council, in accordance with Section 262(1) of the Municipal Act, 2001, declare the office of City Councillor, Wards 7 and 8, to be vacant.

[16] The Council meeting scheduled for June 15, 2022 did not proceed due to a lack of quorum. As Council consisted of eleven members, quorum for a meeting required six members to attend. The meeting was rescheduled to June 17, 2022 and a revised agenda listed Item 5.3 "*Declaration of Vacant Council Office*" along with the same staff report dated June 8, 2022. The meeting that was scheduled for June 17, 2022 also failed due to a lack of quorum. Council has not had quorum at any of its meetings since City Councillor Williams' resignation took effect on June 8, 2002.

## **Issue**

[17] The key issue on this application is whether the Resolution and the By-law comply with the requirements under the *Municipal Act* for filling a vacancy on Council.

## **Application and Standard of Review**

[18] On application, the Court may quash a municipal resolution or by-law for illegality under s. 273 of the *Municipal Act*, which states in part:

**Application to quash by-law**

273 (1) Upon the application of any person, the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality.

**Definition**

(2) In this section,  
“by-law” includes an order or resolution.

[...]

**Timing**

(5) An application to quash a by-law in whole or in part, subject to section 415, shall be made within one year after the passing of the by-law.

[19] The term “illegality” under ss. 273(1) of the *Municipal Act* is a broad generic term that encompasses any non-compliance with the law: *London (City) v. RSJ Holdings Inc.*, 2007 SCC 29 at para 35.

[20] In *Friends of Lansdowne Inc. v. Ottawa (City)*, 2012 ONCA 273 at para 12, Lang J.A. writing for the Court of Appeal considered the standard of review on an application brought under ss. 273(1) of the *Municipal Act*:

[12] Since municipalities are creatures of statute, their jurisdiction is limited to the powers provided by the legislature. Accordingly, a city does not have jurisdiction to pass a by-law that authorizes acts prohibited by its governing legislation. Since a city has no particular expertise in jurisdictional issues, a court will review the legality of a municipal by-law on the standard of correctness: see *London (City) v. RSJ Holdings Inc.*, [2007] 2 S.C.R. 588, [2007] S.C.J. No. 29, 2007 SCC 29, at para. 39. Section 273(1) of the Act gives the Superior Court the discretion to "quash a by-law . . . for illegality".

[13] Absent illegality, municipal by-laws are well insulated from judicial review. Section 272 of the Act prohibits a review of a by-law passed in good faith "in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law". Thus, a court cannot interfere with a by-law that is unreasonable, but a court may quash one that is illegal.

[14] ... While generally the appropriate standard of review on questions of law is correctness, courts are cautioned in cases involving municipal challenges to require "clear demonstration" before concluding that a municipality's decision is made without jurisdiction: see *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, [2000] S.C.J. No. 14, 2000 SCC 13, at para. 36, citing *Shell*

*Canada Products Ltd. v. Vancouver (City)*, 1994 CanLII 115 (SCC), [1994] 1 S.C.R. 231, [1994] S.C.J. No. 15, at p. 244 S.C.R.

[15] Courts reviewing decisions made within jurisdiction must apply a deferential standard: see *Nanaimo*, at para. 35. As the application judge explained, provided they act with jurisdiction, municipalities are accountable to their constituents and not to the courts. [Emphasis added]

[21] The test on jurisdictional issues is correctness: *RSJ Holdings* at para 37; *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13 at para 29. That being said, a decision to quash a by-law for illegality under ss. 273(1) of the *Municipal Act* calls for a discretionary decision which is informed by such factors as the nature of the by-law, the seriousness of the illegality, its consequences, delay and mootness, among others: *RSJ Holdings* at para 39. A by-law that is clearly shown to have been made without jurisdiction may be quashed by a court acting judicially.

### **Analysis**

[22] Municipalities are creatures of provincial legislation: *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at para 2. Given that a municipality's law-making authority is limited to the powers conferred by the provincial legislature, the issue of whether a by-law is passed within a municipality's jurisdiction is a matter of statutory interpretation: *Clublink Corporation ULC v. Oakville (Town)*, 2019 ONCA 827 at para 34. In keeping with the modern approach to statutory interpretation, "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the legislator]": *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para 26. In construing a municipal by-law, a court should take a broad and purposive approach to the construction and interpretation of municipal powers: *Cash Converters Canada Inc. v. Oshawa (City)*, 2007 ONCA 502 at para 20.

[23] Section 2 of the *Municipal Act, 2001*, SO 2001, c. 25 ("*Municipal Act*") sets out the purpose of the statute in the following terms:

#### **Purposes**

2. Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other

Acts for the purpose of providing good government with respect to those matters. [Emphasis added]

[24] As the Court of Appeal explained in *Croplife Canada v. Toronto (City)*, 2005 CanLII 15709 (ONCA) at paras 34 and 37, leave to appeal denied [2005] SCCA No 329, the *Municipal Act* is intended to give Ontario municipalities “the tools they need to tackle the challenges of governing in the 21<sup>st</sup> century” and therefore municipal powers are to be interpreted broadly and generously within their context and statutory limits, to achieve the legitimate interests of the municipality ... The provincial legislator has made clear that it intends for municipal powers to be interpreted broadly by expressly stating as much at s. 8 of the *Municipal Act*.” [Emphasis added] More recently, the Court of Appeal affirmed this reasoning in *Clublink* at para 35.

[25] As noted in *Croplife* at para 34, a municipality’s authority is set out in broad terms under s. 8 of the *Municipal Act* which provides, in part:

#### **Scope of Powers**

8 (1) The powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to respond to municipal issues.

#### **Ambiguity**

(2) In the event of ambiguity in whether or not a municipality has the authority under this or any other Act to pass a by-law or to take any other action, the ambiguity shall be resolved so as to include, rather than exclude, powers the municipality had on the day before this Act came into force. [Emphasis added]

[26] A municipality’s authority under s. 8 is supplemented by ss. 9, 10 and 11 of the *Municipal Act* which provide, in part:

#### **Powers of a natural person**

9 A municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act

#### **Broad authority, single-tier municipalities**

10 (1) A single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public.

### **By-laws**

(2) A single-tier municipality may pass by-laws respecting the following matters:

1. Governance structure of the municipality and its local board

[...]

### **Broad authority, lower-tier and upper-tier municipalities**

**11** (1) A lower-tier municipality and an upper-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public, subject to the rules set out in subsection (4).

### **By-laws**

(2) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting the following matters:

1. Governance structure of the municipality and its local boards.

As the City is a lower-tier municipality, its authority to pass by-laws regarding governance matters is found at ss. 11(2)(1.) of the *Municipal Act*.

[27] Although ss. 8, 9 and 11 of the *Municipal Act* confer broad authority on a municipality, including the authority to pass by-laws with respect to its governance structure, these provisions are limited by ss. 14 and 15 of the *Municipal Act* as follows:

### **Conflict between by-law and statutes, etc.**

**14** (1) A by-law is without effect to the extent of any conflict with,

- (a) a provincial or federal Act or a regulation made under such an Act; or
- (b) an instrument of a legislative nature, including an order, licence or approval, made or issued under a provincial or federal Act or regulation.

### **Same**

(2) Without restricting the generality of subsection (1), there is a conflict between a by-law of a municipality and an Act, regulation or instrument described in that subsection if the by-law frustrates the purpose of the Act, regulation or instrument.

### **Specific powers, by-laws under general powers**

**15** (1) If a municipality has power to pass a by-law under section 9, 10 or 11 and also under a specific provision of this or any other Act, the power



conferred by section 9, 10 or 11 is subject to any procedural requirements, including conditions, approvals and appeals, that apply to the power and any limits on the power contained in the specific provision.

**Interpretation**

(1.1) For the purpose of subsection (1) and, unless the context otherwise requires, the fact that a specific provision is silent on whether or not a municipality has a particular power shall not be interpreted as a limit on the power contained in the specific provision. [Emphasis added]

[28] Writing for a majority of the Court of Appeal in *Clublink* at para 38, Harvison Young J.A. explained the limits of a municipality's powers as follows:

[M]unicipal powers find their source in statutes that are interpreted purposively applying the modern approach. Where the legislator has evidenced its intention to set limits on otherwise expansive municipal authority, municipalities cannot rely on broad grants of power to escape these constraints. [Emphasis added]

It follows that the City's exercise of authority, through the actions of Council, must comply with applicable limits on its otherwise broad authority. To this end, ss. 14 and 15 of the *Municipal Act* plainly require that Council adhere to any limits on its powers under legislation.

[29] As set out below, the *Municipal Act* clearly prescribes mandatory requirements for filling a vacancy to an office of a council of a local municipality.

[30] Subsection 259(1) of the *Municipal Act* sets out the following situations in which a vacancy on a local municipal council may arise:

**Vacant seat**

**259** (1) The office of a member of council of a municipality becomes vacant if the member,

- (a) becomes disqualified from holding the office of a member of council under section 256, 257 or 258;
- (b) fails to make the declaration of office before the deadline in section 232;
- (c) is absent from the meetings of council for three successive months without being authorized to do so by a resolution of council;

- (d) resigns from his or her office and the resignation is effective under section 260;
- (e) is appointed or elected to fill any vacancy in any other office on the same council;
- (f) has his or her office declared vacant in any judicial proceeding;
- (g) forfeits his or her office under this or any other Act; or
- (h) dies, whether before or after accepting office and making the prescribed declarations. [Emphasis added]

[31] Pursuant to ss. 258(1)(3) of the *Municipal Act* and ss. 9(1) of the *Legislative Assembly Act*, RSO 1990, c.L.10 (the “*Legislative Assembly Act*”), respectively, a member of the Assembly is not eligible to hold office as a member of council:

**Ineligible**

**258** (1) The following are not eligible to be elected as a member of a council or to hold office as a member of a council: [...]

- 3. A member of the Assembly as provided in the *Legislative Assembly Act* or of the Senate or House of Commons of Canada

**Not eligible to hold municipal office**

**9** (1) Subject to subsection (2), a member of the Assembly is not eligible to hold office as a member of the council of a municipality or as a member of a local board, as defined in the *Municipal Affairs Act*, of a municipality.

Further, ss. 9(2) of the *Legislative Assembly Act* provides that a person elected to the Assembly while holding office as municipal council member may continue to hold that office until the return of the election to the Assembly is published in The Ontario Gazette:

**Member deemed to have resigned municipal office when election to Assembly published**

(2) Every person who is elected a member of the Assembly while holding an office referred to in subsection (1) may continue to hold such office, despite any other Act, until the end of the day on which the return of the election of such person to the Assembly is published in *The Ontario Gazette* under section 83 of the *Election Act*, at which time the member shall be deemed to have resigned such office.  
[Emphasis added]

[32] The resignation of a member of a municipal council is governed by s. 260 of the *Municipal Act*, which provides:

**Resignation as member**

**260** (1) A member of council of a municipality may resign from office by notice in writing filed with the clerk of the municipality.

**Restriction**

(2) Despite subsection (1), a resignation is not effective if it would reduce the number of members of the council to less than a quorum and, if the member resigning from office is a member of the councils of both a local municipality and its upper-tier municipality, the resignation is not effective if it would reduce the number of members of either council to less than a quorum.

[33] By letter dated June 7, 2022, City Councillor Williams resigned her office as a member of Council effective 11:59 pm on June 8, 2022. The parties agree that her resignation did not reduce the number of Council members to less than a quorum. Pursuant to ss. 260(1) of the *Municipal Act*, the City Clerk accepted the resignation. As a result of the resignation, a vacancy on Council arose after 11:59 pm on June 8, 2022 pursuant to ss. 259(1)(d) of the *Municipal Act*.<sup>1</sup> Importantly, however, there was no vacancy on Council when the Special Meeting was held on May 31, 2022 as City Councillor Williams then: a) was still a Council member; b) was not disqualified from being a Council member under ss. 259(1) of the *Municipal Act* (i.e., as she was not yet elected to the Assembly); c) had not resigned from Council; and d) had not otherwise triggered a vacancy on Council under ss. 259(1) of the *Municipal Act* by that time.

[34] Notably, under ss. 262(1) of the *Municipal Act*, council must declare the office of a member of council to be vacant “at its next meeting” after the vacancy arises:

**Declaration**

**262** (1) If the office of a member of a council becomes vacant under section 259, the council shall at its next meeting declare the office to be vacant, except if a vacancy occurs as a result of the death of a member, the declaration may be made at either of its next two meetings. [Emphasis added]

[35] The word “shall” as used in ss. 262(1) of the *Municipal Act* reveals a mandatory obligation imposed by the Legislature that is imperative and gives Council no discretion: R. Sullivan, *Sullivan on the Construction of Statutes* (6<sup>th</sup> ed. 2014) at p. 91; *Canada (Attorney General) v. Collins Family*

*Trust*, 2022 SCC 26 at para 25. On a plain and obvious reading, ss. 262(1) clearly required Council to declare the vacancy “at its next meeting” following City Councillor Williams resignation effective 11:59 pm on June 8, 2022, which is when the Council vacancy arose under ss. 259(1)(d) and s. 260(1) of the *Municipal Act*, respectively.

[36] Section 263 of the *Municipal Act* further prescribes the following mandatory requirements for filling a vacancy on a municipal council:

**Filling vacancies**

**263** (1) If a vacancy occurs in the office of a member of council, the municipality shall, subject to this section,

- (a) fill the vacancy by appointing a person who has consented to accept the office if appointed; or
- (b) require a by-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996*. 2001, c. 25, s. 263 (1).

**Dual vacancies**

(2) If the offices of a person who is a member of council of both a local municipality and its upper-tier municipality become vacant, the local municipality and not the upper-tier municipality shall fill the vacancy in accordance with subsection (1).

**Court-ordered election**

(3) If an order is made in any judicial proceeding requiring a by-election be held to fill a vacancy on a council, the clerk shall hold the by-election in accordance with the *Municipal Elections Act, 1996*.

**Vacancy, head of council**

(4) Despite subsections (1) to (3), if the head of council of an upper-tier municipality is required to be appointed by the members of the upper-tier council, the upper-tier municipality shall fill a vacancy in the office of head of council by appointment in the same manner as the head was originally appointed.

**Rules applying to filling vacancies**

(5) The following rules apply to filling vacancies:

- 1. Within 60 days after the day a declaration of vacancy is made with respect to the vacancy under section 262, the municipality shall,

- i. appoint a person to fill the vacancy under subsection (1) or (4), or
  - ii. pass a by-law requiring a by-election be held to fill the vacancy under subsection (1).
2. Despite paragraph 1, if a court declares an office to be vacant, the council shall act under subsection (1) or (4) within 60 days after the day the court makes its declaration.
  3. Despite subsections (1) to (4), if a vacancy occurs within 90 days before voting day of a regular election, the municipality is not required to fill the vacancy.

[37] The conduct of municipal by-elections is governed by the *Municipal Elections Act, 1996*, SO 1996, c. 32, Sched. (“*Municipal Elections Act*”) which provides at ss. 4(1), 5 and 65(2), in part, as follows:

**Regular elections**

4 (1) A regular election to fill offices shall be held in 2006 and in every fourth year thereafter.

**Voting day**

5 Voting day in a regular election is the fourth Monday in October ...

[...]

**No by-election after March 31 in year of regular election**

(2) Despite any Act, no by-election shall be held to fill an office that becomes vacant after March 31 in the year of a regular election and no by-election shall be held with respect to a question or by-law after March 31 in the year of a regular election unless it is held in conjunction with a by-election for an office. [Emphasis added]

[38] By operation of ss. 4(1) and 5 of the *Municipal Elections Act*, a regular election is scheduled for 2022 and voting day will be on October 24, 2022. As the vacancy on Council created by City Councillor Williams’s resignation arose on June 8, 2022 and a regular election is scheduled for 2022, there is no dispute that the City is barred under ss. 65(2) of the *Municipal Elections Act* from holding a by-election to fill the Council vacancy and, therefore, must fill the vacancy pursuant to ss. 263(1) of the *Municipal Act* by appointing a person who has consented to accept the office.

[39] From the clear and specific language in ss. 262(1) and 263(5)(1) of the *Municipal Act* for filling vacancies, and applying the modern approach to statutory interpretation, I am satisfied that municipal council can only proceed to appoint a person to fill a vacant office *after* it has declared the vacancy at its next meeting after the vacancy has occurred. From the clear and unambiguous language used in these provisions, I find that the Legislature designed this mechanism to require two (2) mandatory pre-conditions for filling a vacancy on council, namely a) the vacancy must first exist under ss. 259(1) of the *Municipal Act*, after which b) council must declare the office vacant as required by ss. 262(1) and 263(5)(1) of the *Municipal Act*, respectively. Only then can council make an appointment under ss. 263(1)(a) and 263(5)(1)(i) to appoint a person to fill the vacancy within 60 days after the vacancy is declared. The design of this statutory mechanism wisely ensures that the incumbent member of council whose departure creates the vacancy will not participate in the process for determining who will be appointed to fill a vacancy on Council under ss. 263(1) and 263(5)(1)(i) of the *Municipal Act*, respectively. Given the collective interplay between all of these provisions, the design of the mechanism is clearly intended to maintain the integrity of the process for replacing members on Council by excluding departing incumbents from the process to avoid any potential for mischief or the appearance of impropriety. I hasten to add that neither party is alleging any bad faith by anyone in this matter, and I am making no findings of any deliberate misconduct.

[40] The mandatory and prescriptive nature of the mechanism under ss. 262(1) and 263(5)(1) of the *Municipal Act* for appointing a person to fill a council vacancy is reinforced by the language of ss. 15(1) of the *Municipal Act* which expressly affirms that a municipality's power to pass a by-law under any provision of the statute is "*subject to any procedural requirements, including conditions ... that apply to the power and any limits on the power contained in the specific provision.*" Council was obliged to comply with the mandatory process under ss. 259 to 263 of the *Municipal Act* and, therefore, was required to first declare the vacancy before appointing a person to fill the vacancy. Council's failure to comply with these mandatory requirements, as expressly required by ss. 15(1) of the *Municipal Act*, led to a total absence of jurisdiction and an illegality that is clearly demonstrated. Given the express nature of these statutory requirements, I am satisfied that Council cannot rely on its broad grants of power to escape these constraints: *Clublink* at para 38.

[41] In able submissions, counsel for the Respondent countered that the *Municipal Act* contains no express restrictions against passing by-laws that may take effect on a future date or occurrence, and that legislative silence is not a limit on a power under the statute: ss. 15(1.1) of the *Municipal Act*. Taking a broad and generous view of the City's statutory powers, he argued that Council's decision to pass the impugned Resolution and By-law on a contingent basis (i.e., conditional on a future declaration of the vacancy after it arose) was an efficient, sensible and reasonable way to deliver good government pursuant to s. 2 of the *Municipal Act* by arranging to fill the vacancy once it was declared to minimize the time when affected constituents would be under-represented. While I applaud efforts to promote efficient government and generally accept that a municipality might pass conditional by-laws in other situations, Council in this case did not follow the clear and mandatory requirements under ss. 259 to 263 of the *Municipal Act*, as explained earlier. In light of this, I do not see a basis on which Council can be found to have lawfully acted. By passing the impugned Resolution and By-law on May 31, 2002, Council did not comply with clear statutory requirements for filling the vacancy and acted with a total absence of jurisdiction.

[42] Furthermore, in light of the clear intent and design of the statutory scheme to effectively exclude a departing Council member from the decision-making process for filling the vacancy caused by their departure, as set out above, I am satisfied that the Resolution passed at the Special Meeting on May 31, 2022 conflicted with the purpose of the mechanism under the *Municipal Act* for filling a Council vacancy by having the departing incumbent participate in the process for appointing her successor. Given this conflict, I find that the Resolution and By-law are rendered without effect by operation of ss. 14(1)(a) and (2) of the *Municipal Act*, respectively.

[43] Taking all of this into account, I am satisfied that the Resolution and By-law were passed without lawful jurisdiction and should be quashed in their entirety for illegality.

### **Outcome**

[44] Accordingly, the Application is granted.

[45] Following the hearing, the parties advised of their agreement for the successful party to have their costs of the Application fixed at \$20,000.00, inclusive of taxes and disbursements.

[46] Based on the foregoing, I make the following orders:

- a. Resolution C168-2022 passed by Council for the City of Brampton at the Special Meeting of Council held on May 31, 2022 to appoint Elaine Moore to fill an anticipated vacancy on Council is hereby quashed;
- b. By-law 129A-2002, being the by-law to confirm the proceedings of Council for the City of Brampton at the Special Meeting of Council held on May 31, 2022 is hereby quashed; and
- c. The Respondent shall pay the Applicant his costs for the Application fixed at \$20,000.00, inclusive of taxes and disbursements.

[47] I wish to express my appreciation to counsel on both sides for the high quality of their written and oral submissions.



Doi J.

**Date:** July 11, 2022



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**BEFORE:** Doi J.

**COUNSEL:** Thomas A. Richardson and Andrea  
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**ENDORSEMENT**

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Doi J.

DATE: July 11, 2022

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<sup>1</sup> Had it not been for City Councillor Williams' resignation effective 11:59 PM on June 8, 2022, the vacancy on Council resulting from her election to the Assembly would otherwise have occurred on June 18, 2022 when the notice of the return of members was published in The Ontario Gazette: ss. 9(2) of the *Legislative Assembly Act*.