

Legal Memorandum

Regional Municipality of Niagara

Filling Vacancy on Regional Council

CONFIDENTIAL AND PRIVILEGED LEGAL OPINION

To: The Regional Municipality of Niagara, Donna Gibbs, Director Legal & Court Services

From: Sachin Persaud and Carling Chan
Boghosian + Allen LLP

Date: January 3, 2021

Re: The Regional Municipality of Niagara: Filling Vacancy on Regional Council

OVERVIEW

We provide the following legal opinion with respect to the appointment of replacing the vacated seat on Niagara Regional Council arising from the passing of St. Catharines' representative, Councillor Sandie Bellows.

CONCLUSION

The Region is required to approve St. Catharines' recommendation in order to comply with its own Policy C2-001 unless the Region determines that the recommendation contravened the *Municipal Act, 2001* and the *Municipal Elections Act, 1996*. The recommendation of Mr. Siscoe does not contravene the aforementioned legislation or the Region's own Policy on this matter.

EXECUTIVE SUMMARY

The late Councillor Sandie Bellows was elected to the Regional Council of Niagara as a representative for St. Catharines during the October 2018 election. Councillor Bellows passed away on October 11, 2021.

On November 18, 2021, Regional Council declared Councillor Bellows seat vacant. The Region is required to fill the vacant seat by January 17, 2022 pursuant to section 259 of the *Municipal Act, 2001*. In accordance with Niagara Region's Policy C2-001 (**Attached at Appendix A**), Niagara Region requested St. Catharines' municipal council to advise as to how St. Catharines intended to proceed with respect to filling the vacancy on Regional Council. St. Catharines had the choice of either appointing a qualified elector or calling a by-election in accordance with the *Municipal Elections Act, 1996*.

On December 13, 2021, St. Catharines' municipal council voted to fill the Region's vacancy by way of an appointment and chose to appoint Mr. Mathew Siscoe (who is currently a member of St. Catharines' municipal council) to the vacated regional seat. We understand that Mr. Siscoe is a qualified elector within the meaning of the *Municipal Elections Act, 1996* and the *Municipal Act, 2001* and that he has indicated that he would accept the position if appointed. This recommendation was thereafter conveyed to Niagara Region on December 14, 2021.

The Region is required to approve St. Catharines' recommendation in order to comply with its own Policy C2-001 unless the Region determines that the recommendation contravened the *Municipal Act, 2001* and the *Municipal Elections Act, 1996*. The recommendation of Mr. Siscoe does not contravene the aforementioned legislation or the Region's own Policy on this matter. Accordingly, the appointment of St. Catharines' recommendation by the Region is not in contravention of any applicable legislation or municipal policies.

There have been critiques advanced from some members of the public that St. Catharines' recommendation of Mr. Siscoe was in contravention of St. Catharines' own policy #LCS 2015-9 and the *Municipal Conflict of Interest Act (Attached at Appendix B)*. In this regard, we have reviewed the correspondence from Mr. Asher Honickman, legal counsel for Mr. Mike Britton, dated December 16, 2021 (**Attached at Appendix C**). The letter urges Niagara Regional Council to reject the recommendation of St. Catharines' City Council and appoint Mr. Britton. Mr. Honickman outlined three issues with respect to St. Catharines' recommendation of Mr. Siscoe to the Regional Council, namely that it was done contrary to St. Catharines' own policy LCS 2015-9 and contrary to the recommendation in the report of St. Catharines' Director of Legal Services dated November 5, 2021. Further, Mr. Honickman indicates that Mr. Siscoe voted on these matters and advances that, as a result of this, Mr. Siscoe contravened the *Municipal Conflict of Interest Act*. Lastly, Mr. Honickman advances that the *Municipal Act, 2001* precludes Mr. Siscoe from also *becoming* a member of the Niagara Regional Council.

However, Regional Council has no authority to declare any proceedings of another municipal council void on the basis of an alleged conflict of interest or failure of the other municipality to adhere to its internal policies. St. Catharines' policy with respect to filling a vacancy on Regional Council, a policy which is not a legislative requirement for St. Catharines to have, has no legal bearing on the Region's approval of the recommended candidate. Niagara Region is required to accept the recommendation of St. Catharines pursuant to Niagara Region's Policy C2-001 unless the recommendation contravenes the *Municipal Act, 2001* or the *Municipal Elections Act, 1996*.

Further, the *Municipal Act, 2001* does not preclude Mr. Siscoe from *becoming* a member of the Regional Council while he remains a member of St. Catharines' City Council; it prohibits Mr. Siscoe from *being* a member of the Niagara Regional Council while also serving on St. Catharines' City Council. We understand that Mr. Siscoe has, by way of a letter dated December 24, 2021, submitted a conditional resignation from his office on St. Catharines' City Council (**Attached at Appendix D**), which takes effect upon his appointment to the Niagara Regional Council. Therefore, Mr. Siscoe will not be in contravention of the *Municipal Act, 2001* if he is appointed to fill the vacancy on Regional Council.

Lastly, time is of the essence in this matter given that section 263 of the *Municipal Act, 2001* requires that the appointment be made by January 17, 2022. The sufficiency of time for St. Catharines to prepare another recommendation and for Regional Council to approve same before January 17, 2021 ought to be a consideration as part of the Region's decision-making process on filling the vacancy. The Region will be in contravention of the *Municipal Act, 2001* if the Region fails to appoint a replacement by January 17, 2022.

ANALYSIS

We provide the following review of the applicable legislation and municipal policies.

Section I – Law and Policy

Municipal Act, 2001

If a municipal councillor passes, the office of that member of municipal council becomes vacant upon council making the prescribed declaration.¹

The *Municipal Act, 2001* requires the municipal council to, at either of its next two meetings, declare the office to be vacant if a vacancy occurs as a result of the death of a member.²

Once a vacancy is declared, council must fill the seat within 60 days by one of the following two methods:³

- 1) Fill the vacancy by appointing a person who has consented to accept the office if appointed;
or
- 2) Require a by-election to be held to fill the vacancy in accordance with the *Municipal Elections Act, 1996*.

In addition to the above requirements with respect to filling a vacancy, section 270(1) paragraph 5 of the *Municipal Act, 2001* provides that each municipality shall adopt and maintain a policy with respect to the manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public. However, the *Municipal Act, 2001* does not require any municipality to adopt and maintain a policy with respect to filling a vacancy on a municipal council.

Niagara Region's Corporate Policy C2-001 (Appendix A)

The Region developed Corporate Policy C2-001 for the filling of vacancies in the Office of the Regional Councillor (hereinafter the "Policy C2-001"). The Policy states that in the event of a vacancy in the Office of Regional Councillor in any municipality in the Niagara Region:

¹ *Municipal Act, 2001*, S.O. 2001, c. 25, s. 259 [“*Municipal Act, 2001*”].

² *Ibid*, s. 262.

³ *Ibid*, s. 263 and s. 263(5).

1. Regional Council **shall** request the local municipality to advise the Region of their recommendation on whether a qualified elector should be appointed or if a by-election should be held; **AND**
2. Regional Council **would** approve the recommendation of the local municipality provided it was in compliance with all provisions in the *Municipal Act* and the *Municipal Elections Act*.

Of note is that the Region's Policy indicates that if the local municipal council elects to appoint an individual to fill the vacant seat, the only requirement for that individual is that he or she be a qualified elector.

Section 257 of the *Municipal Act, 2001* and section 17 of the *Municipal Elections Act, 1996* define a qualified elector as follows:⁴

1. he or she resides in the local municipality or is the owner or tenant of land there, or the spouse of such owner or tenant;
2. he or she is a Canadian citizen;
3. he or she is at least 18 years old; and
4. he or she is not prohibited from voting under the following circumstances:
 - i. A person who is serving a sentence of imprisonment in a penal or correctional institution.
 - ii. A corporation.
 - iii. A person acting as executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
 - iv. A person who was convicted of the corrupt practice described in subsection 90 (3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.

St. Catharines' Policy #LCS 2015-9 (Appendix B)

St. Catharines developed Policy #LCS 2015-9 for filling a vacancy on City or Regional Council (hereinafter "Policy 2015-9"). It ought to be noted that neither St. Catharines or Niagara Region are required by the *Municipal Act, 2001* to develop a policy for filling vacancies on the Regional Council. Policy 2015-9 provides that if a vacancy occurs within the last year of a Regional and City Council's term, the next place finisher shall be appointed if this individual received 70% of the votes that were achieved by the sixth-place finisher in the case of Regional Council; and the second-place finisher in the case of City Council. If the next place finisher does

⁴ *Municipal Act, 2001, supra* note 1, s. 257; *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched., s. 17 ["*Municipal Elections Act*"].

not receive 70% of the votes, then Council may hold a by-election or commence the appointment process to fill the vacancy.

St. Catharines' appointment process requires:

1. Advertisements to be placed in at least (2) two local newspapers and on the City of St. Catharines website.
2. The advertisements will request that qualified individuals interested in sitting on Council submit an application and resume to the Office of the City Clerk within a prescribed time.

Qualified individuals: for the purpose of this policy, *qualified* will mean as it is prescribed by the *Municipal Election Act, 1996*.

3. An interview committee will be struck by Council and will include the Mayor, two Councillors, and the one remaining Councillor in the Ward with the Vacancy.
4. The interview committee will develop, in consultation with Human Resources, the criteria and questions for the interview.
5. The interview committee will establish the shortlist of candidates.
6. The shortlisted candidates may make a presentation before Council.
7. Once the interview and presentations are done, the interview committee will report back to Council in a confidential manner on each candidate and Council will recommend a candidate for appointment.

Section II – Application to vacant seat of St. Catharines

The late Councillor Sandie Bellows was one of six members elected to the Regional Council of Niagara as a representative for St. Catharines during the October 2018 election. Councillor Bellows passed away on October 11, 2021.

On November 18, 2021 (the second Regional Council meeting after Councillor Bellows' passing), the Regional Council declared Councillor Bellows' municipal office vacant. In accordance with the Region's Policy C2-001, it submitted a request to St. Catharines' City council to advise as to how it intended to proceed with respect to filling the vacancy on Regional Council. On December 13, 2021, in a 10 to 3 vote, St. Catharines' municipal council voted to fill the vacancy by way of an appointment and elected to appoint Mr. Mathew Siscoe (who is currently a member of St. Catharines' municipal council). We understand that Mr. Siscoe is a qualified elector within the meaning of the *Municipal Act, 2001* and the *Municipal Elections Act, 1996* and he has indicated that he will be accepting this appointment. This recommendation was thereafter conveyed to the Region on December 14, 2021.

The recommendation by St. Catharines of Mr. Siscoe does not contravene the *Municipal Act, 2001* or the *Municipal Elections Act, 1996*, as such Niagara Region is required by Policy C2-001 to approve the recommendation.

Section III – Regional Municipality’s Role in filling the Vacant Seat

According to the *Municipal Act, 2001*, other than the two methods in which the Regional Council may use to fill a vacancy on its council (i.e. appointment of an individual who also consents to the appointment or a by-election) and the timeframe that such appointment must be made, the Regional Council has discretion under section 270(1) paragraph 5 of the *Municipal Act, 2001* to develop a policy for determining *who* and *how* a vacancy on its council is filled.⁵

The Region’s Policy #C2-001 is clear that the Region does not have independent discretion to decide *who* or *how* a vacancy is filled as the Region delegated this discretion to the local municipal council of the vacant office. The Region’s policy provides a two-step process for filling a vacancy. First, the Region submits a request to the local municipal council to advise as to how the local council intends to proceed with respect to filling the vacant office (i.e. appointment or by-election). Once the local council advises the Region as to how it intends to fill the vacancy, the Region *will* approve the local council’s recommendation provided that the recommendation is in compliance with the *Municipal Act, 2001* and the *Municipal Elections Act, 1996*. In other words, if the local municipal council’s recommendation is in compliance with the *Municipal Act, 2001* and the *Municipal Elections Act, 1996* the Region *will* approve it.

Of note is that the Region’s Policy does not require any local municipalities to develop a policy for filling a vacancy on the Regional Council and it also does not require the Region to follow any policies developed by local municipalities with respect to filling said vacancy.

Further, the Region’s Policy does not give itself discretion to choose an alternate method or individual in place of the method or individual chosen by the local municipal council even if the recommendation by the local municipal council is not compliant with the aforementioned legislation. In such instances, the Region would reject the recommendation and request a further recommendation that is compliant with the aforementioned legislation.

It is presumed that the intent of the Region's policy to allow each lower-tier municipality to select its own representative(s) on Regional Council based on its own internal processes is to recognize the autonomy and separate governance structure of the lower-tier municipalities.

Accordingly, the Region ought to approve St. Catharines’ recommendation in order to comply with its own Policy C2-001 unless it is determined that the recommendation contravenes the *Municipal Act, 2001* and the *Municipal Elections Act, 1996*.

Section IV – Issues of St. Catharines’ Recommendations

Legal Consequences of approving or rejecting St. Catharines’ Recommendation

⁵ *Municipal Act, 2001*, s. 263(1) and 263(5).

Niagara Regional Council is required to comply with the *Municipal Act, 2001*, the *Municipal Elections Act, 1996* and its own Policy C2-001 in terms of filling a vacancy on Regional Council. The Region is not governed by St. Catharines' policy on filling a vacancy.

In the case at bar, the only statutory requirements with respect to filling a vacancy on Regional Council are:

- 1) The vacant office must be filled within 60 days of declaring its vacancy; and
- 2) The vacant office must be filled by one of the following two methods: appointment of an individual who has consented to accept the office if appointed; OR a by-election in accordance with the *Municipal Elections Act, 1996*.

The *Municipal Act, 2001* does not require any local municipal councils to develop a policy for filling a vacancy on an upper-tier council. Furthermore, the Region's own policy does not require Regional Council to follow the policies of local municipalities with respect to filling a vacancy on the Regional Council. As such, whether St. Catharines complied with its own policy or not has no legal bearing on the Region's decision with respect to filling in a vacancy on Regional Council. The *Municipal Act, 2001* does not require any municipalities to adopt or maintain a policy with respect to filling a vacancy on a municipal council. The legislation also does not prescribe the content of such policies.

Furthermore, the Region's Policy C2-001 provides that it will accept *who* and *how* the local municipal council elects to fill its vacancy on the Regional Council provided that the recommendation is in compliance with the *Municipal Act, 2001* and the *Municipal Elections Act, 1996*. Further, the Region requires any individual recommended by the local municipal council to be a qualified elector. In this case, given that St. Catharines decided against a by-election, the considerations that the Region ought to consider when approving St. Catharines' recommendations, in order to be compliant with the applicable legislation, is whether that individual is a qualified elector and whether that individual has consented to accept the office if appointed.

Notwithstanding the arguments that St. Catharines' recommendation of appointing Mr. Siscoe to replace Councillor Bellows does not comply with its own Policy 2015-9, once the Region complies with the statutory conditions cited above in filling the vacancy on Regional Council, Niagara Region is required to accept the recommendation from St. Catharines. To the extent that there are concerns with respect to St. Catharines' recommendation, Niagara Region has no authority, legally or otherwise, to be the arbiter of any alleged issues that occurred at another municipal council. The challengers are opened to bring these concerns back before St. Catharines' City Council or by way of a court challenge.

With respect to a council member's potential failure to declare a conflict of interest pursuant to sections 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act*, that does not invalidate the proceedings in which the alleged conflict occurred.⁶ Only St. Catharines may declare the

⁶ Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50, s. 12(1) [*"Municipal Conflict of Interest Act"*].

proceedings to be void, in the event that it is determined that a member failed to comply with the Municipal Conflict of Interest Act, before the second anniversary of the date of the passing of the by-law or resolution authorizing the matter.⁷ The Regional Council has no legal authority to declare that proceeding void as the alleged conflict did not occur at the Region's own council meeting.

Procedural Considerations

Section 261 of the *Municipal Act, 2001* provides that except where otherwise provided, no person may hold more than one office governed by the *Municipal Elections Act, 1996* at the same time anywhere in Ontario.⁸ This provision does not preclude the Regional Council from electing to appoint Mr. Siscoe to fill the vacancy on its council as the *Municipal Act, 2001* permits Council to appoint any individual as long as that person consents to accept the office, if appointed, which Mr. Siscoe has already expressed his consent based on his letter dated December 24, 2021. That being said, section 232 of the *Municipal Act, 2001* provides that a person shall not take a seat on the council of a municipality until the person takes the declaration of office in the English or French version of the form established by the Minister for that purpose.⁹ This is the case even if the person has already taken a declaration of office for another office on the same or a different council.¹⁰ Given that Mr. Siscoe is currently a member of St. Catharines' municipal council, he cannot take the declaration to accept the office on Regional Council until he resigns from St. Catharines' municipal council. Section 260 of the *Municipal Act, 2001* provides that a member of council of a municipality may resign from office by notice in writing filed with the clerk of the municipality.¹¹

Based on the above, given the tight timeframe to fill the vacancy, the sensible approach would be to approve of St. Catharines' recommendation in accordance with the Region's policy, which will trigger Mr. Siscoe's resignation from St. Catharines' City Council, and declare Mr. Siscoe as replacement of Councillor Bellows' municipal seat in the same meeting. We have reviewed Mr. Siscoe's conditional resignation letter dated December 24, 2021, which states that his resignation from St. Catharines' City Council is effective upon his appointment being approved by Regional Council and therefore, he will not be in contravention of the *Municipal Act, 2001* when he is declared to fill the vacancy on the Regional Council at the same meeting. However, it would be prudent to confirm with St. Catharines' City Clerk prior to the scheduled special meeting that they acknowledge receipt of the letter.

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Boghosian + Allen LLP

Carling Chan
Associate
Boghosian + Allen LLP

⁷ *Ibid*, s. 12(2); *Sims v. Sault Ste. Marie (City)*, 1997 CarswellOnt 2368 at paras. 19 – 20.

⁸ *Municipal Act, 2001*, *supra* note 1, s. 261.

⁹ *Ibid*, s. 232(1).

¹⁰ *Ibid*.

¹¹ *Ibid*, s. 260.

Appendix A

SECTION	NAME OF POLICY
REGIONAL COUNCIL	FILLING OF VACANCIES IN THE OFFICE OF REGIONAL COUNCILLOR

DEVELOPED BY: Regional Clerk's Office

APPROVED BY: Regional Council

APPROVAL DATE: January 17, 2013

EFFECTIVE DATE: January 17, 2013

POLICY STATEMENT

To establish a practice for filling of vacancies in the Office of Regional Councillor.

POLICY PURPOSE

To respond to a request from Regional Council for a consistently applied procedure for the filling of vacant seats on Regional Council.

PROCEDURE

In the event of a vacancy in the Office of Regional Councillor in any municipality in Niagara Region (except in Wainfleet and West Lincoln, where said vacancy would coincide with a vacancy in the Office of the Mayor in these municipalities):

1. Regional Council shall request the local municipality to advise the Region of their recommendation on whether a qualified elector should be appointed or if a by-election should be held; and
2. Regional Council would approve the recommendation of the local municipality provided it was in compliance with all provisions in the *Municipal Act* and the *Municipal Elections Act*.

Appendix B

 CITY OF ST. CATHARINES	Legal and Clerks Services - Office of the City Clerk Division		
	Subject: Filling a Vacancy on Council	Policy #: LCS 2015-9	
	Approved by L.C.S: 		
	Issue Date: April 25, 2014	Revision Date: July 4, 2018	
	Review Date: July 4, 2018	Page: 1 of 2	

Policy:

The Corporation of the City of St. Catharines must comply with the provisions within the *Municipal Act, 2001*, Section 263, Filling Vacancies, when a vacancy occurs on City or Regional Council.

Purpose:

To provide Council with options that may be followed when a vacancy occurs.

Scope:

This policy shall apply to members of Council for the purpose of filling vacancies on Regional and City Council.

Procedures

Application:

Within the first three years:


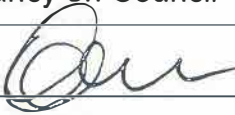
If a vacancy occurs within the first three years of a new Regional and City Council's term, the next place finisher may be appointed if this individual received 70% percent of the votes that were achieved by the sixth place finisher in the case of Regional Council; and the second place finisher in the case of City Council.

Within the last year:

If a vacancy occurs within the last year of a new Regional and City Council's term, the next place finisher shall be appointed if this individual received 70% percent of the votes that were achieved by the sixth place finisher in the case of Regional Council; and the second place finisher in the case of City Council.

If the next place finisher does not receive 70% of the votes:

Council may hold a by-election or commence the appointment process to fill the vacancy. If the vacancy occurs after March 31st of a regular election, Section 65(2) of the *Municipal Election Act, 1996* does not allow a by-election to be held. The next place finisher may submit an application for appointment.

 CITY OF ST. CATHARINES	Legal and Clerks Services - Office of the City Clerk Division			
	Subject:	Filling a Vacancy on Council	Policy #:	LCS 2015-9
	Approved by L.C.S:			
	Issue Date:	April 25, 2014	Revision Date:	July 4, 2018
	Review Date:	July 4, 2018	Page:	2 of 2

Appointment process:

1. Advertisements to be placed in at least (2) two local newspapers and on the City of St. Catharines web site.
2. The advertisements will request that qualified individuals interested in sitting on Council submit an application and résumé to the Office of the City Clerk within a prescribed time.

Qualified individuals: for the purpose of this policy, *qualified* will mean as it is prescribed by the *Municipal Election Act, 1996*.

3. An interview committee will be struck by Council and will include the Mayor, two Councillors, and the one remaining Councillor in the Ward with the Vacancy.
4. The interview committee will develop, in consultation with Human Resources, the criteria and questions for the interview.
5. The interview committee will establish the shortlist of candidates.
6. The shortlisted candidates may make a presentation before Council.
7. Once the interviews and presentations are done, the interview committee will report back to Council in a confidential manner on each candidate and Council will recommend a candidate for appointment.

Appendix C

Asher G. Honickman
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December 16, 2021

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Dear Sirs/Madams:

Re: Britton re Councils of St. Catharines and Niagara Region
Our File No.: 47-068

Please be advised that I represent Mike Britton. I am writing you in advance of the Niagara Regional Council (the "Regional Council") meeting scheduled for this evening.

As you know, the Regional Council is required to fill its vacancy by January 17, 2022, pursuant to s.263(5) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“MA”). As this is the last regular Regional Council meeting prior to that date, we understand that the Regional Council plans to fill that vacancy at its general meeting this evening. We further understand that the Region intends to fill the vacancy by adopting the recommendation of the St. Catharines City Council (the “St. Catharines Council”). Finally, we understand that the St. Catharines Council voted 7-6 against recommending Mr. Britton and instead voted to recommend Mat Siscoe, who is currently a member of the St. Catharines Council.

There are three basic problems with St. Catharines Council’s recommendation to appoint Mr. Siscoe. Firstly, pursuant to St. Catharines own policy, being Policy # LCS 2015-9 (the “Policy”), which St. Catharines Council adopted and has never repealed, St. Catharines Council was required to recommend Mr. Britton to fill the vacancy. The Policy plainly states if “**a vacancy occurs within the last year if a new Regional and City Council’s term, the next place finisher shall be appointed if this individual received 70% percent of the votes that were achieved by the sixth-place finisher in the case of Regional Council...**” (emphasis in original). The use and emphasis of “shall” is properly interpreted as an imperative (see *Interpretation Act*, R.S.O. 1990, c. I.11, s. 29(2)), meaning that St. Catharines Council has no discretion in the matter. Indeed, this section of the Policy is to be contrasted with the previous section, which states that Council “may” recommend for appointment the individual who received 70% of the vote if the vacancy occurs within the first three years.

There is no dispute that the current vacancy occurred within the last year of the Regional and City Council’s term, and there is similarly no dispute that Mr. Britton was the next place finisher and achieved well over 70% of the vote of the sixth-place finisher. St. Catharines Council is therefore required to recommend his name to the Regional Council. Its failure to do so amounts to a breach of its own Policy.

The St. Catharines Director of Legal Services reached the very same conclusion in her Report dated November 5, 2021, which expressly recommended that “**the Council of the City of St. Catharines recommend the appointment of Mr. Mike Britton to fill the vacant seat of Regional Councillor for the City of St. Catharines.**” I am enclosing a copy of this Report, which appends a copy of the relevant Policy.

Secondly, St. Catharines Council permitted Mr. Siscoe to vote on these matters and Mr. Siscoe did not recuse himself, despite being in a clear conflict of interest contrary to s.5 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (“MCIA”). Mr. Siscoe has an obvious pecuniary interest in becoming a member of the Regional Council, which is a paid position. However, as the [video of the meeting](#) in question makes clear, he voted against Mr. Britton and then in favour of his own candidacy, all with the support of St. Catharines Council.

Section 4(g) of the MCIA sets out one of several narrow exceptions to the otherwise broad application of the MCIA. It states that a the MCIA will not apply “by reason of the member being eligible for election or appointment to fill a vacancy, office or position in the council or local board when the council or local board is empowered or required by any general

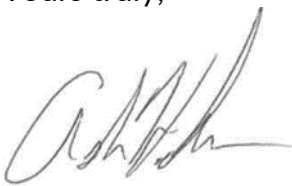
or special Act to fill such vacancy, office or position” (emphasis added). Notably, this exception uses the definite article. The phrase “the council” must mean the council of which the individual is a member. There is no exception for an appointment to fill a vacancy in any other council. Moreover, the St. Catharines Council is not “empowered” to fill the Regional Council vacancy – only the Regional Council can do that - and s. 4(g) is therefore of no application in the present case. Mr. Siscoe was therefore precluded from voting on the matter at issue due to his pecuniary interest.

Finally, as Mr. Siscoe is currently a member of St. Catharines Council, he is precluded under s. 261 of the MA from also becoming a member of the Regional Council. Section 261 plainly states that “[e]xcept where otherwise provided, no person may hold more than one office governed by the *Municipal Elections Act, 1996*, at the same time anywhere in Ontario.” While some municipalities are governed by particular legislation that allows for dual roles, there is no such legislation in force in St. Catharines, and s. 261 of the MA therefore applies. The Region is therefore statutorily precluded from accepting the appointment of Mr. Siscoe unless and until he resigns from St. Catharines Council in accordance with s.260 of the MA.

To summarize, the votes to deny Mr. Britton and recommend Mat Siscoe to the Regional Council were in contravention of the MClA and St. Catharines Council’s own Policy, and Mr. Siscoe is precluded in any event from sitting on Regional Council as he has not yet resigned from St. Catharines Council. For all these reasons, the Regional Council must reject the recommendation of St. Catharines Council. And given the clear wording of the Policy, it should properly appoint Mr. Britton to fill the vacancy.

I trust you understand my client’s position and we look forward to the Regional Council addressing this issue in accordance with the governing legislation and policies as set out in this letter.

Yours truly,



Asher G. Honickman
AGH/km

Encl.

c.c.

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Appendix D



CITY OF ST. CATHARINES

Confidential CL-C 6-2022

City Councillor Mat Siscoe
P.O. Box 3012, 50 Church Street
St. Catharines, ON L2R 7C2

Phone: 905-329-8162
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TTY: 905-688-4TTY (4889)

December 24th, 2021

Ms. Nistico-Dunk,

On December 13th, 2021, St. Catharines City Council approved a motion that recommended my appointment by Niagara Regional Council to fill a vacancy resulting from the passing of our friend and colleague, Sandie Bellows. I trust that in the event of my appointment to Niagara Regional Council being approved by the members of Regional Council at an upcoming meeting, that this letter will serve as formal resignation from my seat on City Council.

I am humbled by the faith my fellow City Councillors have placed in me to continue to advance important issues for our community at the Regional level for the balance of the current term of office. I am also saddened by the prospect of vacating my seat as City Councillor representing the amazing community of St Patrick's Ward. I am exceptionally proud of everything we have accomplished as a Council during my tenure, and I am comforted by knowing the people of St. Patrick's will continue to be served admirably by my wardmate, Councillor Karrie Porter.

In the event that the members of Regional Council do not elect to accept the recommendation of St. Catharines City Council and oppose my appointment, it will continue to be my honour to serve the people of St. Patrick's Ward for the balance of this municipal term of office.

Yours,

A handwritten signature in black ink, appearing to read 'Mathew Siscoe', with a long horizontal flourish extending to the right.

Mathew Siscoe