# KEEPING CURRENT

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## City Councillor not an employee of City
## *(Ras v. Mississauga (City))*

By Stephen Thiele

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**Stephen Thiele**
Partner
416.865.6651
sthiele@grllp.com

Although elected representatives are paid a salary by the government they respectfully represent, this does not mean that they are employees of that government or are entitled to damages if they feel compelled to resign before the end of their elected term. An action brought by an elected representative for constructive dismissal as a result of an alleged "involuntary resignation" is vulnerable to being struck for disclosing no reasonable cause of action.

This was the result in *Ras v. Mississauga (City)*, 2023 ONSC 7102, where the plaintiff, a former councillor, sought damages against the City in excess of $85,000 for alleged constructive dismissal.

The plaintiff had first been elected to City Council on October 27, 2014 and was re-elected, for another four-year term, on October 22, 2018. However, effective January 28, 2022, the plaintiff resigned from her elected position because of alleged repeated harassment from another elected representative.

The plaintiff alleged that for two years she was stalked and harassed by another councillor and that neither the City's Integrity Commissioner nor the Mayor took any action to provide the plaintiff with a safe and healthy work environment. In the circumstances, the plaintiff pleaded that she involuntarily resigned as a councillor and that she had been constructively dismissed.

The City contended that the plaintiff's action disclosed no reasonable cause of action and therefore sought to have it dismissed under rule 21 of the *Rules of Civil Procedure*.

Relying on cases such as, *St. Elizabeth Home Society v. Hamilton (City)*, 2005 CanLII 46411 (ONSC) and *Di Muccio v. Newmarket*, 2016 HRTO 406, the City argued that it was an established principle of municipal law that a councillor was not an employee of the City.

As well, the City submitted that the plaintiff's role and status as a councillor was governed by the *Municipal Act, 2001*, which, among other things,

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prohibits employees of a municipality from holding office as a member of council.

In contrast, the plaintiff argued that she was an employee of the City due to:

a) the definition of "public office holder" under the *Municipal Act, 2001*;

b) the definition of "employee" in the City's Respectful Workplace policy;

c) a Fact Sheet prepared by the Office of the Information and Privacy Commissioner of Ontario; and

d) the factual matrix of case.

The motion judge rejected all of the plaintiff's arguments.

The court held that the plaintiff had only cited part of the definition of "public office holder", misinterpreted the definition of "employee" in the Respectful Workplace policy and the Fact Sheet, and misconstrued the factual matrix.

In an employment relationship, an employer normally has the power of selecting, controlling or dismissing an employee. The City, however, possessed no such powers in connection with a councillor. A councillor is a representative elected by the eligible voters of a city, and in the case of a vacancy can be appointed by Council. The motion judge stated that at no point did the City have the authority to control, discipline or dismiss a City Councillor such as the plaintiff.

Accordingly, the plaintiff and the City were not in an employment relationship and it was plain and obvious that the plaintiff had no reasonable cause of action against the City for constructive dismissal. The court struck the applicable paragraphs from the statement of claim, with leave to amend, and awarded costs to the moving parties of $18, 398.72.

The key take-aways from this case are that:

i) elected representatives simply have no right to claim damages for wrongful termination of their representative status, whether they resign midway through their term or are not re-elected, and

ii) the *Rules of Civil Procedure* provide litigants with a remedy that can be brought at an early stage of proceedings to have claims that disclose no reasonable cause action dismissed.

With respect to the latter, rule 21 of the Rules provides a defendant with a remedy that can be more effective than a summary judgment motion. A motion under rule 21 permits a defendant to strike parts of a claim whereas the principles governing summary judgment motions, in general, only permit parts of a claim to be determined in rare circumstances (see *Butera v. Chown*, 2017 ONCA 783 (CanLII) at para. 34).

As leave was granted to amend the statement of claim, it remains to be seen if and how the plaintiff will amend the parts of her claim which were struck, and whether she will ultimately succeed in her claim against the City and the councillor who allegedly stalked and harassed her.

## Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** at 416.865.6651 or by email at sthiele@grllp.com

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