Date: 20240209
Docket: CI 23-01-40898
(Winnipeg Centre)
Indexed as: The Rural Municipality of Thompson et al v. Cox
Cited as: 2024 MBKB 30

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

THE RURAL MUNICIPALITY OF THOMPSON AND THE LOCAL URBAN DISTRICT OF MIAMI COMMITTEE	)	Maria Grande Jennifer Hanson Erin Lawlor-Forsyth for the applicants
applicants,	)	
- and -	)	
DONNA COX	)	Joseph Aiello
respondent,	)	for the respondent
	)	Judgment Delivered:
	)	February 9, 2024

MARTIN J.

INTRODUCTION

[1] The Rural Municipality of Thompson, through its Council, ("the Municipality" or "Council") and the Local Urban District of Miami Committee ("Committee") brought an application under s. 95(6) of ***The Municipal Act***, C.C.S.M. c. M225 (the ***Act***), seeking an order to declare Donna Cox disqualified as Councillor from the Municipality's Council,

and hence the Committee, and declare her position vacant. For brevity, any reference herein to a legislative section means a section of the ***Act***, unless otherwise stated.

[2] The Municipality asserts that Ms. Cox missed three consecutive Committee meetings, without authorization, and thus is disqualified from continuing as an elected Councillor pursuant to s. 94(b), on both Council and the Committee. Further to s. 95(1), the Municipality says Ms. Cox must resign, but she refuses.

[3] While not disputing that she missed the meetings, Ms. Cox asserts that under all the circumstances she should not be declared disqualified, or her seat vacated. She says that she was, and is, ready, willing, and able to attend Council and Committee meetings. However, the Municipality did not reasonably accommodate to allow some meetings to take place other than during normal 9:00 a.m. to 5:00 p.m. business hours, as her employer refused to give her additional unpaid time-off during business hours to attend to the Municipality's business. Further, she says, as a rookie Councillor, she was not aware that missing three consecutive Committee meetings would result in disqualification.

[4] As will be seen, this matter is anything but an example of collective responsibility, consensus governing and leadership of elected officials; in this case, rural neighbors one to the other. Council did not extend simple courtesies so that every Councillor chosen by voters could rightfully fulfill their mandate. Collectively, on this issue, all members of Council and the Committee fell well short of facilitating good governance as common sense and collegiality would demand, let alone as required by the ***Act***.

ISSUES

[5] Aside from fact finding, two issues arise:

i. What is the nature of the hearing? and

ii. Should Ms. Cox be declared disqualified, and her position declared vacant?

EVIDENCE ON THE APPLICATION

[6] The following are the key facts gleaned from the affidavit evidence and cross-examination of the Reeve.

[7] The Municipality's Council is comprised of six Councillors. The position is not a full-time commitment. Indeed, many citizens who serve on rural municipal councils have some other principal occupation, which may be a full-time job. Ms. Cox is such a person, being an employee of the Provincial Government.

[8] Until 2022, Ms. Cox served for a dozen years as a local School Board Trustee, including as Board Chair.

[9] On October 26, 2022, for the first time, Ms. Cox was elected as Councillor for a four-year term to Council, for Ward 2. The Ward encompasses the town of Miami and as such, by operation of s. 112(1) & (3), Ms. Cox automatically became a member of the Committee. As well, she was appointed Chair of four other committees and a member of a fifth committee, for total of six committee appointments.

[10] Shortly, Council enacted a procedural bylaw changing the start time of its regular Council meetings from alternating 9:30 a.m. and 5:00 p.m., to 9:30 a.m. only. Ms. Cox was the only Councillor to vote against the change. She informed Council that if this change was made, she would only be able to attend one Council meeting per month

because her employer would not give her additional time-off, even unpaid time-off, during business hours.

[11] Subsequently, the Committee also changed its meeting time to 9:30 a.m. Before that, generally it had been over the noon hour or from about 1:00 – 2:00 p.m. Most Committee meetings lasted about an hour.

[12] The Reeve of the Municipality deposed that changes to the timing of Council and Committee meetings were made based on what "worked best for the majority" of the respective members. I find that when making the changes, Council and the Committee knew Ms. Cox would be adversely impacted, if not precluded, from fully attending and participating. In effect, for personal convenience reasons, Council members were unwilling to continue with one monthly 5:00 p.m. meeting, despite Council having done so during the prior four-year period. As to the Committee, again it was a matter of personal convenience.

[13] Not surprisingly, Ms. Cox missed the Committee meetings held on January 18, February 15, and March 15, 2023, all of which were held at 9:30 a.m., as she was working for her employer and unable to attend. I accept Ms. Cox was not aware that missing three consecutive Committee meetings (as opposed to Council meetings), could result in disqualification.

[14] At the April 19 meeting, the Committee added and passed a resolution, noting s. 94(1)(b), that Ms. Cox missed three consecutive meetings, and resolving not to approve those absences. Ms. Cox was not expressly provided with notice that this resolution would be considered. She was not present.

[15] On April 26, Ms. Cox attended remotely at a special Council meeting, held over the noon-hour, to discuss its financial plan and other matters. The Reeve deposed that Council understood Ms. Cox was disqualified and could not participate. As a result, she left the meeting.

[16] Early the next day, Ms. Cox sent an e-mail to Council explaining her views. She stated, in part, that it "is unfair and unreasonable for Council to expect me to choose between my career and being an elected official for one of the smallest municipalities in the province. I have been 100% transparent about my availability with Council and LUD [the Committee] since I was elected in October 2022. Council has demonstrated zero consideration to me and my work schedule as an elected official." She suggested mediation.

[17] Before the regular Council meeting started, the Reeve told Ms. Cox she was disqualified and could not participate. As a result, she left. Council declined her mediation suggestion.

[18] During these months, there were various communications from Ms. Cox to Councillors, Committee members and the Municipality's Chief Administrative Officer (CAO) about her inability to attend these meetings. As late as April 11, the CAO advised Ms. Cox by text message that the Committee may be willing to change their meeting times, seemingly to accommodate her.

[19] On May 11, 2023, at a regular Council meeting, resolutions were passed to adopt the Committee's April 19 resolution and deeming "Ms. Cox disqualified from Council pursuant to s. 94(1)(b)", for having missed three consecutive regular meetings of the

Committee. The minutes noted Ms. Cox "will not resign", per s. 95(1). Thus, Council also passed a resolution to make this Application. Ms. Cox was present but was not allowed to participate. In the Minutes, she was not listed as a Councillor. Thereafter, she was prevented from fulfilling any of her duties as a Councillor. The Municipality filed this Application on May 16, 2023.

[20] On May 29, 2023, a constituent/voter resident in Ward 2 wrote to the Minister of Municipal Relations, detailing concerns respecting this issue and attaching a petition of 60 residents from Ward 2 requesting that Council sit a minimum of one evening per month and that Ms. Cox be allowed to continue to act as their elected Councillor. The petition was also sent to the Municipality.

[21] On May 31, 2023, the Deputy Minister for Municipal Relations wrote the Municipality stating its position as follows:

> … Under the process defined in The Municipal Act, only the Court of King's Bench may make a determination that a council member is disqualified. I understand that the RM has referred this matter to the Court. However, until a council member has been disqualified by a Court decision, they remain a member of the municipality's council with all of the associated rights and duties of that position.
>
> Municipalities are governed by The Municipal Act and it is extremely important that council members understand and uphold the requirements of the Act, which are in place to promote good governance in municipal decision making.

The Municipality replied that they disagreed, as "[U]pon a strict interpretation …" of the ***Act***, Ms. Cox was disqualified, and the Court application sought declaratory relief to "merely confirm an existing legal right of the Municipality." It has since acted accordingly, by refusing to allow Ms. Cox access to her equipment or computer portal as any Councillor is entitled to. In effect, she has been frozen from acting as Councillor for Ward 2 since May 2023.

[22] There is no evidence the Municipality responded to the concerns raised in the petition by the constituents, other than the Reeve deposing that such ratepayer information was "not relevant to this Application", nor was there provision in the ***Act*** for such consideration.

[23] Despite the disagreement between the Municipality and the Department of Municipal Relations as to the interpretation of relevant statutory provisions, there is no legislative mechanism for the Department to be a party to this action, and it did not seek to intervene.

[24] A final comment. I have set out the core facts. I decline to engage in an analysis of the "he said - she said" nature contained within much of the affidavit evidence, by attempting to put blame for the situation on Ms. Cox, or by her, to deflect that. This was unhelpful. The "who-is-to-blame" focus, primarily advanced by the Municipality, distracted mostly from what should have been key considerations arising from Ms. Cox's full-time job.

[25] To be clear, I have no doubt that when Council and Committee made changes to their schedules, and passed the disqualification resolutions in April and May, they knew Ms. Cox could not, because of her employment, attend meetings the way the Council or Committee set them up.

PARTIES' POSITIONS

[26] A fair reading of the Municipality's position in their brief is that Ms. Cox is to blame for the circumstances, including because she did not clearly articulate her inability to attend Council or Committee meetings during business hours and she did not take

steps to address that or formally seek leave to be absent. They say that given the modern interpretation of statutory instruments including the ***Act***, the Council and the Committee acted appropriately and correctly throughout. They ask the Court for declaration that she is disqualified from being a Councillor and that her seat is vacant. Finally, they also seek costs.

[27] Ms. Cox takes a diametrically opposed position respecting the legal considerations, because the Council and the Committee did not fairly or proportionally consider all the circumstances, especially her employment constraints; in effect it acted arbitrarily. It did not balance municipal democratic values, as she was excluded from serving as an elected official, and Ward 2 was prevented from having their chosen Councillor represent it.

[28] As a key preliminary point, the parties agree the Application and hearing is not a judicial review or an appeal of the Council's or the Committee's actions. They disagree whether this is a fresh hearing of the substantive matter, as opposed to a form of perfunctory declaration further to a unnuanced assessment of facts respecting s. 94(b).

THE *ACT*

[29] Municipalities are creatures of statute. Their authority and powers are derived from, and bound by, legislation. In this situation, only the ***Act*** is germane, no other.

[30] Relevant for this situation (as opposed to, for example, a conflict of interest allegation) are the following sections of the ***Act*** that address disqualification, resignation, vacancy, and court applications specifically for disputes of this kind:

> When member becomes disqualified
>
> 94(1) A member of a council is disqualified from council if he or she

> …
>
> b) is the councillor appointed to the committee of a local urban district under clause 112(1)(a) and is absent for the full duration of three consecutive regular committee meetings unless the absences are with the leave of the committee granted by a resolution of the committee passed at any one of the three meetings, a prior meeting or the next meeting following the third absence;
>
> Disqualified person must resign
>
> 95(1) A member of a council who is disqualified under this Act must resign immediately.
>
> Application to court
>
> 95(2) If the member of a council does not resign immediately upon disqualification, the court may, on application, declare the member to be disqualified and his or her position on the council to be vacant.
>
> Who may apply
>
> 95(4) An application for a declaration under this section may be made by the council or by 10 or more voters.
>
> Powers of court on application
>
> 95(6) After hearing an application under this section, the court may (a) declare the member to be disqualified and the member's position on the council to be vacant; or (b) dismiss the application.
>
> Effective day of resignation
>
> 104(2) A resignation is effective and a vacancy on the council occurs at the time the resignation is given to the chief administrative officer despite any other date set out in the resignation, and the resignation may not thereafter be revoked.
>
> (emphasis added)

ANALYSIS

[31] To my understanding, s. 94 and s. 95 have not previously been judicially considered. Other provinces have similar provisions, but not necessarily the same. No precedent neatly on point has been provided.

What is the Nature of the Hearing?

[32] Briefly, for the reasons that follow, I find that an application under s. 95(2) & (6) is a fresh hearing based on the evidence of the parties. I am to exercise judicial discretion to allow or dismiss the Application.

[33] First, I agree that Justice McCawley's comments in ***6901124 Manitoba Ltd. v. Rosser (Rural Municipality)***, 2017 MBQB 58, [2017] M.J. No. 96, are apt and properly frame statutory construction of the ***Act*** and the germane provisions:

> [14] To the extent that legislative interpretation applies to the issues here, the parties agree that the "modern" approach governs. Put simply, the words of the legislative text must be read in their ordinary sense harmoniously with the scheme and objects of the relevant *Act*, and the intention of the legislature. (See Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham: Lexis Nexis, 2014) at s. 2.6, p. 9). The court must therefore consider the legislative text, the legislative intention and whether the consequences of adopting the proposed interpretation is consistent with the norms that the legislature is presumed to respect.

[34] Second, the civil proceeding under s. 95(4) is specified as an "application for a declaration" to the Court of King's Bench. Claims for declaratory relief are usually cases of first impression or first instance, and the standard discretionary. I reiterate the parties agreed the hearing is not an appeal nor a judicial review of Council's decision.

[35] Third, there is nothing set out in the ***Act*** which narrows the scope of the hearing or a judge's exercise of discretion on this Application. Had the Legislature intended the Committee's decision to refuse a leave of absence, or Council's affirmation of that or it's decision to seek a judicial declaration, as an appeal based on a correctness standard, or a review based on a reasonableness standard, or in some other manner, it would have said so.

[36] Fourth, the scheme of the ***Act*** contemplates a fresh hearing not only because of the nature of the proceeding as just set out, but because s. 95(2) and (6) explicitly authorizes that the judge "may" either grant the declaration or dismiss the application. ***The Interpretation Act*** C.C.S.M. c. 180 applies to this ***Act***. Section 15 provides that "may" is permissive and empowering. Thus, the use of the term "may" in s. 95 presumes the court's power is permissive not mandatory. In this context, this means an exercise of discretion, based on the evidence and arguments.

[37] The Municipality relies on ***Lac La Biche (County) v. Bochkarev***, 2009 ABQB 400, for the proposition that the word "may" in similar municipal legislation was construed as imperative or mandatory because the context of the legislation inferred such. The Municipality says that case is analogous. I disagree.

[38] ***Lac La Biche*** examined the historical development of various provisions of the ***Municipal Government Act***, R.S.A. 2000, c. M026, in Alberta. It noted that historically the Alberta legislation (with a provision similar to Manitoba's s. 95) was interpreted in ***Re Buzunis***, [1974] A.J. No. 283 (Alta. C.A.), to mean that "may" was to be construed as imperative; based on a contrary intention gleaned from the context of the legislation. ***Lac La Biche*** explained:

> [23] Re Buzunis [1974] A.J. No. 283, a decision of the Alberta Supreme Court, Appellate Division examined the then s.32(2) of the MGA [which later became s.32(3)] and determined that:
>
> > in applying the principles outlined in the cases therein referred to ... the clear intent and purpose of the statute requires the word "may" as used in s. 32 to be construed as imperative, and that consequently where in any proceedings under s. 2 it is clearly established that the circumstances entailing disqualification exist, and which proceedings in my view are designed only to establish by appropriate means of proof that such circumstances do exist, the Court is obliged to make the declaration of disqualification in such proceedings.

I pause to note, in effect, this is the Municipality's position.

[39] For completeness respecting statutory construction and the word "may", is para. 26 in ***Lac La Biche***:

> [26] Sullivan quotes Dickson C.J. in ***R. v. S. (S.)*** [1990] S.C.J. No. 66 for the proposition that the use of the word "may" implies discretion, but it does not preclude obligation (Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (LexisNexis Canada Inc, 2008) at 71). She goes on to state that "the cases show that the *Interpretation Act* provisions respecting "may" create a presumption, not a rule. This is in keeping with the provision found in most *Interpretation Acts* that say its provisions [in this case that "may" is permissive] apply to all legislation unless a contrary intention appears."

I take no issue with these comments as matters of general statutory interpretation.

[40] In addition, I am cognizant ***The Interpretation Act*** means the word "may" in s. 95(6) is permissive unless "a contrary intention appears" in the ***Act***. This provision is very similar to the contrary intention provision at play in ***Re Buzunis***. However, unlike ***Re Buzunis***, I find no similar contrary intention to suggest that "may" in s. 95(6) is mandatory rather than discretionary.

[41] A closer look at ***Re Buzunis*** demonstrates its context was disqualification because of a pecuniary conflict of interest, as was jurisprudence it examined (see paras. 22 – 27). It was through the perspective of the cardinal rule that an incumbent must not, no matter the extent, place themselves in a position where they would have a private interest that the court found "may" to mean an imperative. The court reasoned a breach of the duty, arising out of a fiduciary or quasi-fiduciary relationship, was to be addressed without latitude. At para. 17, the court adopted dicta

from ***Wanamaker and Patterson,*** 1973 ALTASCAD 60 (CanLII), [1973] A.J. No. 46 that:

> … Throughout the years the courts have applied, and continued to apply, this principle with unabated rigour. No erosion of it, nor of its application, can, in my opinion, be permitted if confidence is to be maintained in the electoral process in democratic institutions. Integrity in the discharge of public duties is and will remain of paramount importance, and when the question of private interest arises, the court will not weigh its extent nor amount in determining the issue. … If there has in fact been a breach, the prescribed consequences must follow.

Critically, the current legislative scheme in Manitoba for disqualification of elected council members for conflict of interest is different from that which I understand was in place 50 years ago in ***Re Buzunis***.

[42] The Manitoba criteria for disqualification in s. 94 does not include conflict of interest. Rather, for such issues, ***The Municipal Council Conflict of Interest Act***, C.C.S.M. c. M255, comes into play. As may be expected, arguably, it is more a rigorous scheme than for s. 94 types of disqualification. Although, even in this legislation, there is a legislated safety valve to allow a judge not to declare a council vacancy for an unknowing or inadvertent breach of conflict.

[43] I am not convinced, but for the subject matter involving a pecuniary conflict of interest, that the court in ***Re Buzunis*** would have come to the same broad conclusion as it did. I would not come to the same conclusion. Missing meetings is not the same class of offence as conflict of interest. ***Re Buzunis*** has not been adopted before in Manitoba, and I would not do so in this instance.

[44] Fifth, critically, s. 94 addresses disqualification in nine distinct ways, covering a multiple of potential fact scenarios which imply not only first-instance hearings, but that a judge exercise judicial discretion.

[45] Finally, s. 6 of ***The Interpretation Act*** requires the ***Act*** be interpreted as remedial and given the fair, large and liberal interpretation that best ensures the attainment of its objects. In this respect, processes of disqualification, resignation and vacancies are distinct but interrelated. The scheme is as follows:

- a council member is deemed disqualified on grounds under s. 94. There is no definition of disqualified or disqualification in the ***Act***. "Disqualified" commonly means that someone is ineligible or stopped from doing something because they are unsuitable or have done something wrong;
- importantly, in this instance, the Committee's role (and by extension Council's) is limited to consider excusing Ms. Cox's disqualification by granting leave for one or more of her absences (s. 94(1)(b)). If it grants leave, i.e. excuses her, she is not disqualified. If it does not, as here, then she remains disqualified;
- disqualification itself does not trigger a vacancy or by-election. A vacancy is necessary to trigger a by-election, as the case may be (s. 105(1));
- the only two prescribed ways a vacancy occurs for a s. 94 disqualification is if the member resigns (s. 104(2)) or if a court declares a vacancy (s. 95(6)(a)). Neither a council nor a municipality's CAO has the authority to declare a vacancy;
- section 95(1) requires a disqualified member to resign immediately. That may happen without a council doing anything, if the member voluntarily accepts the disqualification, or once leave has been refused. The significance of a

resignation is to trigger, to make it clear, that the member's seat is vacant (s. 104);

- obvious from the s. 95 court procedure, the ***Act*** contemplates situations where a member will not resign; in other words, where there is a dispute. In such cases, a court hearing must result, but only if the council pursues it – they may choose not to. The court will then consider the matter afresh and determine whether to declare the member disqualified and the member's position vacant, or dismiss the application; and it follows that,
- if no vacancy results (because the member does not resign or the court dismisses the application), the councillor remains a member of council for the balance of the term of office, with all the attendant rights and responsibilities as a duly elected representative.

[46] In construing the scheme of the ***Act*** as I do, I recognize there may be certain gaps in the legislation. All in however, I consider this construction as consistent with jurisprudence such as quoted at para. 14 herein from the ***Rosser*** decision and the remedial, fair and liberal construction required by s. 6 of ***The Interpretation Act***. Coincidentally, it also aligns with the Government's understanding, as set out in the Deputy Minister's May 31, 2022, letter to the Municipality.

Should Ms. Cox be Declared Disqualified and Her Position Declared Vacant?

[47] For the following reasons, I decline to deem Ms. Cox disqualified and declare her position vacant. Pursuant to s. 95(6)(b), I dismiss the Application.

[48] First, I recognize that Ms. Cox missed three consecutive Committee meetings, which triggered a deemed disqualification. However, critically, I have no doubt the absences were not a matter of neglect, irresponsibility, or intention to flout her obligations to attend meetings. I also have no doubt that the Reeve in particular, as leader of the Municipality and a key member of the Committee, was fully aware at the time the meeting schedules were changed, that Ms. Cox would have difficulty, if not be prevented, from fully attending the meetings. With those changes, it should have been clear she was bound to fail.

[49] Second, the Reeve deposed that Council changed its schedule, as did the Committee, to what works best for the majority. I find this surprising.

[50] I do not accept as valid the bold statement that the schedule change was made to convenience most members. It appears that Ms. Cox was either the only representative, or one of few, that was employed full-time by an independent employer. The Municipality submitted that a few other members of Council were also full-time employees, even though they worked for themselves in businesses they owned. The degree of flexibility they have, being their own boss, is in no way equivalent to the lack of flexibility Ms. Cox had. It was disingenuous to offer this excuse.

[51] Ms. Cox faced a real and honest dilemma that many citizens would similarly face with their employers; she was prepared to take unpaid time off work, but her employer was not able to grant that. She was stuck.

[52] Further, I find it was reasonable for her to have believed that in seeking election as a Councillor, she would have been able to properly represent constituents, regardless

of her work commitments. She had 12 years' experience doing so as a School Board Trustee, and the Municipality's Council schedule had been alternating 9:30 a.m. and 5:30 p.m. meetings during the previous four-year term. While the Committee work is important, its time commitment was not overly onerous. It was objectively, and subjectively for Ms. Cox, sound to assume flexibility would be shown in setting a schedule to facilitate elected members to attend most meetings, or to excuse those who had valid reasons for missing a meeting. The Municipality points out that Ms. Cox was legislatively mandated to be a member of the Committee and therefore she should not be excused from absences. In my view, this should be considered differently; as she was the only legislatively mandated member, it was even more important to help her - which could easily have been done.

[53] The previous Council schedule had worked for the last four years. There is no overriding reason why it could not reasonably continue, if only to facilitate the need of one of its members. Similarly, there is no reason that, for example, the Committee meetings could not have taken place over the lunch hour. In all instances, remote video participation by a member could easily be arranged. Ultimately, I find the Municipality, with the Reeve's leadership, as head of Council and an influential member of the Committee, adopted an obstinate posture. As the Reeve conceded, "she had to decide between her job and fulfilling the duties of a councillor".

[54] Third, regardless of whether there was a formal request by Ms. Cox for leave to miss meetings, clearly it was a live issue. This is not an excuse for the Committee and Council to proactively determine she should not be granted leave. Curiously, they did

not even entertain the possibility of excusing her from one or more Committee meetings. The Municipality and Committee either knew, or it should have been blatantly obvious, that Ms. Cox wanted to participate and did not want to quit her role as a Councillor. I reject any assertion to the contrary.

[55] Finally, there does not appear to have been any consideration that Ms. Cox was the voters' elected representative. It was very important, if not paramount, to at least attempt to make arrangements for her to fulfill that task. Moreover, Council had the option not to push the issue to court. They had the option, indeed the obligation, to attempt to work something out with Ms. Cox, with or without a mediator.

[56] Any council, or committee, has the responsibility to all voters to work with elected representatives to assist them in fulfilling their obligations to the voters and the municipality. It is very much a collaborative effort recognizing various constraints on various individuals and organizations. A municipality cannot, in a situation such as this, in effect, obstruct a councillor and disenfranchise voters, by taking actions it knows, or should reasonably know, will preclude the elected representative from fulfilling their function. The Supreme Court of Canada in ***Prud'homme v. Prud'homme***, [2002] 4 S.C.R. 663, commented at para. 16:

> 16 Elected municipal officials are the leading players in municipal democracy. They are chosen by the residents to look after the community's interests; they take on a variety of responsibilities, some of which are provided by law and others of which are inherent in the nature of their position. Because their office is an elected one, municipal officials are accountable primarily to their constituents if they are unable to meet the demands of their position. …

[57] Generally, communication, collaboration and compromise are hallmarks of good governance; here the Municipality failed miserably.

[58] Just because the Municipality believed it had a legal right to act as it did, does not mean it was right to do so.

CONCLUSION

[59] The Application is dismissed. Ms. Cox remains an elected member of Council with all such rights and responsibilities.

[60] Unless costs to Ms. Cox are agreed by the parties, an appointment for me to set costs should be made within the next 60 days.

_____ J.