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October 22, 2025

Township of Springwater
2231 Nursery Road
Minesing, ON L9X 1A8

Attention: Jennifer Marshall, Clerk

Dear Mayor Coughlin and Members of Council:

RE: Opinion Regarding Judicial Review of the exercise of Strong Mayor Powers pursuant to Part IV.1 of the *Municipal Act, 2001,* S.O. 2001, c. 25
Barrie Annexation Proposal
Our File No. 33222-0002

ISSUE:

You have asked us to outline the potential legal avenues that may be available to challenge or seek review of the exercise of the Strong Mayor Powers pursuant to Part VI.1 ("**Strong Mayor Powers**") of the *Municipal Act, 2001,* S.O. 2001, c. 25 (the "**Act**") by the Mayor of the Township of Springwater (the "**Township**") to facilitate the City of Barrie's ("**Barrie**") Annexation Proposal (the "**Barrie Annexation Proposal**").

The request arises in the context of differing views among members of Council as to the lawfulness and appropriateness of the exercise of the Strong Mayor Powers, and whether that exercise ought to be the subject of legal proceedings.

This document has been prepared for the purpose of outlining the potential legal avenues that may be available in respect of the exercise of the Strong Mayor Powers. It is being circulated to all members of Council, including those who may support or oppose the pursuit of any such relief. Given the range of views among recipients, and in recognition that this document may ultimately be reviewed by parties with divergent interests, it does not constitute a legal opinion on the merits, prospects, or advisability of any particular course of action. No legal analysis

or strategic assessment has been included, so as to avoid providing either side with a roadmap to potential success or defeat in prospective proceedings.
The purpose of this document is purely to identify and describe in neutral terms the types of judicial review or litigation options that may, as a matter of law, be open for consideration.

FACTS AND ASSUMPTIONS:

For the purposes of providing this opinion, we have relied on the following facts and assumptions which were provided by you or which we have concluded from documents we have reviewed which were supplied by you. If any of the facts set out below are different, then it is possible that the conclusions in this opinion would also be different.

- In June 2024, the Minister of Municipal Affairs and Housing assigned the Office of the Provincial Land and Development Facilitator to work with the City of Barrie (the "**City**"), the Township of Oro-Medonte ("**Oro-Medonte**"), the Township of Springwater, and the County of Simcoe (the "**County**"), to assist the municipalities in developing a mutually acceptable approach to enable growth in the area.
- Through the facilitated process, Hemson Consulting Ltd., was jointly retained by the municipalities to prepare a Land Needs Analysis. The Land Needs Analysis projects residential land needs to the planning horizon year of 2051, while the employment land needs are evaluated based on a 2061 horizon.
- On May 7, 2025, at the regular meeting of Council, the Mayor exercised the Strong Mayor Powers by proposing and requiring a vote on By-law 2025-042. By-law 2025-042 was passed by Township Council and enacted the following:
    1. That the Mayor be authorized and directed to engage in direct discussions with the City of Barrie and Province in order to expedite an economical, mutually satisfactory outcome and bring back and offer of agreement to Township Council for consideration in an open meeting; and
    2. Notwithstanding any previous resolutions regarding the Barrie Boundary Discussions, this by-law shall take precedence.
- On May 15, 2025, the Mayor exercised the Strong Mayor Powers and effected Mayoral Direction MDIR-2025-001, which directed Township staff to perform all duties, as required, to facilitate the discussions with the City of Barrie and Province regarding the proposed boundary adjustment.
- On September 3, 2025, at the regular meeting of Council, the Mayor exercised the Strong Mayor Powers by proposing and requiring a vote on By-law 2025-068. By-law 2025-068 was passed by Township Council and enacted the following:
    1. That the Mayor be authorized to include cross-border servicing for the Bayfield Street corridor in discussions with the City of Barrie and the Province of Ontario regarding the Barrie Boundary Proposal to meet the Province's deadline of September 30, 2025 for a framework agreement.

2. That Confirmatory By-law 2025-053 dated July 2, 2025 be revoked, in part, as it applies to resolution C266-2025 and that the remainder of Confirmatory By-law 2025-053 remain in effect.
3. That notwithstanding any previous resolutions regarding cross-border servicing for the Bayfield Street Corridor in the Barrie Boundary Discussions, this by-law shall take precedence.

POTENTIAL LEGAL AVENUES:

I. Application to Quash

The *Municipal Act*, 2001, S.O. 2001, c. 25 (the "***Act***") includes an explicit mechanism to challenge municipal by-laws to the courts. In particular, section 273 of the *Act* provides that upon the application of any person[1], the Superior Court of Justice may quash a by-law of a municipality in whole or in part for illegality. Section 273(2) of the *Act* clarifies that in this context, "by-law" includes an order or resolution. An application to quash brought under this section must be commenced no later than 1 year after the impugned by-law was passed.[2]

Section 272 of the *Act* states that by-laws which are passed in good faith under any *Act* shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the by-law. As a result, a by-law may only be set aside for unreasonableness where bad faith has been demonstrated. A reason a by-law may be found to have been enacted in bad faith is "… where the council acted unreasonably and arbitrarily and without the degree of fairness, openness and impartiality required of a municipal government."[3]

However, a finding of illegality can support quashing a by-law without bad faith. A finding of illegality can be supported in a number of ways. This includes:

- where a by-law was passed in furtherance of an improper motive or object, for example where a by-law is passed to advance a purely private as opposed to public interest; or,
- to violate contractual rights.

Municipalities are creatures of statute and derive their authority and powers entirely from legislation. In other words, municipalities do not have any inherent legislative authority. Therefore, any by-law that a municipality passes must be authorised by enabling legislation. Where a by-law is found to be "ultra vires" or beyond the powers of the municipality, a finding of illegality can also be made out.

[1] The words "any person" have been narrowly construed by the courts to mean "any person who has standing under the common law relating to standing." See: *Galganov v. Russell (Township),* 2012 ONCA 409, 350 D.L.R. (4th) 645 (Ont. C.A.), at para. 15.
[2] *Municipal Act,* 2001, S.O. 2001, c. 25, s. 273(5)
[3] *Minnow Lake Restoration Group Inc. v. Sudbury (City)* 2022 ONSC 4084, 2022 CarswellOnt 9981, at para. 40

Similarly, where a by-law was passed in a manner that did not properly follow statutorily prescribed conditions or requirements, such by-law will also be found to be illegal.

Municipalities are afforded considerable deference and the courts will be reluctant to interfere with, scrutinize, or overturn decisions of municipal Councils that are otherwise undertaken within the jurisdiction of a municipality.[4]

Where an individual seeks to challenge a municipal by-law and there are material facts in dispute, proceeding by way of an application to quash under section 273 of the *Act* may be appropriate.

Section 273(4) of the *Act* allows applicants to seek an interim order, similar to an injunction, that nothing be done under the impugned by-law until the application is disposed of. In *Valastro v. London (City)* the Ontario Superior Court found that the burden that an applicant must meet when seeking an order under that subsection is no different than an ordinary request for injunctive relief and is subject to the same test.[5] The test for obtaining an injunction established by the Supreme Court of Canada is discussed in detail below.

II. Judicial Review

Another potential avenue to challenge the exercise of the Strong Mayors Powers in relation to the Barrie Annexation Proposal is an application for judicial review filed with the Divisional Court[6] pursuant to the *Judicial Review Procedure Act*, R.S.O. 1990, c. J1 ("JRPA").

Judicial review is a mechanism to hold administrative decision makers accountable when they exercise powers vested in them by statute. Given that municipalities are creatures of statute, the decisions of municipal councils, including the decision to pass by-laws, are potentially subject to judicial review.

Although the Supreme Court of Canada has confirmed that judicial review is not limited to "exceptional circumstances", it is a discretionary remedy and the availability of a statutory right of appeal or other appropriate alternative remedy may weigh against a court exercising its discretion to consider such an application.[7]

An application for judicial review must ordinarily be made no later than 30 days after the date the decision for which judicial review is being sought was made, however, the court has discretion to extend the time for making an application if it is satisfied that there are apparent grounds for relief and that no substantial prejudice or hardship will result to any person affected by reason of the delay.[8]

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[4] *Nanaimo (City) v. Rascal Trucking Ltd*. 2000 SCC 13 (CanLII), [2000] 1 SCR 342, 9 MPLR (3d) 1, at para. 35
[5] *Valastro v. London (City)* 2013 ONSC 598, 2013 CarswellOnt 1119
[6] An applicant may be made to the Superior Court of Justice with leave of a judge thereof, where the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice. See: *Judicial Review Procedure Act,* R.S.O. 1990, c. J1, subsections 6(1) and 6(2).
[7] *Yatar v. TD Insurance Meloche Monnex,* 2024 SCC 8, 2024 CSC 8, 2024 CarswellOnt 3407;
[8] *Judicial Review Procedure Act,* R.S.O. 1990, c. J1, subsections 5(1) and 5(2)

The courts have observed that if a party wishes to avail itself of judicial review and an application to quash pursuant to section 273 of the *Act* with respect to the same by-law, the proceedings should be commenced at the same time.

Through a judicial review, an applicant can seek a variety of orders from the court, including a *mandamus*,[9] *prohibition,*[10] or *certiorari*[11]. Actions for a declaration or injunction or both may also proceed as a judicial review pursuant to the JRPA.

Following the Supreme Court's direction in *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65, 2019 CSC 65, the standard to be applied by the court in considering a judicial review is presumptively one of reasonableness, even when a court is reviewing a decision maker's interpretation of its authority or enabling statute or whether the decision maker properly exercised its jurisdiction in making the decision in question.[12]

The reasonableness standard requires the court to look at the justification, transparency, and intelligibility within the decision-making process in relation to the factual and legal constraints that bear on the decision and whether the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law.[13] In such cases there may only be one reasonable interpretation open to the decision maker but that does not elevate the standard of review to one of reasonableness. The standard of review of reasonableness is a deferential one that will depend on the nature of the decision being made and whether the administrative decision maker was required to give reasons. In cases where no reasons are required, the court may look to the record as a whole to serve as reasons. This can include "debate, deliberations, and the statements of policy that give rise to the by-law."[14]

An administrative decision may be reviewed on a standard of correctness in only one of 6 exceptional circumstances:

- Where the correctness standard is required by law;[15]
- Where statutory appeal mechanisms are in place;[16]
- Where constitutional questions are engaged;[17]
- Where general questions of law of central importance to the legal system as a whole are engaged;[18]

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[9] A *mandamus* is essentially an order of the court requiring the decision maker to do something.
[10] A *prohibition* is an order that prevents a decision maker from continuing to undertake an action or do something that the court has ruled is unlawful.
[11] A *certiorari* is an order from the court that renders the decision that was made by the decision maker that is under review of no force or effect.
[12] *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65, 2019 CSC 65, para. 68
[13] *Ibid,* para. 86
[14] *Ibid,* para. 137
[15] *Ibid,* para. 34-35
[16] *Ibid,* para. 36
[17] *Ibid,* para. 53
[18] *Ibid,* para. 53

- Questions related to the jurisdictional boundaries between two or more administrative bodies;[19] or,
- Cases when administrative bodies and courts have concurrent first instance jurisdiction over a legal issue in a statute.[20]

In addition to reviewing the merits of the decision itself, the courts are also empowered to review the process that was followed by a decision maker to determine whether there was a lack of procedural fairness and a denial of natural justice. The content of the duty of fairness will vary greatly from case to case and will depend on a number of different factors including the nature of the decision being made, the nature of the statutory scheme and terms of the statute pursuant to which the body operates, the importance of the decision to the individual or individuals affected, the legitimate expectations of the person challenging the decision, and the choices of procedure made by the original decision maker.

The court can also review the jurisdiction of the decision maker to make the decision in a judicial review. This would involve whether the decision-maker has been granted the authority or power to make the decision, and in some cases whether it took the steps necessary to make the decision at law.

III. Application for Interpretation pursuant to Rule 14.05(3) of the *Rules of Civil Procedure*

Where a dispute involves ambiguity in the exercise of a course of action, as in the exercise of the Strong Mayor Powers in relation to the Barrie Annexation Proposal, an Application to the Superior Court of Justice could be commenced under Rule 14.05(3) of the *Rules of Civil Procedure*.

This procedure allows a party to seek a court ruling without proceeding through the full litigation process typically required in an action. The application is brought by Notice of Application and decided based on affidavit evidence and legal submissions, rather than through oral testimony or a trial. The relief typically sought is a declaration of rights or obligations arising from the court's interpretation.

Courts are generally receptive to this process where the facts are either agreed upon or can be established through documents, and the only dispute concerns the meaning or legal effect of a written provision. This approach is particularly suitable where the matter turns on interpretation rather than contested evidence.

Timeliness and efficiency are key considerations, as applications are typically heard more quickly than actions and follow a streamlined process. They avoid lengthy pleadings, discoveries, and trial preparation, which significantly reduces cost and delay.

[19] *Ibid,* para. 63
[20] *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30

Applications are generally used where limited relief is sought, such as declarations or narrow equitable remedies. They are not intended to resolve broader claims for damages or allegations of breach, unless those issues clearly flow from the interpretation question.

Rule 14.05(3) applications remain a valuable option in appropriate cases, particularly where legal clarity is urgently needed to guide ongoing decision-making.

IV. Injunction

An injunction is a court order requiring a party to either refrain from a specific act or to perform a specific act. Injunctions are considered an equitable remedy, meaning they are rooted in fairness and are granted in circumstances where monetary compensation would be insufficient to address the harm in question.

Injunctions serve primarily to preserve the status quo and prevent irreparable harm while legal proceedings are ongoing. Since litigation can take months or even years to resolve, an injunction provides immediate, interim relief where waiting for a final judgment could result in damage that cannot later be remedied through financial compensation. This form of relief is particularly useful when the harm is ongoing or imminent and when financial damages, awarded later, would not fully restore the applicant's position.

Before granting an interlocutory injunction, Ontario courts apply the three-part test established by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*[21]:

1. There is a serious issue to be tried: The applicant must demonstrate a legitimate legal issue exists. This is a relatively low threshold and does not require proving the case will succeed, only that it raises a genuine question for the court to resolve.
2. The applicant would suffer irreparable harm if the relief sought is not granted: The harm must be such that it cannot be adequately remedied through monetary damages.
3. The balance of convenience favours granting the injunction: The court assesses which party would suffer greater harm if the injunction were granted or denied. The objective is to ensure fairness and minimize harm. Courts may also consider the public interest, depending on the nature of the case.

These factors are not considered in isolation; the court will weigh them together to determine whether, in all the circumstances, it is just and equitable to grant the injunction.

An injunction prevents harm or preserves rights while a matter is before the courts. In appropriate cases, it offers protection where waiting for final judgement would result in irreparable damage.

V. Estimated Costs

[21] *RJR MacDonald Inc. v. Canada (Attorney General)*, (1994) 111 DLR (4th) 385, [1994] 1 SCR 311

The legal fees for initiating or defending against any of these applications are likely to be in the range of $75,000 to $90,000. In the case of a motion for an injunction, the costs are likely to be in the range of $40,000 to $60,000 but there are likely to be some savings related to the main application/proceeding in the event that a motion for injunctive relief is filed.

Subject to rules related to standing, each application/process described above can be brought by any person.

Generally, the successful party to any of the above proceedings would be entitled to reimbursement of a portion of its costs from the unsuccessful party.

CONCLUSION:

In conclusion, there are several legal avenues available for challenging or seeking review of the exercise of Strong Mayor Powers in relation to the Barrie Annexation Proposal. Each of these options involves distinct procedural mechanisms, timelines, and strategic considerations.

One potential course of action is an application to quash a municipal by-law, order, or resolution on the grounds of illegality. Such applications must be brought before the Superior Court of Justice within one year of the by-law's enactment. The court will assess whether the by-law was passed in bad faith, for an improper purpose, or in excess of the municipality's statutory authority.

Alternatively, parties may pursue judicial review by filing an application with the Divisional Court. Judicial review is available to challenge administrative decisions made pursuant to statutory powers, and the standard of review typically applied is reasonableness. The court will examine whether the decision was justified, transparent, and made through a fair process.

Where there is ambiguity in the scope or application of the relevant statutory powers, parties may seek a declaration from the court under Rule 14.05(3) of the Rules of Civil Procedure. This process is particularly suitable in cases where the facts are not materially in dispute and where legal clarity is required in an expedited manner.

In circumstances where immediate relief is necessary to prevent harm, an injunction may be sought to preserve the status quo while legal proceedings are ongoing.

Please do not hesitate to contact the undersigned should you require anything further.

Yours truly,

LOOPSTRA NIXON LLP

[redacted]

Per: Christopher Lee

Appendix "A"

1. **Please provide information regarding a judicial review in the context of: who, what where, why, when… Who can initiate, who pays, who does the actual review, what information is reviewed – is it just the legal opinions or if worded properly is it the whole process from start to finish, what is the cost?**

   A judicial review of the exercise of the Strong Mayors Powers in relation to the Barrie Annexation could be initiated by any number of parties subject to meeting the requirements for standing set out in the *Municipal Act* and at common law. This could include the Township itself, individual Councillors at the Township, or a group of Councillors. It could also include private citizens or entities provided they meet the test for public or private interest standing in relation to the conduct/decision or By-law that is the subject of the request for judicial review.

2. **Where would the review take place i.e. Township/Courthouse/Tribunal?**

   The forum would be the Superior Court of Justice for an application under section 273 of the *Act* or Rule 14.03, or the Divisional Court for a judicial review.

3. **Why it would be necessary in this context?**

   It would be necessary in the event that a party sought to challenge the exercise of Strong Mayors Powers in relation to the Barrie Annexation. Without a repeal of the by-laws by the Township (which would render the question moot) the only way to review the exercise of these powers would be to refer the matter to the courts.

4. **When – how long would it take and would it/should it hold up annexation talks from continuing – would it be public vs private?**

   It is likely that the proceedings could take up to [*] months/years to conclude subject to any appeals that may be filed of lower court decisions. Annexation talks would be held up only in the event that a party were to successfully argue for an injunction from the courts. A judicial review could either be public or private.

5. **Due to Mr. Annibale advising repealing of (2) of the By-laws – is that something that should be looked at now – pause on all advancing of the Boundary discussions (until this review is completed) because this could be flawed from the beginning?**

If Council wished to repeal the two By-laws in question this would avoid the need for a judicial review as this would render the decisions that would be subject to such judicial review moot. This is something that is for Council to determine.

6. **If the Judicial Review finds that the Framework agreement was moved forward in an improper manner – what happens then to the agreement? Additionally, if the Strong Mayors Powers were found to be used inappropriately (partially) – what happens then and to the decisions that were made?**

This would depend in part on the particular details of the decision of the court. Likely the decisions that were made would not have been properly exercised and the framework agreement would not exist. Further, it is highly likely that there would be no authority to bring that agreement back to Council for consideration and it could never be of force and effect. The By-laws that are potentially subject to review did not authorize the execution or finalization of any agreements with the City of Barrie and any agreement was required to be brought back to Council in any event.

7. **Who is financially responsible for the cost of the review?**

A judicial review is an adversarial legal proceeding. The costs will be borne, at first instance, by the part(ies) who initiate the review and any party who may respond to the review. Based on the outcome of the litigation, costs may be payable to the successful party or parties.

8. Are the outcomes binding or just suggestive in nature?

Subject to any appeals to higher courts the outcomes would be binding on the Mayor and the Township.

9. **Can there be a monetary value tied to a binding decision?**

In this context it is unlikely that a court would award any damages however it is normal for the unsuccessful party to litigation to pay a portion of the successful party's legal costs. Generally this will be 50% of the costs incurred.

10. **If the decision in question is deemed inappropriate, what are the next steps?**

If the decision is overturned on an application under section 273 of the *Act*, the relevant by-law will be quashed and of no force and effect. If the decision is found to be unreasonable or procedurally unfair in a material manner then the decision is generally quashed or set aside and of no force and effect and sent back to the correct decision

maker to make a decision in accordance with law, including the reasons of the court. In some cases, the court will substitute its own decision for that of the decision maker.

11. If there are questions of inappropriate decision making and Council does not initiate a judicial review can the Township be held liable?

No, the Township would not be liable for not initiating a judicial review, however, if a private citizen or entity initiates a review and the actions of the Township were improper, this can lead to damages that can recoverable. In this case we are not certain what would support a claim for damages, and in our view it is unlikely that financial liability in this sense is a realistic risk to the Township if a review is not initiated.