

**CITATION:** Sri Lanka Canada Association of Brampton et al v.  
Corporation of the City of Brampton, 2025 ONSC 7093  
**COURT FILE NO.:** CV-24-00001878-0000  
**DATE:** 2025 12 23

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
SRI LANKA CANADA ASSOCIATION ) RATNAMALALA, Hasaka, for the  
OF BRAMPTON, ) Applicant  
HEWAGE, NEVILLE )  
)  
Applicant )  
)  
)  
**- and -** )  
)  
)  
)  
CORPORATION OF THE CITY OF ) MUIR, Christine and LOCKHART,  
BRAMPTON ) Sandy, for the Respondent  
)  
)  
Respondent )  
) PHILIPUPILLAI, Geetha for the  
) intervener (National Council of  
) Canadian Tamils (NCCT)  
)  
) **HEARD:** December 12<sup>th</sup>, 2025

2025 ONSC 7093 (CanLII)

**REASONS FOR JUDGMENT**

**LEMAY J**

[1] The Applicants in this case are challenging the decision of the Respondent, the City of Brampton, to build a monument known as the Tamil Genocide Monument (“TGM”) in Chinguacousy Park in Brampton. The monument was

approved by Brampton City Council in 2022, and construction is complete. The Applicants challenge both the City's authority to recognize a Tamil Genocide and the City's authority to construct the monument.

[2] The Applicants have raised a number of arguments in opposition to the City's decision. Some of those arguments include the fact that the City's decision to recognize a Tamil Genocide are *ultra vires* the powers of a municipality under the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), and/or that it interferes with their rights under sections 2 and 15 of the Canadian *Charter of Rights and Freedoms*. The Applicants also allege that the City has not complied with the *Planning Act*, R.S.O. 1990, c. P.13 ("*Planning Act*") and the *Building Code Act*, 1992, S.O. 1992, c. 23 ("*Code*").

[3] The City has brought a motion to strike the paragraphs of the Application that pertain to the *Code* and *Planning Act* violations. For the reasons that follow, the City's motion is granted. The Applicants' paragraphs in respect of the *Code* and the *Planning Act* violations are struck out without leave to amend.

## **Background**

### **a) The Parties**

[4] The facts set out below are taken primarily from the Applicant's pleadings and the affidavits of Dr. Hewage, as my ability to make findings of fact in this matter are limited, particularly in respect to the Rule 21 and 25 portions of the motion. The factual summary below is not final and is not intended to bind any subsequent judge hearing a motion in this matter.

[5] The individual Applicant, Dr. Neville Hewage, is a former Professor and Director of Research at the International Centre for Interdisciplinary Research in Law at Laurentian University in Sudbury. He has been involved in issues around human rights and civil liberties for some time.

[6] The Applicant, the Sri Lanka Canada Association of Brampton (“SLCAB”) is an organization working on ethnic harmony and the welfare of individuals with Sri Lankan heritage.

[7] The Respondent, the City of Brampton (“the City”) is the municipality where these issues arose. The park where the monument was built is part of some land owned by the City.

**b) The Monument and the Application**

[8] At a council meeting on June 8<sup>th</sup>, 2022, City Council approved a decision to proceed with the installation of the Tamil Genocide Monument (“TGM”) at Chinguacousy Park in Brampton. The park is, as I have noted, a City site.

[9] At a council meeting on November 1<sup>st</sup>, 2023, City Council approved a motion allowing the National Council of Canadian Tamils (“NCCT”) to lead the project constructing the monument with the assistance of some other related groups.

[10] Construction on the monument began in August of 2024. The site agreement between the City and the NCCT was finalized in September of 2024.

[11] There was a ceremony officially opening the monument that was held on May 10<sup>th</sup>, 2025. The monument is an approximately 2000 square foot structure, at least according to the Applicant’s materials.

**c) The Procedural History**

[12] The Applicants’ application was commenced in April of 2024 and amended in May of 2024. The original application had three principal grounds:

- a) The decision of the City interferes with foreign relationships, which are a Federal Crown prerogative. In other words, there is a division of powers issue under the *Constitution Act, 1867*.
- b) That the City's decisions to recognize a Tamil Genocide and to build the TGM are contrary to section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, which both sets out and limits the powers of a municipality.
- c) The City's decision is a violation of the rights of freedom of expression, freedom of association and equality under sections 2(b), 2(d) and 15 of the *Charter*.

[13] Once the application was brought and finalized on May 8<sup>th</sup>, 2024, a timetable was set out for the exchange of materials. The City's Responding Record was served and filed on July 26<sup>th</sup>, 2024. Among the points made in the City's materials was that the City was in the process of preparing the site agreement and included the minutes recording the by-law that approved the site agreement.

[14] The Applicants delivered a Supplementary Application Record and a factum on October 4<sup>th</sup>, 2024. The City delivered its responding factum on November 25<sup>th</sup>, 2024. At that point, the bulk of the materials for the Application had been served and filed.

[15] In December of 2024, the NCCT sought leave to intervene in the Application. On January 14<sup>th</sup>, 2025, Bloom J. granted the NCCT leave to intervene in this application over the opposition of the Applicants. The NCCT's leave application made it clear that neither party had filed the final site agreement with the City, partly because it was completed after the City's Responding Record was filed.

[16] On January 8<sup>th</sup>, 2025, the City advised that it would be serving and filing the final site agreement between the NCCT and the City. The City viewed this as a procedural step that was taken to ensure that the Court had a complete record. After receiving the City's supplementary materials, the Applicants served a Second Supplementary Motion Record containing a further Affidavit from Dr. Hewage. That Affidavit raised various issue in respect of the *Code* and the *Planning Act* that were not pled in the original Application. The City brought a motion to strike the Second Supplementary Application Record.

[17] On September 24<sup>th</sup>, 2025, the City's motion to strike the Second Supplementary Application Record came before me. For oral reasons given on the same day, I granted that motion. I found that the Second Supplementary Application Record advanced issues in respect of the *Code* and of the *Planning Act* that had not been raised in the original application. I found that the application was originally framed as a claim that the City had acted *ultra vires* its powers as a municipality and that the decision to recognize a Tamil Genocide was a violation of the *Charter* rights of the Applicants.

[18] Given that the Applicants had significantly expanded the scope of their Application in reply, I found that they had changed their legal and factual position in reply. I also found that they were splitting their case in a manner that would cause prejudice to the City. As a result, I struck out the Affidavit and the material that addressed the alleged violations of the *Code* and the *Planning Act*. The Applicants were given leave to amend on a tight timeline.

[19] The Applicant was also advised that, if a notice of constitutional question had not been served, then one should be served in accordance with the *Courts of Justice Act*, R.S.O. 1990. c. C 43. This notice was duly served on October 4<sup>th</sup>, 2025.

[20] I also advised the parties that, given the fact that the procedural motions were beginning to pile up in this case, I would case-manage the matter. A further case management hearing was convened on October 17<sup>th</sup>, 2025. At that time, I was advised that the City wished to bring a motion to strike the pleading under Rules 21 and 25 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. That motion was scheduled and heard before me as a case management judge.

### **Positions of the Parties**

[21] The City takes the position that this motion should be granted on the basis that the Applicants do not have public interest standing to advance the *Code* or *Planning Act* issues. The City notes that Dr. Hewage, the Affiant, does not have any expertise in these issues. The City also argues that the *Code* and *Planning Act* claims advanced by the Applicants are without merit and should be dismissed under Rules 21 and 25.

[22] The Applicants argue that this motion is improperly brought because it is an abuse of process and the issues should have been dealt with at the last hearing. In the alternative, they argue that the motion should be dismissed because the constitutional issues are interwoven with the *Code* and *Planning Act* issues. Finally, the Applicants argue that they should be given public interest standing to pursue the *Code* and *Planning Act* issues and that those issues are, on their own, justiciable issues.

### **Issues**

[23] The factums filed by the parties do not set out the same issues to be determined. However, on a review of the factums and the arguments, and after discussion with the parties, I am of the view that the following issues arise on this motion:

- a) Whether the fact that the City has brought two separate procedural motions is an abuse of process.
- b) Whether the *Building Code* and *Planning Act* issues are interconnected and must remain live issues until the Application as a whole is heard on its merits.
- c) Whether, if the *Code* and *Planning Act* matters are not inextricably intertwined with the rest of the Application, the Applicants have public interest standing to bring them.
- d) Whether the City's conduct, as pled in the Application, amounts to a justiciable violation of the *Code*, or whether it is plain and obvious that the *Code* arguments will fail.
- e) Whether the City's conduct, as pled in the Application, amounts to a justiciable violation of the *Planning Act* or whether it is plain and obvious that the *Planning Act* arguments will fail.
- f) If I find that any of the claims under either the *Code* or the *Planning Act* should be struck, whether leave to amend should be granted.

[24] I note that I confirmed this list of issues with the parties during the course of oral argument.

[25] Before analyzing the issues, I should address the Applicants' statement that the NCCT is a terrorist organization, a submission repeated on numerous occasions during submissions. This submission appears to be based on an order allegedly issued by the Government of Sri Lanka.

[26] I advised the parties that I was certainly not making any finding that the NCCT was a terrorist organization on this application, and certainly not on the

record I had. I am not at all certain that this Court has the jurisdiction to make such a finding in any event, or that this Court would make a finding based on orders or statements of a foreign government.

[27] That being said, the Amended Application specifically pleads that the NCCT is a terrorist organization and that the City has violated a UN Security Resolution by coming to an agreement with them. This allegation clearly belongs with the rest of the constitutional issues and will not be considered further on this motion.

[28] I will now begin my analysis of the issues by setting out the principles that apply to Rule 21 and 25 motions. I will then address each of the issues listed in paragraph 23 in turn.

### **The Legal Principles**

[29] The analysis of the various issues in this case is made more complex by the fact that I can consider some evidence in addressing some of the questions and am prohibited from considering evidence in addressing other questions. As a result, it is helpful to set out the legal principles at play in addressing the various issues.

[30] The question of abuse of process and of the interconnectedness of the *Code* and the *Planning Act* issues are questions that can be determined by looking at the case-law, the Application on its face and the procedural history of the matter.

[31] The question of public interest standing requires me to consider the materials filed by the Applicants, and particularly the qualifications of the Applicants' affiant, Dr. Hewage. I will deal with the test for public interest standing when I address that issue.

[32] This brings me to the tests under Rules 21 and 25. These Rules arise in dealing with the merits of both the *Code* and the *Planning Act* issues. As a result, it is convenient to set out those tests at this point.

[33] The City is moving under Rule 21.01(1)(b) to strike out a pleading that discloses no reasonable cause of action or defence. Under this Rule, no evidence is admissible. Further the Court will strike a claim only where it is “plain and obvious” that the claim has no chance of success: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980.

[34] A helpful summary of the principles applicable under this Rule is set out in *The JSL Trust v. Razor Logic Systems Inc.*, 2020 ONSC 3603:

[22] Further, the following principles are to be applied:

- a. The allegations in the Notice of Application are to be taken as true or capable of being proven unless they are patently ridiculous or incapable of proof;
- b. The Notice of Application is to be read generously, with due allowance for drafting deficiencies; and,
- c. The court should not at this stage of the proceedings dispose of matters of law that are not fully settled in the jurisprudence: see *Paton Estate v. Ontario Lottery and Gaming Corporation*, 2016 ONCA 458, 131 O.R. (3d) 273, at para. 12.

[23] The test for granting leave to amend pleadings that have been struck is whether it is possible for the pleadings to be fixed and whether the defendant would be unfairly prejudiced: see e.g. *Aristocrat Restaurants Ltd. v. Ontario*, 2003 CarswellOnt 5574 (Ont. S.C.), at paras. 85-86.

[35] Rule 21.01 can be applied to an application: *Carroll v. Toronto Dominion Bank*, 2021 ONCA 38, 153 O.R. (3d) 385 (C.A.), at paras. 4 and 5.

[36] Rule 25.11 permits the Court to strike all or part of a pleading, either with or without leave to amend, where the pleading:

- a) May prejudice or delay the fair trial of the action;
- b) Is scandalous, frivolous or vexatious; or,

c) Is an abuse of the Court's process.

[37] Under Rule 25.11, the Court will only strike out a claim in the clearest of cases, where it is plain and obvious that the claim cannot succeed: *Baradaran v. Alexanian*, 2016 ONCA 533, 3 C.P.C. (8th) 131 (Ont. C.A.), at para. 15.

[38] In *Carney Timber Company, Inc. v. Pabedinskas*, 2008 CanLII 63163 (Ont. S.C.), the court set out the following list of factors that are considered by the court on a Rule 25 motion (at para. 16):

- a fact that is relevant to a cause of action cannot be scandalous, frivolous or vexatious;
- a pleading that has no material facts is frivolous and vexatious;
- a pleading that is superfluous or can have no effect on the outcome of the action is scandalous, frivolous and vexatious;
- portions of a pleading that are irrelevant, argumentative, inserted only for colour or are bare allegations without material facts in support, will be struck as scandalous;
- a pleading that is purely argumentative will be struck out;
- a pleading that contains unfounded and inflammatory attacks on the integrity of a party, and speculative and unsupported allegations of defamation will be struck as scandalous and vexatious;
- a pleading may be struck on the ground that it may prejudice or delay the fair trial of the action where the probative value of the evidence would be outweighed by the time and effort involved and would seriously interfere with the fair and focused trial of the issues;
- striking a pleading on the ground that it may prejudice or delay the fair trial of an action is an exercise in discretion – the court must balance the added complexity of the pleading against the potential probative value of the facts alleged;
- pleadings that are replete with conclusions, expressions of opinion and contain irrelevant matters will be struck in their entirety; and
- pleadings that are clearly designed to use the judicial process for an improper purpose are an abuse of process – these include harassment and oppression of other parties by multifarious proceedings, the re-litigation of issues previously decided and the litigation of matters that have been concluded.

[39] More generally, frivolous actions are ones that are readily recognizable as being devoid of merit. A vexatious action is one taken to annoy or embarrass the opposite party, or one that is conducted in a vexatious manner: *Howell v. Cullen*, 2025 ONSC 1449, at para. 8.

[40] Finally, the Courts have noted that untested claims should not be dismissed at a preliminary stage, particularly where they raise serious questions: *Operation Dismantle v. The Queen*, [1985] 1 S.C.R. 441, at para. 51.

[41] With that background in mind, I will now address the specific issues that this motion raises.

**Issue #1 - Is the City's Conduct in Bringing Two Procedural Motions an Abuse of Process?**

[42] No.

[43] The Applicants argue that the City had a full opportunity to raise the objections in this motion in the first motion. The Applicants also argue that, since they were given leave to amend their Application, their pleading was therefore proper. Neither of these submissions have any merit.

[44] First, the City did not have an opportunity to raise the objections in this motion in the first motion. The first motion was brought (and granted) because the Applicant's Second Supplementary Affidavit raised the *Code* and *Planning Act* issues, which were beyond the scope of their Application as it was then pled and were only raised in reply. As a result, the materials in the Second Supplementary Affidavit were inadmissible.

[45] When the motion was granted, I permitted the Applicants to amend their pleading so that they could raise the additional issues if they chose to do so. My decision was not a guarantee that the Applicants would be permitted to pursue the *Code* or *Planning Act* issues. Put another way, neither the City nor the Court could comment on the propriety of a pleading that they had not seen.

[46] Having seen the pleading, the City is now entitled to argue that the pleading, as constituted, is not a proper pleading under Rule 21, Rule 25 or

because the Applicants do not have public interest standing to address the *Code* or *Planning Act* issues as well as the question of whether the causes of action, as pled by the Applicants, are sustainable. These are separate issues from whether the Second Supplementary Affidavit was beyond the scope of the Application before it was amended. For these reasons, I reject this argument.

[47] I should also briefly address the Applicant's argument that, because the site plan is part of the City's materials, it would be unfair for all of the Applicant's materials in the Second Supplementary Record to be excluded. The site plan is included for completeness, as it provides detail about the type of structure that has been built. If the *Code* and *Planning Act* issues are not in dispute, then there is no unfairness to the Applicant in not excluding all of the material in the Second Supplementary Affidavit, as it is superfluous.

**Issue #2 - Are the *Code* and *Planning Act* Issues Interconnected With the Constitutional Issues?**

[48] The constitutional issues in this case fall into two categories. First, there is a division of powers question. Specifically, whether the City, as a creature of the Province of Ontario, improperly entered into federal jurisdiction by its conduct. The Applicants have provided case-law that supports their position that the division of powers question is a justiciable issue in this case. The City did not dispute that position.

[49] Then, there is a *Charter* issue. Specifically, whether the decision to build the TGM violated the section 2(b), 2(d) and 15 rights of the Applicants. Counsel for the Applicants argues that these are justiciable issues. The City does not disagree with that position either.

[50] However, the mere fact that the constitutional issues are justiciable does not make the *Code* and *Planning Act* issues integral to their determination. The

Applicants are correct to point out that, if they are successful on the constitutional challenge, then the approval of the TGM's construction was contrary to the constitution. However, that fact does not make the *Code* and *Planning Act* issues integral to the case. Those issues exist separately from the constitutionality of what the City has done.

[51] Counsel for the Applicants directs my attention to two unreported endorsements. One, from Dunphy J. (dated December 1<sup>st</sup>, 2021), contains the following passage:

I am HIGHLY dubious that a rule 21 motion offers anything like an efficient or expeditious rout to final resolution of the issues. This sort of application is highly likely to move on for appellate review regardless of the outcome. An intervening R14.09/21 application simply offers the prospects of two trips up the ladder instead of one with the added risk that an appellate court will find that it is unable to pronounce on the constitutionality question with the full development of constitutional context needed to accomplish that task. R 21 motions, or any tactical manoeuvre that can be read as 'heads I win, tails I try again' is rarely an efficient use of court or legal resources.

[52] I do not have any details about the case that Dunphy J. was considering. As a general matter, I agree with him that two trips up the ladder is not an efficient use of judicial resources. However, in this case there are two important observations that distinguish the case before Dunphy J. from the one before me. First, the constitutional issues can clearly be separated from the *Code* and *Planning Act* issues. Second, as will be seen, the *Code* and *Planning Act* issues are appropriately resolved at an early stage of litigation as there is no basis on which they can succeed.

[53] For these reasons, this argument is also rejected.

### **Issue #3 - Do the Applicants Have Standing?**

[54] There is no dispute that the Applicants have standing to raise the constitutional issues. However, the City argues that they do not have the standing

to raise either the *Code* or the *Planning Act* issues. In support of this assertion, the City points to the decision in *Canada v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524.

[55] The three requirements to establish standing are (*Downtown Eastside*, at para. 2):

- a) Whether the case raises a serious justiciable issue;
- b) Whether the party bringing the application has a real stake or a genuine interest in its outcome; and
- c) Whether the proposed application is a reasonable and effective means to bring the issues before the Court.

[56] These three requirements are not airtight compartments. Instead, they should be seen as “interrelated considerations to be weighed cumulatively, not individually, and in light of their purposes”: *Downtown Eastside*, para. 36.

[57] The question of what is a serious and justiciable issue is one which requires an examination of the pleading and of the statutory schemes of the *Code* and of the *Planning Act*. I will set out my analysis of those statutes and the pleading in my discussion of issues 4 and 5. For the purposes of my analysis of this issue, I will simply apply my conclusion that the claims under the *Code* and the *Planning Act* are unsustainable. As a result, there is no real justiciable issue.

[58] This brings me to the question of whether the party bringing the action has a real stake, or a genuine interest in the issue. In *Ontario Place Protectors v. Ontario*, 2025 ONCA 183, 175 O.R. (3d) 561 (C.A.), the Court noted (at para. 25):

[25] First, there is no doubt that the appellant has a genuine interest in the litigation. The bar is not high. A genuine interest is concerned with whether a person “has a real stake in the proceedings or is engaged with the issues they raise”: *Downtown Eastside*, at para. 43. The appellant is an organization that

includes a wide range of citizens and community groups, all of whom are deeply concerned with the Ontario Place redevelopment. If the appellant does not have a genuine interest in challenging the constitutionality of *ROPA*, it is difficult to see how anyone would. Although the appellant does not have a claim that is affected by the immunity provisions in *ROPA*, those provisions are integral to the redevelopment of Ontario Place and the appellant clearly has a genuine interest in that redevelopment.

[59] While the test for a real stake, or genuine interest, is not high, it requires some evidence that the Applicants have a special interest in the matter. Otherwise, any member of the public could sue over any decision, which is a concern that Cromwell J. identified in *Downtown Eastside*. In this case, there is no indication that Dr. Hewage has any knowledge of issues in respect of either land planning or of building standards. There is also no evidence that the SLCAB has any knowledge of these issues either. This lack of expertise raises concerns about whether the Applicants have a genuine interest in this issue, beyond that of any other resident of Brampton.

[60] Over and above the Applicant's lack of expertise, the general problem that they have in this case is that their challenge to the *Code* and *Planning Act* issues are not based on their constitutional interests, but rather on their interests as residents of Brampton who are concerned that the City is not putting this portion of Chinguacousy Park to what they view as a proper use. Part of the Applicant's argument is that a skating ring was originally supposed to go where the TGM ended up being built.

[61] Counsel for the Applicants argues that an application to the Courts is the only way for a party to challenge the City's decisions in respect of the use of City lands. Counsel argues that there should be a mechanism, beyond the ballot box, for disaffected citizens to challenge the City's decisions on what should be built on City lands even if there is no constitutional aspect to the complaints that the disaffected citizens have. I disagree.

[62] Ultimately, the decision of whether to build a skating ring, a park, or a bandstand, or to leave the land as parkland, is a decision of City council and is based on the needs and desires of the residents, as expressed by the members of council. Permitting a small group of residents to challenge every decision of a City council, even when it has no more impact on them (or no more unique impact on them) than the average resident of Brampton would be substituting the judgment of the Court for that of elected officials. It would be trenching on Council's legislative role.

[63] My comments on this point focus on the Applicants' standing to bring a challenge under the *Code* and the *Planning Act*. Under those provisions, the Applicants are in no different position than any other resident of Brampton. I note that the conclusion is very different in respect of the constitutional issues that have been raised. In respect of those issues, it is not disputed that the Applicants have standing and that part of the Application will continue. Put another way, the constitutional issues raise the possibility that the City (as a state actor) has violated the rights of the Applicants. They are of a different character from the *Code* and *Planning Act* issues.

[64] Finally, there is the question of whether an Application is a proper way to bring these issues before the Courts. The question is not whether there is a better way to bring these issues before the Court: *Ontario Place*, at para. 26. Counsel for the City observed that, in respect of the *Planning Act* issues, if there was a basis for an appeal it would be taken to the Ontario Land Tribunal ("OLT") first. As a result, an Application is not a proper way to bring the *Planning Act* issues before the Courts. On this point, I would note that the conclusion might be different if the other factors supported granting public interest standing as there is room to bring a *Code* challenge to this Court.

[65] For these reasons, the Applicants do not have standing to advance the *Code* and *Planning Act* issues.

[66] I now turn to the detailed analysis of whether the *Code* and the *Planning Act* provisions can survive the City's challenges to them under Rules 21 and 25 of the *Rules*.

#### **Issue #4 - The Code Arguments**

[67] There was originally some dispute as to whether a building permit had actually been issued in this case. When the motion was heard, it was common ground that a building permit had not been issued in this case. However, the Applicants allege that the City and the NCCT have breached sections 8(1) and 8(2) of the *Code*. Those provisions set out the fact that no person shall construct or demolish a building unless a permit has been issued by the Chief Building Official (s. 8(1)) and that the Chief Building Official shall issue a permit unless certain exceptions are established (s. 8(2)).

[68] The City advances three arguments as to why there cannot be an actual violation of the *Code* in this case:

- a) The TGM is not a building, and there is no pleading from the Applicants that it is a building.
- b) The allegations are not sufficiently particularized.
- c) The challenge to the decision to issue, or not issue, a building permit is out of time.

[69] I will deal with each argument in turn.

#### ***The TGM is Not a Building***

[70] The definitions section of the *Code* sets out the following definition of a building:

“building” means,

- (a) a structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,
- (b) a structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto,
- (c) plumbing not located in a structure,
  - (c.1) a sewage system, or
- (d) structures designated in the building code

[71] In argument, I reviewed this list with counsel for the Applicants. The only portion of this definition that could possibly apply to the TGM is subsection (a), which speaks to a structure of greater than ten meters with a wall, roof and floor and the accompaniments. Nothing is pleaded that would allow me to conclude that the TGM is actually a building within the meaning of the *Code*.

[72] As a result, I am of the view that, as a question of law, the *Code* does not apply to the TGM, and the Applicants’ claims of violations of the *Code* cannot succeed. In other words, these allegations cannot survive scrutiny under either Rule 21 or Rule 25.

[73] I am fortified in this conclusion by the fact that the limited case-law on the issue of what is a building supports the view that not every structure will be a building, and that not every structure is caught by the *Code*: *FNX Mining Company Inc. v. City of Greater Sudbury*, 2018 ONSC 4912 at para. 32.

### ***The Lack of Particulars***

[74] The City argues that the Applicants have failed to particularize the specific provisions that have been violated by the City's decision in this case. The Applicants point to the fact that they have pled sections 8(1) and 8(2) of the *Code* as well as various provisions of the *Planning Act* to demonstrate that they have provided sufficient particulars.

[75] The problem with the Applicant's argument is that it is difficult to understand what, precisely, they claim is wrong with this decision other than that the construction of the TGM was in violation of the *Planning Act*. However, given that these claims cannot survive because there is no basis to conclude that the TGM is a building, it is not necessary to inquire into this issue further.

### ***The Limitations Issue***

[76] In the alternative, the City argues that the Applicants were required to bring any appeal of the decision to not issue a building permit within twenty (20) days, and that the Applicants missed this time limit without reasonable explanation. The City may very well have strong arguments on this point. However, this is not an issue that can be determined on a Rule 25 or a Rule 21 motion. It will require evidence, particularly because the Court may grant an extension if there are reasonable grounds to do so.

### ***Conclusion on the Building Code Issues***

[77] For the foregoing reasons, it is plain and obvious that the *Code* claims will not succeed because there is no basis to conclude that the TCM is a building. Therefore, these allegations shall be struck.

### **Issue #5 - The *Planning Act* Arguments**

[78] The Applicants argue that various portions of the *Planning Act* have not been complied with. They also argue that the *Clean Water Act, 2006*, S.O. 2006,

c. 22 (“the CWA”) has not been complied with. There are no specific provisions of the CWA that the Applicants point to as having been violated. Instead, they allege that the City’s official plan states that any development in a significant groundwater area must be assessed under the CWA or submitted as a watershed plan or equivalent study. The Applicants allege that Chinguacousy Park is in a key hydrological area, and that the assessment under the CWA has not been done. The Applicants also allege that the failure to conduct a proper site assessment under the CWA violates the *Code* and the *Planning Act*.

[79] In respect of the *Planning Act* more generally, other than pointing to a claimed violation of section 41(1), the Applicants summarize the alleged violations in paragraph 54 of their amended Application. It reads as follows:

(54) The Planning Act sets out rules for land use planning in Ontario. Brampton Plan represents the Official Plan for the City of Brampton and has been prepared under the authority of Part III of the Planning Act, R.S.O. 1990, c. P.13. It contains goals, objectives, and policies established primarily to manage and direct the physical change and the effects on the social, economic, and natural environment of the City. The Brampton Plan needs to meet the legislative requirements of the Act. Constructing a TGM without an evaluation or proper evaluation under the Region of Peel Official Plan and City of Brampton Official Plan contravenes Part III of the Planning Act, R.S.O. 1990, c. P.13.

[80] Section 41(4) of the *Planning Act* prohibits any person from undertaking any development in an area designated under subsection 41(2) unless the authorized person in subsection (4.0.1) or, after an appeal the Ontario Land Tribunal (“OLT”), has approved the plans and/or drawings, as described in section 41(4).

[81] When section 41 is read as a whole, it indicates that development in an official plan area that is designated as a “site plan control area” by the City council cannot take place without the approval of an authorized person or of the OLT. The authorized person is someone who has been appointed by the municipality.

[82] Therefore, assuming without deciding that this property is in a site plan control area as asserted by the Applicants, their arguments under the *Planning Act* cannot succeed for two reasons. First, it would be a municipal official (or Council) who would approve any site plan. As a result, it is not possible to sustain a claim that the City has improperly approved a project under section 41 of the *Planning Act*.

[83] Second, even if the City has not strictly complied with the *Planning Act*, section 63 of the *Planning Act* states:

**63** If the Minister, the council of a municipality, a planning board or the Tribunal exercises any authority under this Act, including giving an approval, an exemption from an approval or a consent, the provisions of this Act that relate to or are requirements for the exercise of the authority shall be deemed to have been complied with upon the decision becoming final.

[84] Section 66 extends this deemed compliance to delegated decisions.

[85] From this section, it is clear that even if the City did not strictly adhere to the provisions of the *Planning Act* or of the official plan, these sections act to provide the City with the authority to make the decisions that it has made. As a result, even if I accept the Applicants' allegations as true, there is (and can be) no violation of the *Planning Act*. As a result, these pleadings are struck out under both Rule 21 and Rule 25.

[86] I should also address the claim that this is an innovative claim and that it should not be struck merely because it is untested. However, the legislation provides a complete answer to the claim. The fact that it is an "innovative" claim does not change the fact that it cannot succeed. As a result, the *Planning Act* paragraphs are struck out.

**Issue #6 - Should Leave to Amend be Granted?**

[87] On the subject of whether leave to amend should be granted, I reviewed the description of the law as set out in *Shillingford v. 9706151 Canada Inc et. al.*, 2025 ONSC 2840, at paras. 51 to 53 during the hearing. The parties agreed that this was the law that I should apply when determining whether to grant leave to amend. Those paragraphs state:

[51] The law on whether leave to amend a Statement of Claim should be granted is set out in *South Holly Holdings Ltd. v. The Toronto Dominion Bank*, 2007 ONCA 456. In that decision, the Court stated (at para. 6):

[6] We also agree with the Bank that, in the circumstances, it should have been granted leave to amend its third party claim. A litigant's pleading should not lightly be struck without leave to amend. To the contrary, leave to amend should be denied only in the clearest of cases. This is particularly so where the deficiencies in the pleading may be cured by an appropriate amendment, as in this case. Importantly, on this record, there is no evidence of prejudice to the respondents if leave to amend is granted.

[52] The Court hearing the motion has an obligation to articulate the reasons why leave is being denied: *Tran v. University of Western Ontario*, 2015 ONCA 295 at para. 27.

[53] However, leave to amend should be denied where the pleading contains a radical defect such that it cannot be improved by amendment, or if there is no reason to suppose that the party can improve their case by amendment. *Net Connect Installation Inc. v. Mobile Zone Inc*, 2017 ONCA 766 at paras 8-9, *Davies v. Clarington (Municipality) et. al.*, 2009 ONCA 722 at paras 28-33.

[88] The Applicants also point out that the rules granting parties leave to amend are designed to ensure that matters are adjudicated on their merits, where possible: *Spar Roofing and Metal Supplies Ltd v. Glynn*, 2016 ONCA 296, 401 D.L.R. (4th) 318 (Ont. C.A.), at paras. 35 and following.

[89] In this case, I have concluded that leave to amend should not be granted for any of the *Code* or *Planning Act* claims for the following reasons. First, as a general matter, I have concluded that the Applicants do not have public interest standing to advance these issues. As a result, it is not in the interests of justice to permit a further amendment.

[90] Second, as the City noted, the Applicants appear to have been engaged in a fishing expedition with this portion of the Application. Rather than pointing to specific provisions, the Applicants have made a series of generalized allegations and have sought to engage in significant questioning of City officials to explore the basis for their case. This raises significant concerns that the Applicants are seeking to add the *Code* and *Planning Act* issues to this proceeding to make the litigation more complicated for the City.

[91] Third, for the *Code*, there is the fact that there are no material facts pled to support the position that the TGM is a building or otherwise fits within the scope of the *Code*. There are also good reasons to conclude that the TGM is not a building within the meaning of the *Code*. As a result, even if leave to amend were granted, it would inevitably result in a further motion to strike the pleadings, which would almost inevitably be successful.

[92] Finally, for the *Planning Act*, section 63 appears to act as a cure to any procedural breaches that the City may have engaged in. As a result, it is difficult to see how any amendments to the Application could result in a viable case in any event.

[93] I should not leave this discussion without a comment about the remedy that the Applicants are seeking. In a number of places in their factum, the Applicants simply state that they are seeking “declaratory relief” and that this is a “non-coercive remedy that invites judicial clarification, not statutory substitution.” There are two problems with this argument:

- a) In other places in the Application, the Applicants are seeking to have the TGM removed. As a result, it is not at all clear that, if granted a declaration, the Applicants will not then try and use that declaration to have the TGM removed. Indeed, in his Affidavit, Dr. Hewage states

that, if a declaration is granted, “it is the City’s responsibility to find an appropriate remedy to ensure compliance.”

- b) The fact that a declaration is the only relief sought does not seem to provide me with any basis to reach any different conclusions on my legal analysis.

[94] For these reasons, the Applicants are denied leave to amend their Application in respect of the *Code* and *Planning Act* claims.

### **Conclusion and Costs**

[95] For the foregoing reasons, the portions of the Application in respect of the *Code* and the *Planning Act* are struck out without leave to amend. I also find that the Applicants do not have public interest standing to advance these issues.

[96] As I have noted, the constitutional issues remain to be decided. I am case managing these issues and a further case management conference should be convened by Zoom. To that end, I can offer the parties the following dates: January 28, 29 and 30, and February 3<sup>rd</sup> or 4<sup>th</sup> at 9:30 a.m. The parties are to agree on a date as soon as possible and advise the Trial Coordinator.

[97] This brings me to the subject of costs. The City did not seek costs of the last procedural motion in this matter, although they were successful. I would also note that the Applicants are not immune from an award of costs, even if this was public interest litigation and that a lower award of costs might be appropriate: *Yaiguaje v. Chevron Corp*, 2018 ONCA 472, 141 O.R. (3d) 1 (C.A.), at paras. 87 and 88. If the City is seeking costs of this procedural motion, then they are to file costs submissions of no more than two (2) single-spaced pages, exclusive of bills of costs, offers to settle and case-law within fourteen (14) days of today’s date.

[98] If the City seeks costs, the Applicants may submit costs submissions of no more than two (2) single-spaced pages, exclusive of bills of costs, offers to settle and case-law within fourteen (14) days after receipt of the City's costs submissions.

[99] The City shall have the right to reply to the Respondents' costs submissions with submissions of no more than one (1) single-spaced page within 7 days after the receipt of the Applicants' costs submissions.

[100] There are to be no extensions for costs submissions, even on consent, without my leave. If I do not receive costs submissions in accordance with this timetable, then there shall be no order as to costs.

[101] Finally, in addition to serving, filing and uploading any costs submissions, the parties are to provide a copy of those submissions to my judicial assistant. Those submissions are to be sent to the general e-mail box at: SCJ.CSJ.General.Brampton@ontario.ca . This is not in lieu of filing with the Court office. The e-mail is to have the file name and number and for my attention in the subject line when it is sent.

**Released:** December 23, 2025

**CITATION:** Sri Lanka Canada Association of Brampton et al v.  
Corporation of the City of Brampton, 2025 ONSC 7093  
**COURT FILE NO.:** CV-24-00001878-0000  
**DATE:** 2025 12 19

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

SRI LANKA CANADA ASSOCIATION  
OF BRAMPTON,  
HEWAGE, NEVILLE

Applicant

**- and -**

CORPORATION OF THE CITY OF  
BRAMPTON

Respondent

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**REASONS FOR JUDGMENT**

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LEMAY J

**Released:** December 23, 2025