

Court File No. CV-12-448481

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:



PAUL MAGDER

Applicant

-and-

ROBERT FORD

Respondent

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NOTICE OF APPLICATION

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TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.


THIS APPLICATION will come on for a hearing on March 23, 2012 at 10 a.m., or as soon thereafter as this matter may be heard, at 393 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: March 9, 2012

Issued by: .....  
Local registrar

Address of court office:  
393 University Avenue  
10th Floor  
Toronto ON M5G 1E6

**TO THE RESPONDENT:**

Mayor Robert Ford  
Office of the Mayor  
Toronto City Hall,  
2nd Floor,  
100 Queen St. West,  
Toronto ON  
M5H 2N2

## APPLICATION

This is an application for relief under sections 5, 8, 9, and 10 of the *Municipal Conflict of Interest Act* (the “*Act*”) in respect of the Respondent’s speaking to and voting on a matter in which he had a personal financial interest.

### THE APPLICANT MAKES APPLICATION FOR:

- (a) a declaration that the Respondent’s seat on the Toronto City Council is vacant, pursuant to section 10(1)(a) of the *Act*;
- (b) an order, pursuant to section 10(1)(b) of the *Act*, disqualifying the Respondent from being a member of the Toronto City Council for a period of seven years;
- (c) a declaration that the Respondent violated section 5 of the *Act*;
- (d) costs of this action, together with applicable Harmonized Sales Tax thereon; and
- (e) such other remedies as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE APPLICATION ARE:**

- (a) A formal complaint was filed on May 4, 2010 after a Toronto resident received a letter mailed from the Respondent, Councillor Robert Ford (as he then was), seeking donations to the "Rob Ford Football Foundation" ("the Football Foundation"). The City of Toronto logo was on the envelope and the letter. The letter was printed on Councillor Ford's letterhead and included a watermarked drawing of Etobicoke North, Ward 2, the area represented by Councillor Ford. On the back of the envelope there was an embossed gold seal with the City of Toronto logo and, "Rob Ford Etobicoke North Councillor" stamped into the seal. The letter was postmarked March 19, 2010.
- (b) Councillor Ford had been informed on two previous occasions that it was improper for him to use City resources and his position as an elected official to solicit funds for his private charity. The two previous complaints had been made and resolved informally by the Toronto Integrity Commissioner, Janet Leiper, at the request of the complainants.
- (c) The Integrity Commissioner investigated the formal complaint. On August 12, 2010, the Integrity Commissioner issued a report to Toronto City Council that concluded that Councillor Rob Ford violated Articles IV, VI, and VIII of the *Code of Conduct for Members of Council* (the "*Code of Conduct*") for using the City of Toronto logo, his status as a City Councillor, and City of Toronto resources to solicit funds for a private football foundation he created in his name.

(d) The report identified a number of instances where lobbyists who had met with Councillor Ford had also donated to the Football Foundation. The Integrity Commissioner recommended that Councillor Ford repay \$3,150.00 in donations made by "11 lobbyists/clients of lobbyists during the relevant time period and one corporation engaged in business with the City of Toronto." Councillor Ford used the Football Foundation as part of his Mayoral campaign; lobbyists could therefore be seen to have made the donations in exchange for a personal favour or benefit.

(e) At its meeting of August 25, 2010, Toronto City Council adopted the report of the Integrity Commissioner and provided that:

1. City Council adopt the finding that Councillor Rob Ford violated Articles IV, VI, and VIII of the *Code of Conduct*.

2. City Council adopt the recommendation that the following sanction permitted by Article XVIII of the *Code of Conduct* be imposed:

Councillor Ford will reimburse the lobbyist and corporate donors in the amounts listed in the attachment to the report (August 12, 2010) from the Integrity Commissioner and provide confirmation of such reimbursement to the Integrity Commissioner.

(f) The Respondent voted on this motion even though he had a pecuniary interest in it.

(g) The Council's August 25, 2010 order imposed a legally binding obligation on the Respondent to reimburse the \$3150.00.

(h) On June 30, 2011, the Integrity Commissioner published her 2010-2011 Annual Report. In it she wrote:

During this reporting period, I completed one investigation which resulted in a report to Council on the Code of Conduct. The "Report on Code of Conduct Violation" was adopted by Council at its meeting of August 25 and 26, 2010. A copy of this report is available on the Integrity Commissioner's website at: <http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/CC52.1.pdf>.

Council's decision required the Councillor to reimburse lobbyists and corporate donors from whom he had improperly solicited and taken donations. A copy of the decision was provided to the Councillor and follow-up letters were sent on August 31, 2010, September 15, 2010, May 10, 2011, June 7, 2011 and July 4, 2011. Confirmation of compliance remains outstanding. A copy of Council's decision is attached as Appendix I.


- (i) At the February 7, 2012 Council meeting, the Integrity Commissioner tabled a follow-up report recommending that:
  - 1. City Council adopt a recommendation that Mayor Ford provide proof of reimbursement as required by Council decision CC 52.1 to the Integrity Commissioner on or before March 6, 2012, and
  - 2. City Council adopt the recommendation that if proof of reimbursement has not been made by March 6, 2012, that the Integrity Commissioner report back to Council.
- (j) Council did not adopt these recommendations. Instead, Council did precisely the opposite. It voted to remove the sanction imposed in August 2010. As such, the Respondent no longer had to repay the \$3150.
- (k) Mayor Rob Ford attended the February 7, 2012 Council session. He spoke to this issue and voted on it.
- (l) Because the Council voted on the issue of the Respondent's liability to repay \$3150, Mayor Ford had a pecuniary interest in the outcome.

- (m) Section 5 of the *Act* precludes City Council members from taking part “in the discussion of, or vot[ing] on any question” in respect of any matter in which the member has a pecuniary interest.
- (n) Section 10(1)(a) of the *Act* provides that a member who contravenes section 5 of the *Act* forfeits his seat unless he can show that “the contravention was committed through inadvertence or by reason of an error in judgment.”
- (o) The Respondent’s conduct was not inadvertent or mere error in judgment. It was flagrant and deliberate. There could be no question that the Respondent had a pecuniary interest in the matter: The very subject matter of the Council’s debate was whether to remove a sanction previously imposed on the Respondent for using his office for private gain.
- (p) Sections 5, 8, 9 and 10 of the *Municipal Conflict of Interest Act*, R.S.O. 1990 c. M.50.
- (q) Rule 38 of the *Ontario Rules of Civil Procedure*.
- (r) Such other grounds as counsel may advise and this Honourable Court may permit.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

- (a) The Affidavit of Paul Magder and exhibits thereto;
- (b) The Affidavit of Jude MacDonald and exhibits thereto; and
- (c) Such other documents as counsel may advise and this Honourable Court may permit.

CM Dated at Toronto, Ontario this 8<sup>th</sup> day of March, 2012



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Counsel for the Applicant, Paul Magder



Court File No. CV-12-448487

**BETWEEN:**

**PAUL MAGDER**  
Applicant

- and -

**ROBERT FORD**  
Respondent

**SUPERIOR COURT OF JUSTICE**  
Proceeding Commenced at TORONTO

**NOTICE OF APPLICATION**  
**(Re: RELIEF UNDER SECTION 10(1) OF THE MUNICIPAL CONFLICT**  
**OF INTEREST ACT)**

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**Counsel for the Applicant, Paul Magder**