



## DECEMBER 2012 NEWSLETTER

This is the official newsletter of the  
TORONTO PARTY FOR A BETTER CITY

### POLITICIANS NOT ABOVE THE LAW

#### Did You Know

- The [Municipal Conflict of Interest Act](#) mandates a court to declare a seat vacant where a municipal politician is found to have acted in a conflict of interest.
- Section 5 of the Act defines the circumstances under which a municipal politician will be in a conflict of interest and prescribes what the politician must do to avoid being found in conflict of interest.
- Section 4 of the Act prescribes 11 categories of pecuniary interests which are deemed to be exempt from the application of s. 5 of the Act. In Mayor Ford's case, Justice Hackland determined that s. 4(k) did not apply.
- Section 10 of the Act contains a saving provision. Under this provision, the municipal politician must prove that he or she committed an "error in judgment".

Website:

[www.thetorontoparty.com](http://www.thetorontoparty.com)

Email:

[info@thetorontoparty.com](mailto:info@thetorontoparty.com)

It is difficult to imagine that Canada's municipal political system has become a worldwide media spectacle with scandal upon scandal rocking the foundations of our democracy.

In Quebec, two Mayors have been forced to resign amid growing allegations of municipal corruption. In London, Mayor Fontana has been charged with fraud as a result of an alleged misuse of public money while a federal Member of Parliament.

And in Toronto, the decision of the Honourable Mr. Justice Hackland has removed Mayor Ford from office for a conflict of interest. While the Mayor appeals this decision, there is a frenzy over who will be his successor.

The circumstances surrounding Mayor Ford's removal from office are, of course, very different from the controversies surrounding the other Mayors. There is no allegation that Mayor Ford's conduct was fraudulent or corrupt.

Nevertheless, the conflict of interest legislation which Mayor Ford was found to have breached is unforgiving.

Essentially, Justice Hackland's decision supports the view that politicians are not above the law. The Toronto Party agrees with this basic principle.

In October 2006, the Toronto Party was formed because its founders recognized that our municipal government was no longer responding to the interests of its residents.

The agenda at City Hall did not conform to the agenda of the average city resident. In our view, politicians were growing too comfortable in their job, taking advantage of perks and making decisions which were beyond their power.

The arrogance of our municipal government was epitomized when the majority of City Council voted in favour of paying the legal expenses incurred by Councillors Mammoliti and Heaps in defending respective compliance audits arising out of their 2006 elections cam-

paings.

This was followed by another vote in December 2009 which would see the City pay more money to then Councillor Heaps for another personal matter.

The latter decision prompted the Toronto Party to turn to the courts for justice and a declaration that these decisions were void for illegality under the [City of Toronto Act, 2006](#).

The Divisional Court ultimately ruled that the City's decision to compensate Councillors Mammoliti and Heaps was ultra vires. However Superior Court of Justice judge refused to hold the councillors who voted in favour of the improper by-law personally responsible for the over \$150,000 paid to their fellow councillors.

The Toronto Party appealed that decision, and the appeal is scheduled to be heard by the Ontario Court of Appeal on December 11, 2012.

Although rendered in the context of a conflict of interest application, the ruling of Justice Hackland may have a direct impact on our case because of its message that politicians must be held to high standards.

Not only must politicians carefully assess whether their votes raise actual or potential conflicts of interest, they must also carefully assess whether they are passing by-laws that fall within the powers that have been generously granted to them by the provincial government.

Municipal governments are creatures of statute. They are corporations run by a group of people, collectively called City Council, who owe certain duties and responsibilities to the taxpayers of Toronto.

Where City Council exceeds its authority, the courts have a role to play in holding City Council to account.

As seen in Mayor Ford's case, our Courts are the ultimate check and balance on the political system.

## THE GROWING NEED FOR MUNICIPAL LAW REFORM

BY STEPHEN THIELE, PRESIDENT, THE TORONTO PARTY

The decision in [Magder v. Ford](#) raises many interesting questions which touch the heart of integrity and accountability in government.

In addition, it has raised very interesting questions about the need for municipal law reform.

As acknowledged by Justice Hackland in Mayor Ford's conflict of interest case, the *Municipal Conflict of Interest Act* is a "sledgehammer". It is an inflexible statute which provides little discretion to a court to craft a remedy which matches the conflict of interest committed by a municipal politician. In this respect, the Act is arguably unconstitutional since the minimum punishment that the court must impose is removal from public office.

The Act, of course, has been criticized before. Yet provincial politicians of all stripes have ignored the criticism and refused to take the steps necessary to amend the law. This is reminiscent of the reaction received from the provincial parties to our request to permit residents of Toronto to formally band together and express our political beliefs through municipal political parties.

In the Mayor Ford case, Judge Hackland, after stating that s. 5 of the Act is a blunt instrument, quotes as follows from an observation made by Professor David Mullan in September 2006:

Even more importantly, the City should make every endeavour to persuade the provincial government to modernize the *Municipal Conflict of Interest Act* or confer on the City of Toronto authority to create its own conflict of interest regime in place of or supplementary to that Act. Aside from the fact that the existing Act places legal impediments in the way of the City extending the concept of conflict of interest beyond the formulation in that Act, it is simply Byzantine to have a regime under which the only way of dealing

legally with conflict of interest in a municipal setting is by way of an elector making an application to a judge and where the principal and mandatory penalty (save in the case of inadvertence) is the sledgehammer of an order that the member's office is vacated.

In the Mississauga Inquiry, Commissioner Cunningham also recommended that while the existing sanctions of the Act remain in place, lesser sanctions should also be made available. Accordingly, he recommended that s. 10(3) of the Act be repealed and that other sanctions such as suspension, public reprimand or probation be included in the Act.

Yet nothing was done by our provincial government and its opposition parties to push for municipal law reform. The result of doing nothing has left Toronto City Council in turmoil and left Toronto voters to face a potential multi-million dollar by-election in arguably unwarranted circumstances.

Is a by-election for Mayor what people and those aspiring to be "interim" Mayor truly want

There are some extremely serious issues facing our City and our economy. More and more people are losing their jobs and relying on the services of government agencies and food banks to survive during these troubled times.

Excessive gridlock continues to rob our economy of productivity and harms the quality of life of Toronto residents.

Budgetary pressures may lead to cutbacks in police and firefighting services.

These, and other issues, should be occupying *all* of the time of our City government. For those who want to be Mayor, 2014 will be upon us soon enough.