



FEBRUARY 2011 NEWSLETTER

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

City should end fight with Party and derail gravy train

By Stephen Thiele, President

LEGAL ACTION FUND

The Toronto Party for a Better City continues to seek recovery of more than \$150,000 that was wrongly paid to Councillors Mammoliti and Heaps in 2008.

The City has fought against our application for more than 15 months and continues to fight us even though a subsequent court ruling and a decision made by City Councillor a month after our application was started has proven that our position was correct.

The City, who has infinite resources at its disposal, is represented by the law firm of Lenczner Slaght, a high-profile downtown litigation boutique.

Although our lawyer, Mr. Murray Maltz, is working for us on a pro bono basis, we want to build up our legal action fund.

Please visit our website and make an online donation today.

Website:

www.thetorontoparty.com

Email:

info@thetorontoparty.com

On February 7, 2011, City Councillors voted to repeal a bylaw, passed in the dying days of Mayor's Miller regime which essentially reaffirmed the compensation of legal expenses to Councillors Giorgio Mammoliti and Adrian Heaps that had been paid out nearly two years before. This bylaw was passed because of a court ruling that struck down the earlier bylaw authorizing payment on the grounds that the bylaw was beyond the powers of the City.

City Councillors also directed the City's outside lawyer to seek leave to appeal the decision of the court. However leave to appeal was denied.

Position of City's outside lawyer

Although many view the City's action of February 7th as another example of Mayor Rob Ford stopping the City Hall "gravy train", the Toronto Party continues to be subjected to legal wrangling from the City's outside lawyer, who not only represents the City, but the councillors who voted to pay out the money in the first place and Mr. Heaps, a recipient of the money and upon whom the same City lawyer has now issued a demand letter for repayment.

Why is the City continuing to fight the Toronto Party in court when the City and the Toronto Party are now aligned in interest? We both want to see repayment of the money, and, frankly, without the action of the Toronto Party being commenced in December 2009 it is unlikely that the City would have done anything with respect to the payments it had authorized to Mr. Heaps for costs he had

incurred in defending a lawsuit launched against him by Ms. Michele Berardinetti or that the issue of the payment of legal expenses to councillors in defending election compliance audits would have ever been brought to the attention of the public.

The City and its taxpayers suffered a loss because of the payments made to Messrs. Mammoliti and Heaps. As a corporation, the City is entitled to recover its loss from either the persons who received the funds or from the directors of the corporation, i.e. the politicians, who voted to authorize the payments contrary to the legal opinions given by the City's in-house lawyers prior to the votes. This is general corporate law in Ontario because directors of a corporation have what is called a fiduciary duty to the corporation and in this case, as other judicial pronouncements show, the taxpayers of Toronto.

Demand for repayment limited

Yet the City of Toronto has only made a demand against Messrs. Mammoliti and Heaps, more than 2 1/2 years after the payments were made. It has chosen to make no demand against the councillors who voted to make the payments and fights the Toronto Party, who represents the interests of the taxpayers, in our quest to hold the councillors to account for their breach of fiduciary duty.

The councillors who voted in favour of making the payments primarily represent the left-wing of council and many of them are no longer members of council. So why is the new regime purportedly continuing to instruct the outside City lawyer

...City may never recover money from Mammoliti and Heaps...
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to fight the Toronto Party when we are trying to not only stop the gravy train but to derail it?

Mammoliti and Heaps may defend City's claim

The Toronto Party is concerned that the City will never recover any money from Messrs. Mammoliti and Heaps.

The lawyers for Mr. Mammoliti have already suggested to the Toronto Party's lawyer a couple of defences against the demand now being made by the City. Although a judge might ultimately be required to decide the merits of those defences, they are neither frivolous nor vexatious.

And so we have contended that the politicians who made the fateful decision to vote in favour of authorizing the payments in September 2008 be held responsible for their conduct. This is part of our application that will be proceeding to a hearing on

May 3, 2011.

City should join Party

We trust that by then the City will join us in the pursuit of this "derivative" action rather than continue to protect the politicians against a legitimate claim for breach of fiduciary duty.

We trust that Mayor Ford will continue to put meaning to his election promise to end the gravy train and to make City Hall accountable to the taxpayer.

Approximately \$170,000 is at stake.

This is enough money for many things, including keeping outdoor ice-rinks open for the benefit of our kids during March break.

MEMBERS OF COUNCIL WHO VOTED TO REIMBURSE COLLEAGUES

From the minutes of City Council dated [September 24, 25, 2008](#):

Mayor David Miller
(No longer a member of council)

Brian Ashton
(No longer a member of council)

Maria Augimeri
(Current City Councillor)

Shelley Carroll
(Current City Councillor)

Raymond Cho
(Current City Councillor)

Janet Davis
(Current City Councillor)

Glenn De Baeremaeker
(Current City Councillor)

Michael Del Grande
(Current City Councillor)
(Actively assisting Party to recover money)

Frank Di Giorgio
(Current City Councillor)

Michael Feldman
(No longer a member of council)

John Filion
(Current City Councillor)

Paula Fletcher
(Current City Councillor)

Mark Grimes
(Current City Councillor)

Barbara Hall
(No longer a member of council)

Cliff Jenkins
(No longer a member of council)

Norm Kelly
(Current City Councillor)

Gloria Lindsay Luby
(Current City Councillor)

Peter Milczyn
(Current City Councillor)

Ron Moeser
(Current City Councillor)

Joe Pantalone
(No longer a member of council)

John Parker
(Current City Councillor)

Gord Perks
(Current City Councillor)

Anthony Perruzza
(Current City Councillor)

Kyle Rae
(No longer a member of council)

Karen Stintz
(Current City Councillor)

Adam Vaughan
(Current City Councillor)