

Councillor Successful in Protecting Council Funds

July 20, 2010

The Divisional Court of the Ontario Superior Court of Justice has held that the City of Toronto had no legal power to indemnify two members of its Council, Giorgio Mammoliti and Adrian Heaps, for legal costs which they incurred in responding to compliance audit requests arising out of their candidacy for office in the municipal election campaign of 2006. The City has paid \$74,402.00 to Councillor Mammoliti and \$64,757.00 to Councillor Heaps to reimburse them for counsel fees and to pay their income tax relating to the compensation as a taxable benefit. The Court held that the Council had the power to pay expenses of its members only where they are acting in their capacity as members, and could not rely upon the general powers of the City to make grants as justification for paying expenses of members incurred while running for office.

In spite of its decision that the City Council had no legal power to pay councillors' fees relating to compliance audits, it made no order requiring the City to recover the funds from the councillors or for the councillors to repay the money.

The Court also held that the City did have the legal power to compensate Councillor Susan Bussin for her legal expenses in bringing a defamation action against a third party, deferring to Council's conclusion that this was an expense incurred in her capacity as a councillor, and that she should be reimbursed.

Finally, the Court decided not to deal with a claim by Councillor Heaps for reimbursement of legal expenses incurred in defending a defamation action arising out of his campaign for election, on the basis that Councillor Heaps had made it clear that he would not accept such a payment, and the issue was therefore held to be moot.

The Court has not yet made any order with respect to costs.

The City of Toronto and Councillors Heaps and Mammoliti have filed Notices of Motion seeking leave to appeal the respective decisions to the Court of Appeal.

A more in-depth summary of this matter can be downloaded from this site.

George Rust-D'Eye and Raivo Uukkivi acted for the Applicant, Councillor Douglas Holyday, in the proceedings.



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