[**CITATION**](http://intra.judicialsecurity.jus.gov.on.ca/NeutralCitation/)**:** Magder v. Ford, 2012 ONSC 6929

Divisional Court File No. 560/12

**DATE:** 20121205

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

B E T W E E N:

PAUL MAGDER

Applicant

(Respondent in Appeal)

and

ROBERT FORD

Respondent

(Appellant)

Heard: December 5, 2012

Alan J. Lenczner Q.C. for the Appellant

Clayton C. Ruby for the Respondent

ENDORSEMENT

Pardu J.

1. The Appellant moves for a stay of the judgment of Hackland J. dated November 26, 2012, pending the hearing of his appeal from that judgment. The application judge removed the Appellant from his office as mayor of the City of Toronto, finding that he had violated the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50 by speaking to and voting on a motion requiring him to repay donations made by others to a charitable foundation. The application judge concluded that the Appellant had a pecuniary interest at stake, and that his actions in speaking to and voting on the matter did not result from inadvertence or an error in judgment.
2. The parties agree that the test for determination of whether to grant a stay pending appeal requires consideration of 3 questions:

Is there a serious issue to be heard?

Will there be irreparable harm if a stay is not granted?

Does the balance of convenience and the public interest justify granting a stay?

1. At this stage it would not be appropriate for me to enter upon a prolonged discussion of the merits of the appeal. Having reviewed the Notice of Appeal, I conclude that the appeal is neither frivolous nor vexatious. It is apparent that there are serious issues to be determined on the appeal.
2. It is clear that the Appellant would suffer irreparable harm if he were removed from office, but it later transpired that his appeal was successful, and the order of Hackland J. was set aside.
3. If the judgment is not stayed, then a by-election must be called, or council must appoint another person to act as mayor. If these steps are undertaken, but the appeal is allowed, and the appellant restored to his position as mayor, significant uncertainty will result, and needless expenses may be incurred if a by-election is called. If the decision under appeal is stayed for a short interval until the appeal is heard, there is no basis to conclude that any harm will be caused to the public interest. The Application judge noted, “I recognized that the circumstances of this case demonstrate that there was absolutely no issue of corruption or pecuniary gain on the respondent’s part. His contraventions of the municipal Code of Conduct involved a modest amount of money which he endeavoured to raise for a legitimate charity (his football foundation), which is administered at arm’s length through the Community Foundation of Toronto.”
4. On the other hand, a lengthy stay would not be in the public interest. Given the important issues at stake, a stay which was so lengthy as to negate the effect of the application judge’s order, should it be upheld on appeal, would be detrimental to the interests of the community.
5. The Respondent concedes that this is an appropriate case for a stay pending the appeal, given that the appeal will be heard shortly.
6. I agree that the test mandated by RJR-Macdonald v. Canada (Attorney General), [1994] 1 S.C.R. 311 has been met.
7. There will be an order that the order of R.S.J. Hackland dated November 26, 2012 removing the appellant from office shall be stayed until a decision has been rendered by the Divisional Court on the appeal. The appeal will be heard on January 7, 2013. The Appellant shall file all documents necessary in support of the appeal by December 12, 2012. The Respondent shall file all documents in opposition to the appeal by December 24, 2012.

December 5, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_