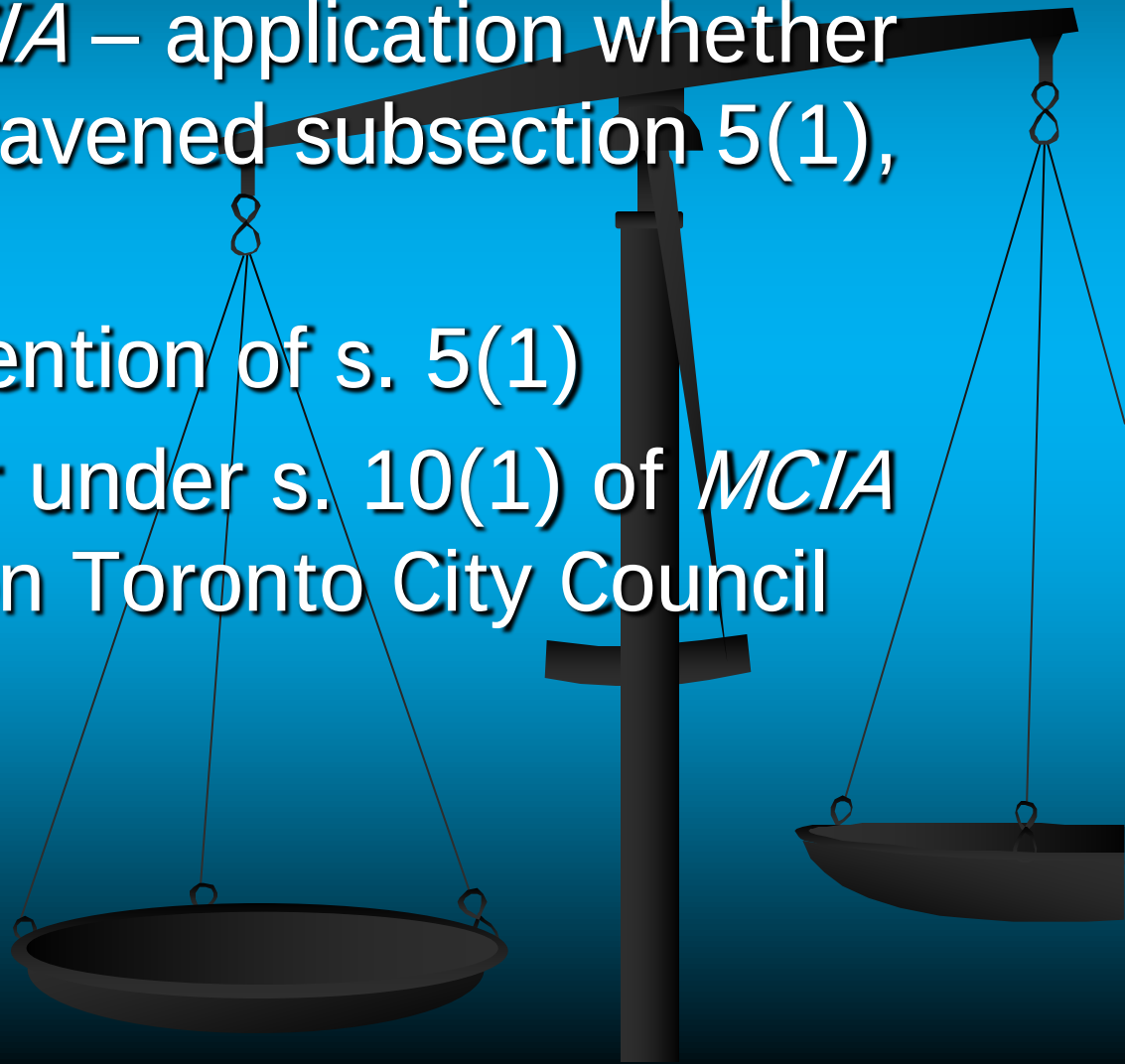
Magder v. Ford

THE COURTS SPEAK



Application Brought by Paul Magder:

- section 9 of *MCIA* – application whether the Mayor contravened subsection 5(1), (2) or (3)
- alleged contravention of s. 5(1)
- requested order under s. 10(1) of *MCIA* declaring seat on Toronto City Council vacant

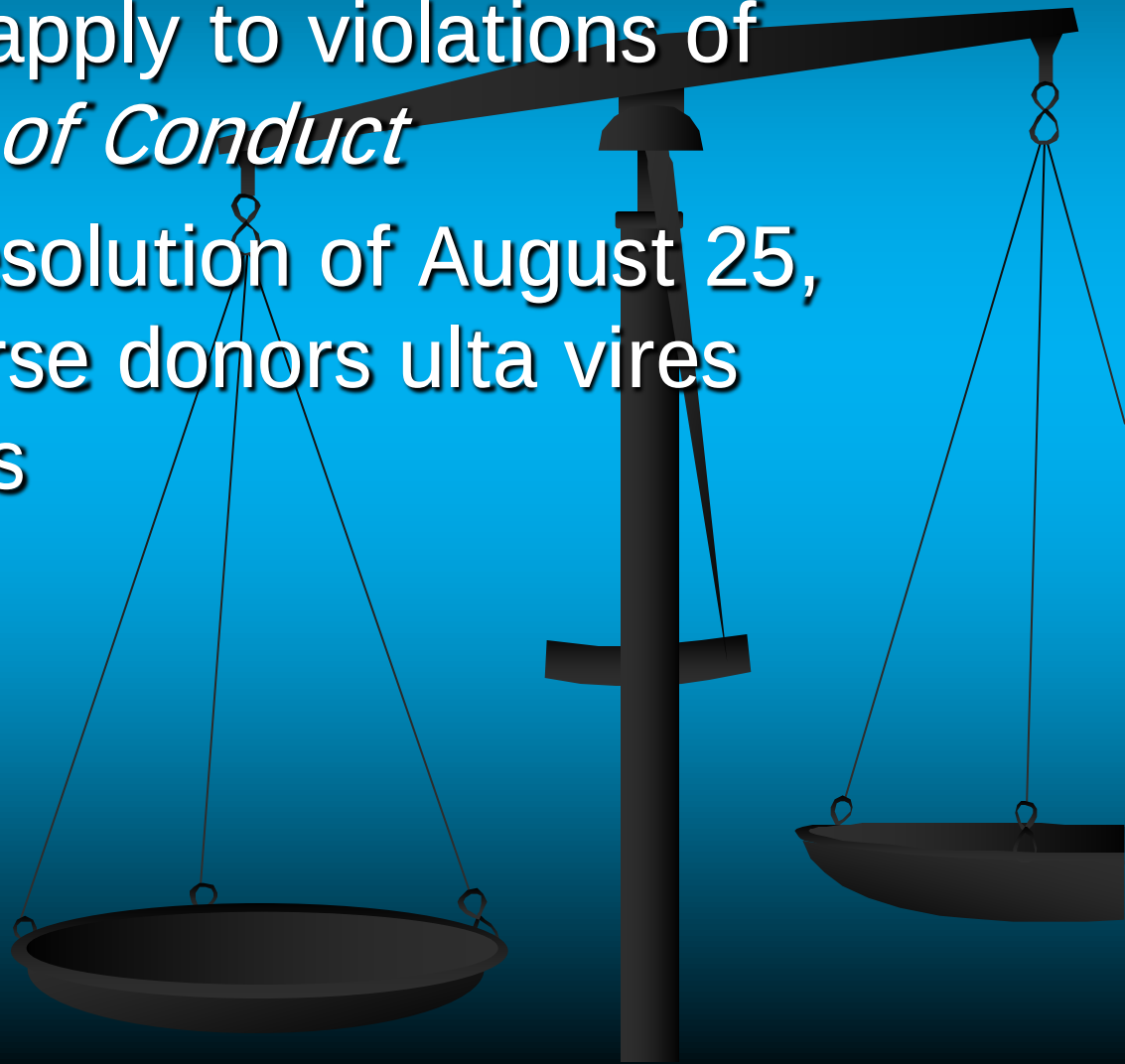


- heard by Justice Hackland on September 5 and 6, 2012
- decision issued on November 26, 2012



Mayor's Position:

- *MCIA* does not apply to violations of Toronto's *Code of Conduct*
- initial Council resolution of August 25, 2010 to reimburse donors ulta vires Council's powers



- in the alternative –
- amount involved insignificant
- contravention committed through inadvertence or by error in judgment

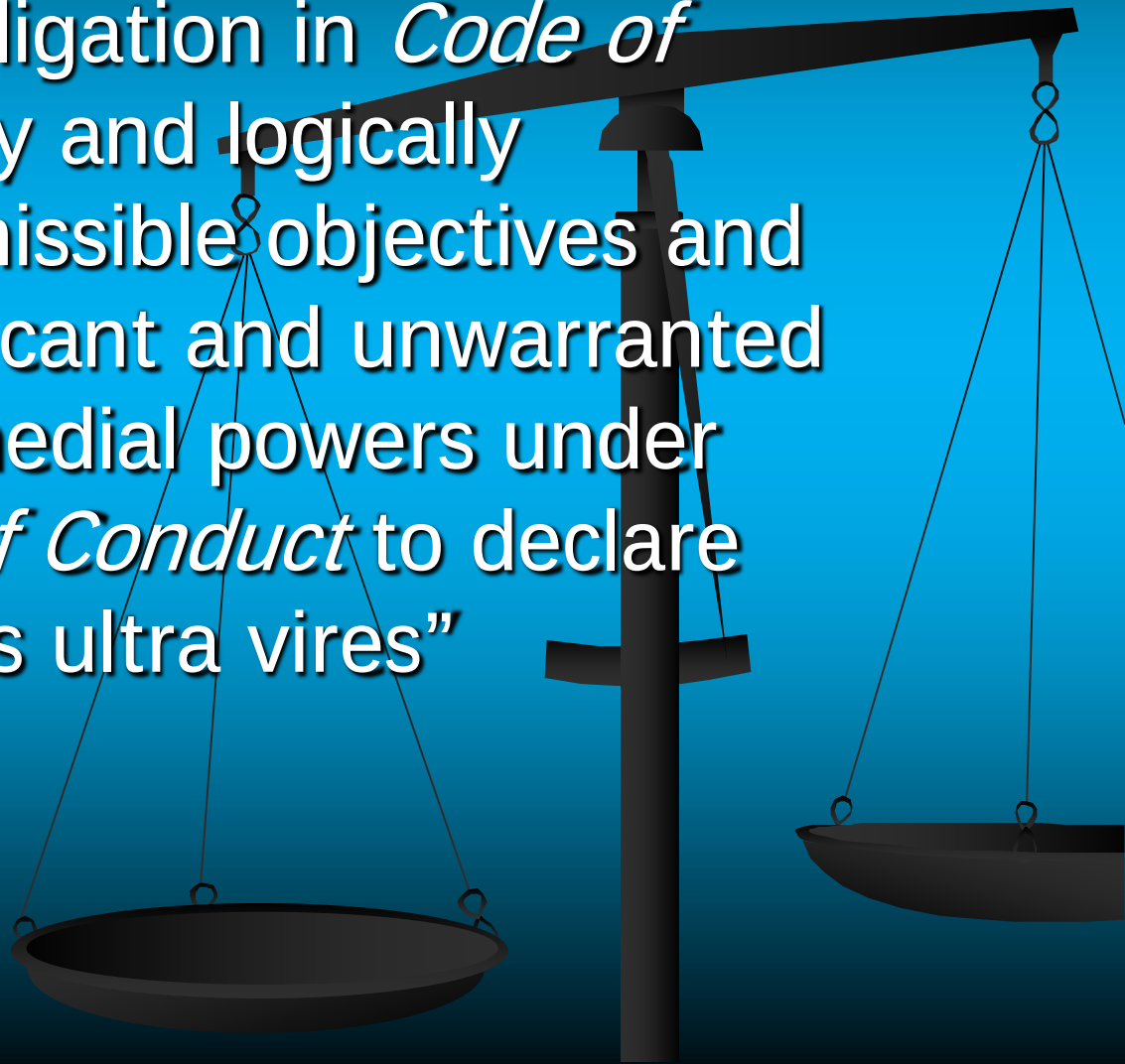


Justice Hackland's Analysis

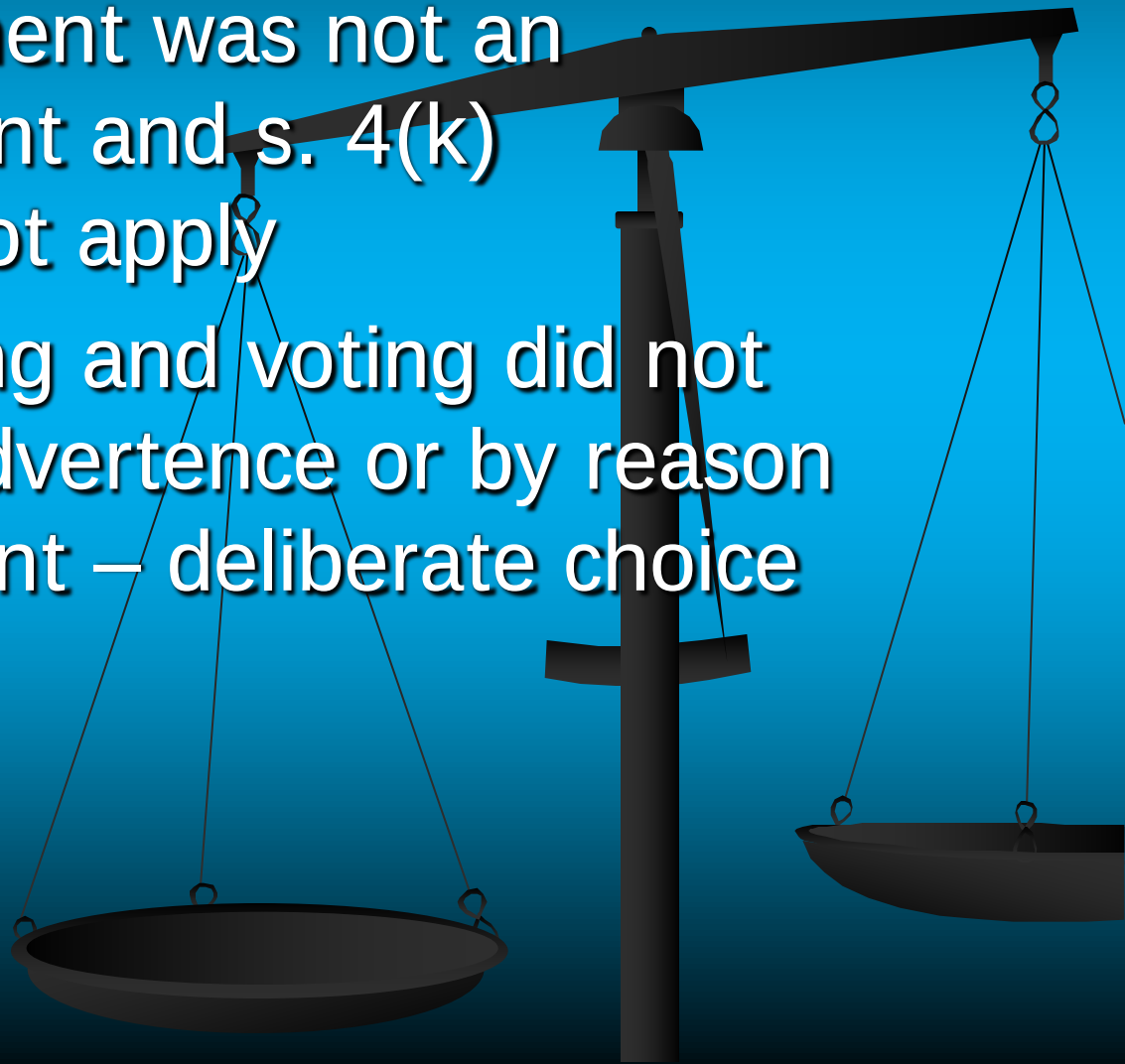


- *MCIA* applies to *Code of Conduct* violations
- respondent violated s. 5(1) of *MCIA* when he spoke and voted

- reimbursement obligation in *Code of Conduct* is properly and logically connected to permissible objectives and would be a “significant and unwarranted impairment of remedial powers under Municipal *Codes of Conduct* to declare these other actions ultra vires”

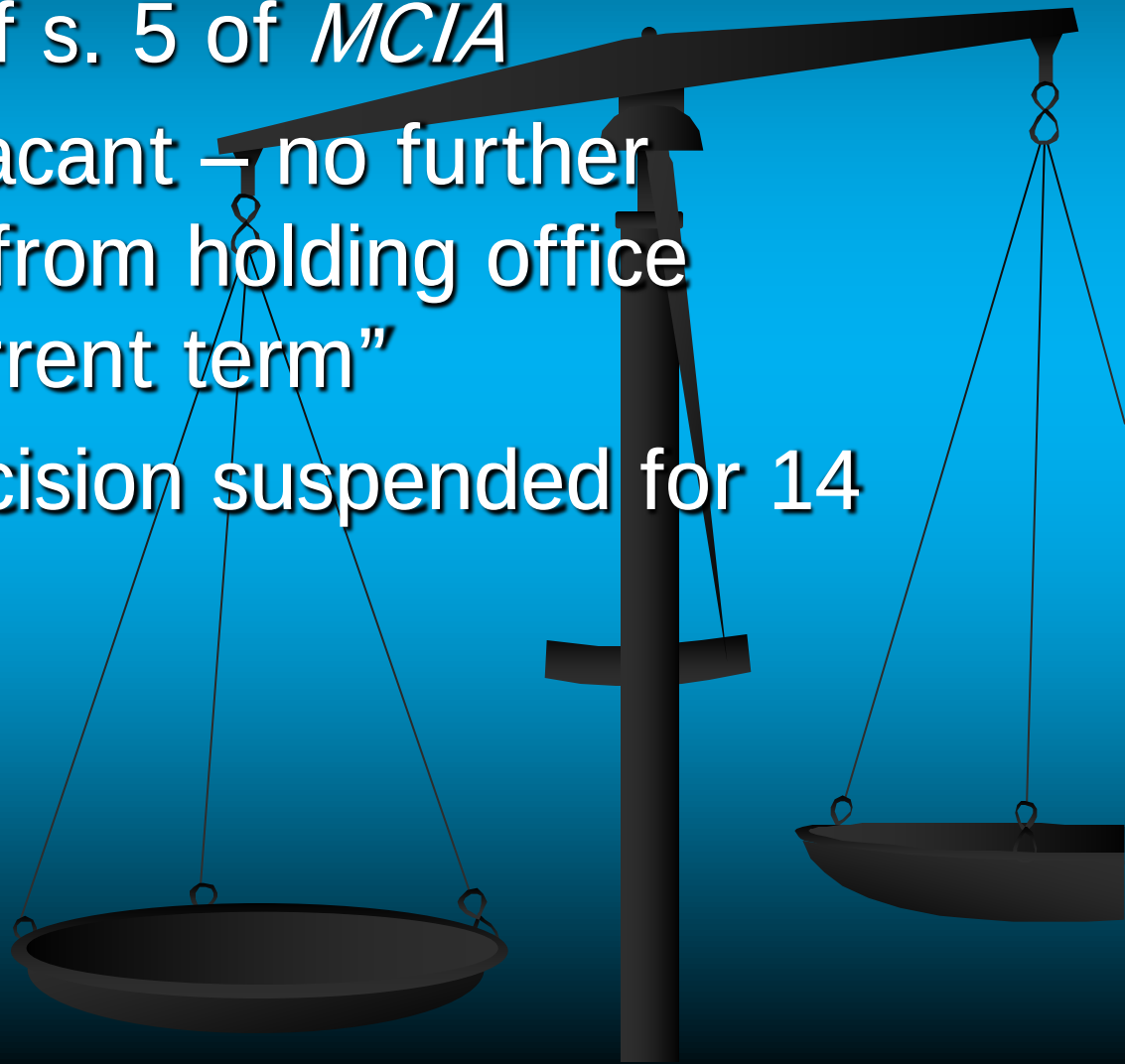


- found that repayment was not an insignificant amount and s. 4(k) exemption does not apply
- found that speaking and voting did not occur through inadvertence or by reason of error in judgment – deliberate choice

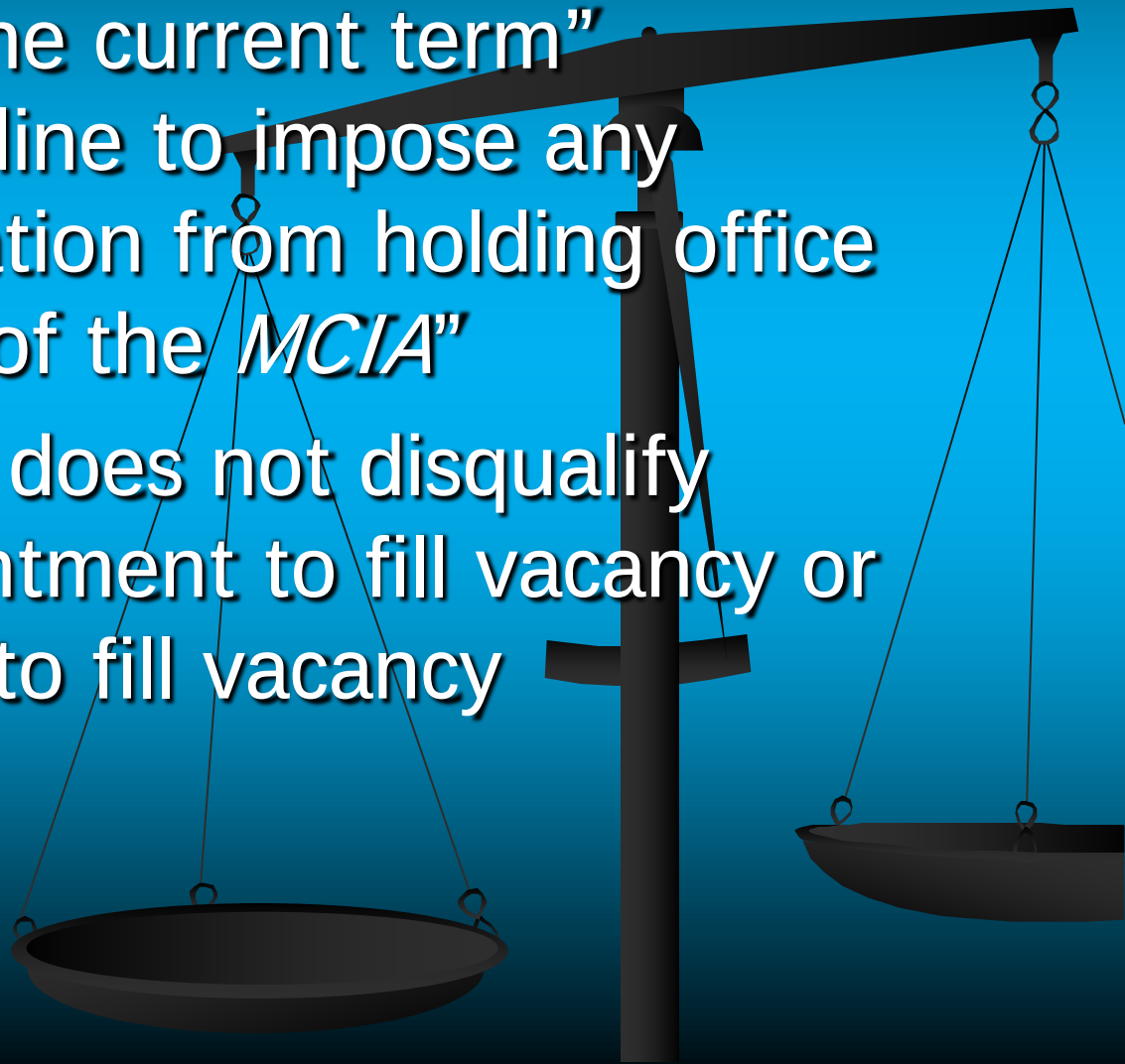


Conclusion

- contravention of s. 5 of *MCIA*
- seat declared vacant – no further disqualification from holding office "beyond the current term"
- operation of decision suspended for 14 days



- November 30, 2012 – amended decision deleted “beyond the current term” replaces with “decline to impose any further disqualification from holding office under s. 10(1)(b) of the *MCIA*”
- amended wording does not disqualify Mayor from appointment to fill vacancy or run in by-election to fill vacancy

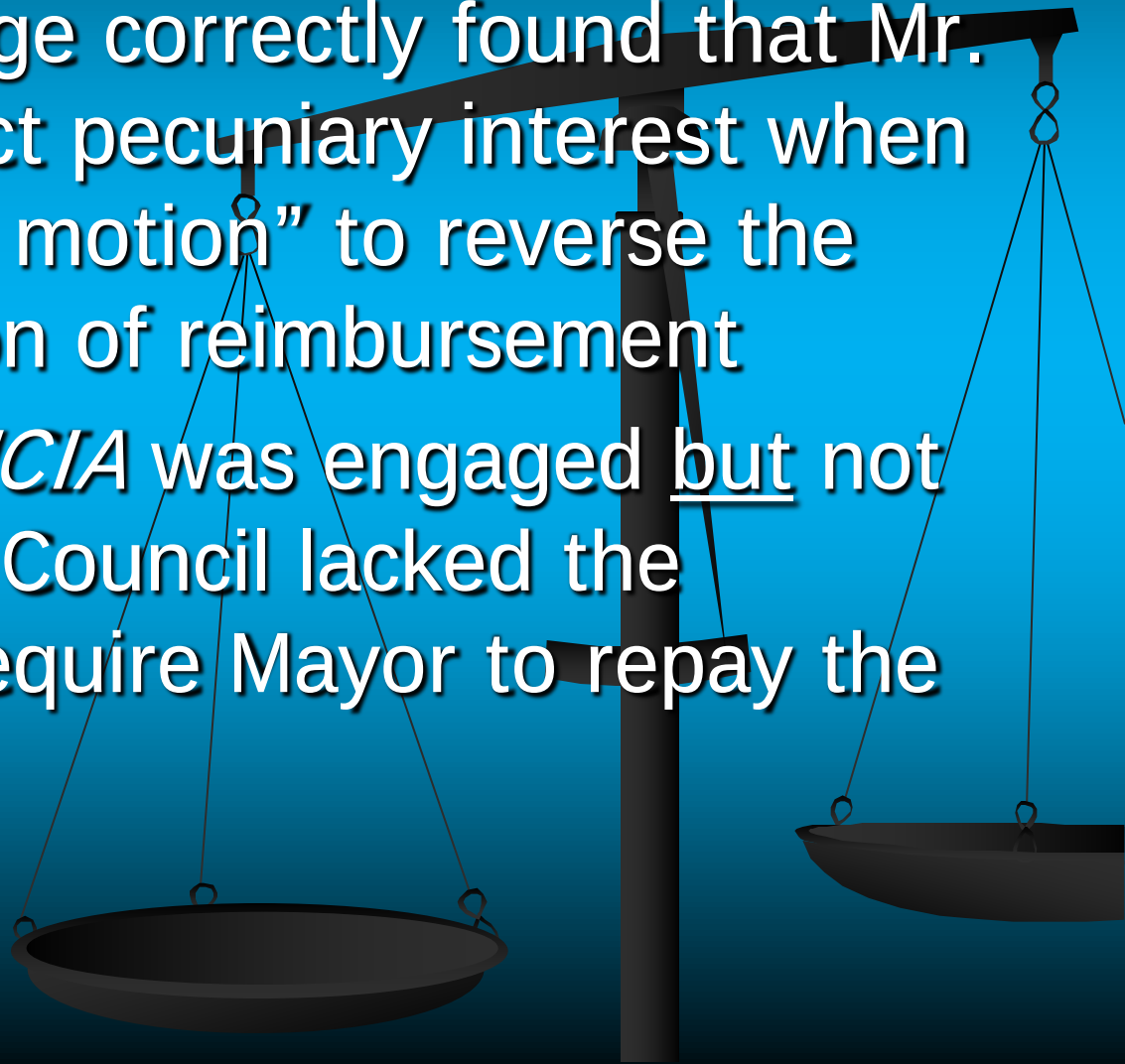


The Divisional Court Speaks

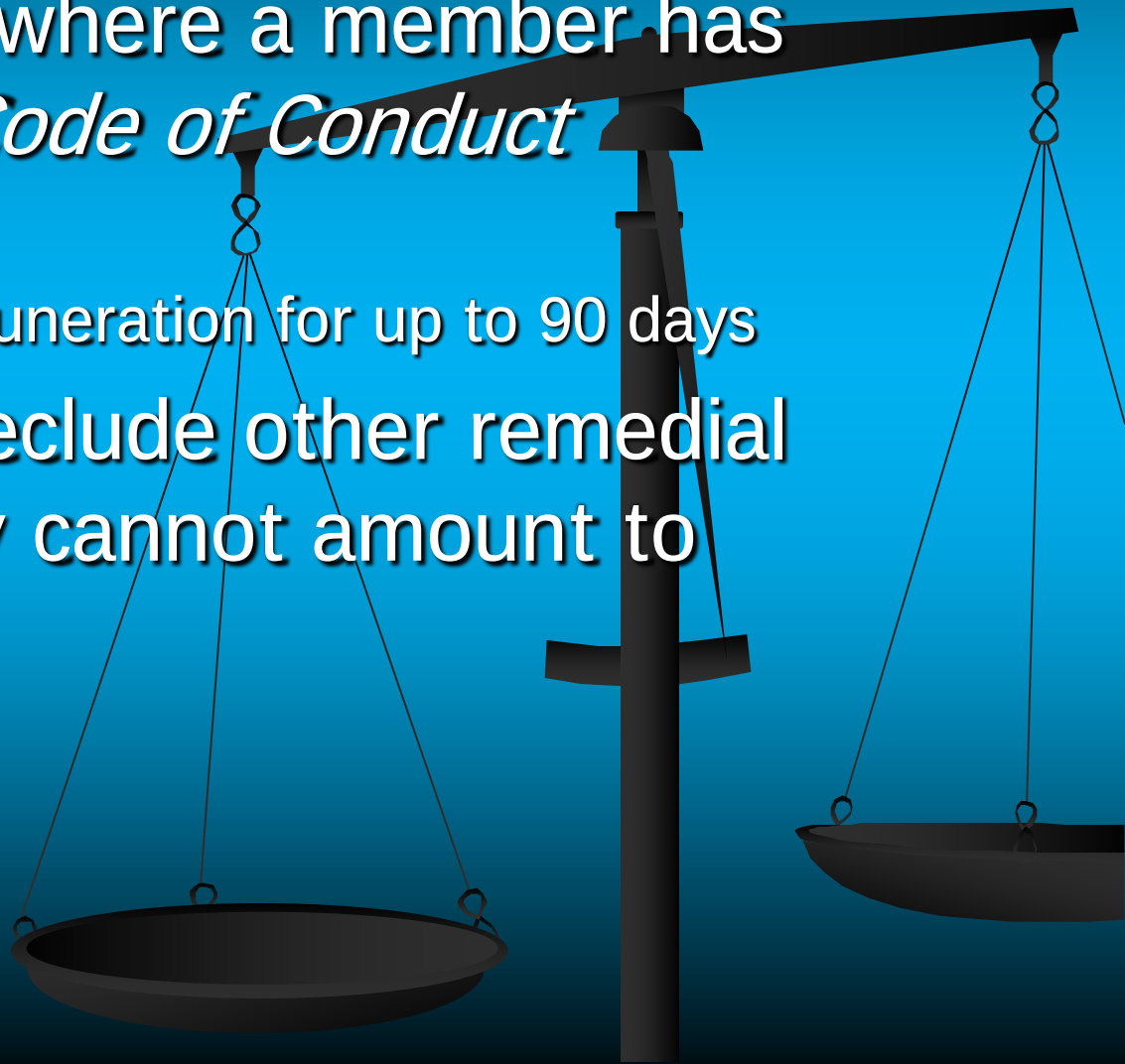


- heard January 7, 2013
- decision issued January 25, 2013 granting Mayor's appeal

- “application judge correctly found that Mr. Ford had a direct pecuniary interest when he voted on [a] motion” to reverse the financial sanction of reimbursement
- s. 5(1) of the *MCIA* was engaged but not contravened as Council lacked the jurisdiction to require Mayor to repay the money



- conclusion based on s. 160 of *COTA* which sets out penalties where a member has contravened the *Code of Conduct*
  - reprimand and/or
  - suspension of remuneration for up to 90 days
- *COTA* does not preclude other remedial measures but they cannot amount to penalties



- requirement to “pay certain monies to donors when [the Mayor] had never received such monies personally” is a penalty
- Council’s decision to impose the penalty was a nullity

