

COURT FILE NUMBER 1701-06436

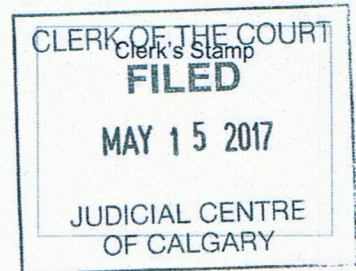
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF 338153 ALBERTA LIMITED

DEFENDANT DRUH FARRELL

DOCUMENT AMENDED STATEMENT OF CLAIM



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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**NOTICE TO DEFENDANT**

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**

1. The Plaintiff is a corporation that is duly registered pursuant to the laws of the Province of Alberta pursuant to the *Business Corporations Act* and operates in the City of Calgary.
2. The Defendant is an individual, resident of the City of Calgary, in the Province of Alberta and is elected pursuant to the *Local Authorities Election Act* ("LAEA") of Ward 7 and under the jurisdiction of the *Municipal Government Act* ("MGA").



## BACKGROUND

3. The principals of the Plaintiff have had a long history with the Defendant as business owners and operators in the Hillhurst/Sunnyside community (The "Community") as well as residents of over 20 years of the Community and as her neighbour.
4. The Defendant's bias against the principals of the Plaintiff became evident in or about 2008 when they began operating a successful Stampede event for the duration of the Calgary Stampede each year (the "Stampede Event"). The Defendant resides literally within 100 meters of the said Stampede Event on 10A ST NW and she publicly renounced it.
5. In furtherance of her bias, the Defendant has repeatedly and improperly exercised her authority by compelling bylaw officers to attend routinely to monitor the Stampede Event in hopes that citations would be laid and ultimately, the permits for the Stampede Event revoked. She did this as an abuse of her public office for her own economic self-interest even though the Stampede Event was supported by the Community, the Kensington BRZ and is approved each year by the City Planning Department.
6. Further, the Defendant directed bylaw enforcement for her own benefit which is contrary to the principal of independence of law enforcement from elected officials, the particulars of which shall be proven at the trial of this action.
7. As the Defendant's efforts failed to have bylaw officials lay citations against the Stampede Event, she resorted to bringing a motion before City Council for targeted changes to the City's special event bylaw under which approval was granted for the Stampede Event. The changes she sought to the special event bylaw were brought forward under her direct instruction to City administration and lobbied by her before City Council as a targeted means to deny subsequent approvals of the Stampede Event.
8. The Plaintiff claims that her lobbying and voting on the Bylaw amounted to a breach of the MGA as she had a financial interest in the matter. The Plaintiff further claims that she failed to disclose her financial interest prior to her voting on the matter, all of which was done in furtherance of her abuse of public office for her own personal gain.
9. As a result of the changes to the special event bylaw, the Plaintiff made successful changes to the Stampede Event that complied with the new special event bylaw and continued to gain City approval. Consequently, the Defendant would harass and intimidate public officials to increase monitoring of the Stampede Event. All of her attempts at revoking the permits for the Stampede Event failed.



10. In 2013, in the months leading up to the civic election, upon direct instructions from the Defendant, a close political activist, close friend, and agent of the Defendant met with a principal of the Plaintiff to discuss matters to help resolve the issues between the Defendant and the principals of the Plaintiff.
11. At that meeting, the agent for the Plaintiff was advised that to obtain the Defendant's support on its proposed mixed use development herein below set out, the following needed to happen:
  - a. The principals of the Plaintiff and their related entities were not to publicly display support for her opponent in the 2013 municipal election, who she knew that the principals of the Plaintiff supported. Specifically, they were not to post campaign banners on its very large and very visible billboards and properties throughout the Kensington area.
  - b. A political contribution of \$2,500 was to be made to her campaign. She asked for \$5,000 donation. However, under this duress, be it real or perceptual, the Plaintiffs felt coerced paid \$2,500.
12. Although not otherwise willing to comply with her demands as it was publicly known that the principals of the Plaintiff strongly supported the conservative and political views of her opponent, they were compelled to comply. They adhered to her demands as they understood that to act contrary would be detrimental to their economic interests.

#### **INTERFERED WITH THE APPLICATION AND HEARING PROCESS UNDER THE LANDUSE**

13. In 2013, the Plaintiff filed with the City of Calgary planning department a land use re-designation application to increase density and height (the "Landuse Application") for property located in Kensington (the "Property"). The property is where the Stampede Event was held.
14. The Defendant made demands upon the Plaintiff that it was not to submit the Landuse Application until after the 2013 civic election as she did not want it to be an issue in her campaign. Although the Plaintiff was prepared to submit the Landuse Application months before the 2013 civic election, the Plaintiff felt compelled to acquiesce to her demands as it was understood that to act contrary would be detrimental to its economic interests.
15. On demand by the Defendant (on the understanding of gaining her vote in support), the Plaintiff retained the services of an architect that she insisted upon. The Plaintiff states



that it would not have otherwise retained the services of the said architect had the Defendant not insisted. The Plaintiff states that the Defendant has also coerced other developers to do the same

16. The said architect is a loyal political advocate of the Defendant and a consistent financial contributor to the Defendant's political campaigns. The Plaintiff claims that there is connection between the architect's financial contributions and his political advocacy and the Defendant's initiatives to impel him upon developers.
17. The Landuse Application sought to rezone the Property for a mixed-use development with a maximum height of 36 metres and 7 x the Floor Area Ratio ("FAR"). In exchange for the extra density, the Plaintiff would provide a public plaza.
18. The Property had already been approved for a mixed-use development of 26 meters in height and a 5 FAR.
19. The Plaintiff retained various professionals to work on gaining approvals for the Landuse Application. The Plaintiff proposed to exchange increased density and height for the construction and maintenance of an onsite public plaza area, a proposal widely accepted within the planning rationale of the City of Calgary.
20. During the Landuse process the Plaintiff's professionals collaborated with the Hillhurst Sunnyside Community Association (The "Association") to gain insight and comments on the Landuse Application that were to reflect those of the Community.
21. Between May 2014 - June 2014, in conjunction with the Association, the Plaintiff, through a 3<sup>rd</sup> party technology firm, created an electronic survey asking for comments by the Community about the Landuse Application (the "Survey").
22. The Survey was available online from about July 7, 2014 to August 30, 2014 for the public at large and specifically targeted the Community.
23. As a result of the Survey and independent review by the Association, by letter to the City of Calgary Planning Department dated September 5, 2014, the Association expressed support for the Landuse Application stating specifically:
  - a. Community comments indicate that a "small" increase to FAR in exchange for the plaza may be a benefit to the community. The Association also feels that creating a local amenity [Plaza] would be a benefit to the community on this important site.
  - b. The Plaza option was the option most favoured by the Community.



24. The Survey showed that 75.6% of those responding to the survey approved the Landuse Application.
25. The Plaintiff also obtained roughly 20 support letters from residents in proximity to the Property that might be most affected by the proposed development. The Plaintiff also received roughly 50 signatures from local Community residents in support of the Landuse Application and numerous Community residents attended the City Council public hearing to speak in favor of the Landuse Application. The Kensington BRZ also provided a letter of support for the Landuse Application.
26. On May 11, 2015, the Landuse Application went before City Council for a public hearing and final determination. During the public hearing, only five people spoke against the Landuse Application. Two were Community members presenting under the coaching of the Defendant who made misrepresentations and defamatory statements about a principal of the Plaintiff which resulted in the Defendant's apparent bias.
27. No one from the Association attended the public hearing to speak against the Landuse Application.
28. Given the bias that the Defendant has for the principals of the Plaintiff and prior to the public hearing on the Landuse Application, various City Councillors advised the Defendant of a potential conflict of interest and not to vote on the item. She refused to listen to the other councillors. She attended the City Council public hearing to speak to the Landuse Application and to vote on the matter.
29. As further illustration of the Defendant's targeted malice towards the Plaintiff, she reiterated the malicious and untrue statements before City Council of her coached cohorts that spoke against the Landuse Application to deceitfully manipulate the vote.
30. The Plaintiff claims that the Defendant improperly looked through the Landuse Application and its overwhelming support by the Community directly to the principals of the Plaintiff that were behind the Landuse Application. Thereby, exercising a public power for a reason that is unrelated to the purpose for which that power was granted. Furthermore, as she lives within meters of the proposed development she had a financial interest in the Landuse Application.
31. The Defendant failed to disclose her financial interest as a further means to disguise her deplorable conduct.



32. The Defendant vigorously lobbied and voted against the Landuse Application. The result of the City Council vote was 8-6 against the Landuse Application, with the Defendant's vote being the deciding vote against the said application.
33. The Plaintiff claims that were it not for the financial interest, dishonesty, targeted malice, bad faith conduct and inherent bias of the Defendant, the Landuse Application would have been approved.
34. Additional indicia of unlawful conduct of the Defendant amounting to Abuse of Public Office include:
- a. During the currency of the Landuse Application, agents of the Plaintiff attended a local community association meeting on a different landuse redesignation within the same Community. At the meeting, the agents, who are also residents of the Community, expressed openly at the meeting that the applicant should seek additional density for its proposed development in exchange for providing wider sidewalks to make the area more walkable. The next day, the Defendant, through the Plaintiff's architect, advised the agents to discontinue attending community meetings to encourage other developers to seek additional density. Knowing that to act contrary to the Defendant's demands could be detrimental to the Landuse Application and their economic interest, and although contrary to their personal beliefs as residents of the Community, the agents acquiesced to her demands.
  - b. The Defendant threatened the Plaintiff by advising her long-time friend, the Plaintiff's architect, during the currency of the Landuse Application stating that if the Plaintiff lobbied other City Councillors to gain support for the Landuse Application that it would not be good for them as regards her supporting it.
  - c. The Defendant has made repeated defamatory comments, injurious falsehood, and innuendo raising an apprehension of bias toward the Plaintiff and its principals including but not limited to:
    - i. That the principals of the Plaintiff are "criminals" (which is a patent falsehood). For example, she told the Plaintiff's architect the foregoing. She has also said it publicly at City Hall.
    - ii. The statement as aforesaid is false and defamatory and was made with malice, consisting of either injurious intent or an ulterior and improper purpose, knowing that the statement was false or in careless disregard.



- iii. The aforesaid statement in its natural and ordinary meaning and by innuendo meant and was understood to mean that the principals of the Plaintiff had engaged in inappropriate behavior, vulgar commentary, and bullying tactics and were guilty of a criminal offense.
- iv. The statement as aforesaid has injured the Plaintiff in its credit, character, and reputation as a corporate citizen, in the practice of its business, and has been brought into public scandal, odium, and contempt. The Plaintiff has suffered and will continue to suffer irreparable harm to its reputation and good standing in the community as a result of the actions of the Defendant, the particulars of which to be proven at the trial of this action.

The foregoing defamatory comments have been made routinely and publicly by her from as early as 2008 when the Stampede Event began operating up to the date of filing this Action.

- d. In June 2015, in furtherance of her inherent bias as regards specifically the Plaintiff, its principal and the Landuse Application, the Defendant brought forward a City Bylaw that would have seen a literally 1000% increased taxation on the proposed development site. The Bylaw was nothing less than targeted malice toward the Plaintiff.
- e. The Plaintiff sought further and better information about the said bylaw from the Defendant and for a chance to be involved in the engagement process given the adverse affect it would have on the proposed development. However, the Defendant refused to provide the Plaintiff with any information about the proposed Bylaw in an attempt to circumvent its involvement in the process. When the Bylaw came before Council for voting, the Defendant shamefully withdrew the Bylaw only after significant pressure from her colleagues.

#### **ABUSE OF PUBLIC OFFICE**

- 35. As a result of the foregoing, the Defendant must be held accountable for her deliberate and intentional unlawful actions that constitute dishonesty, bias, conflict of interest, discrimination, abuse of power, corruption, unfairness, and conduct that is deplorable of a public official.
- 36. The Defendant acted with impunity and full knowledge that her unlawful conduct will likely injure the Plaintiff and bring disrepute to her public office. She disregarded her



duties and oath of office and continued with her unlawful actions that resulted in loss, harm and damage to the Plaintiff and disrepute of her public office.

37. Alternatively, she was seriously reckless and careless or wilfully blind to the extent of her statutory, common law or equitable duties owed to the Plaintiff and her public office. Further and/or in the alternative, she was recklessly indifferent or willfully blind as to the limits of or restraints upon her public power or authority and the damage that would be caused by her dishonesty and targeted malice.

#### **INJURIOUS FALSEHOOD AND DEFAMATION**

38. The Plaintiff alleges that the egregious conduct of the Defendant, specifically the purposeful dissemination of an untrue statement and the misrepresentations, as herein above set out as aforesaid, was done for the sole and malicious purpose to systemically and abusively discredit a supported and favorable Landuse Application in which she had a financial interest.
39. The Plaintiff alleges that the conduct of the Defendants was motivated by nothing less than to cause public odium and contempt of the Plaintiff, and its principals, and as a form of hostility toward the Plaintiff and its principals. The deplorable activities and conduct of the Defendant were deliberately designed to cause damage to the Plaintiff and its principals.
40. As a result, the Plaintiff has suffered damages and continues to suffer damages the full extent of which shall be quantified at the trial of this action.

#### **CONCEALING OF PUBLIC DOCUMENTS**

41. In or around November 2015, the Plaintiff made an application pursuant to the Freedom of Information and Protection of Privacy Act (FOIP) for any and all documentation about the Landuse Application and matters related thereto. The Plaintiff did not receive any meaningful response from the City of Calgary with no meaningful reasons or exceptions given.
42. The Plaintiff states that the Defendant has improperly used her political influence to interfere in the FOIP process and deny the Plaintiff access to information to which it is entitled, the particulars of which to be proven at the trial of this action.

#### **PUNITIVE, EXEMPLARY AND AGGRAVATED DAMAGES**

43. As described herein, the conduct of the Defendant is egregious, high-handed, reprehensible and warrants the condemnation of this Court. The Defendant deliberately



and systematically flouted her public duties and fiduciary obligations and had done so for the purpose of inflicting harm upon the Plaintiff and its principals and acted deplorably in doing so.

44. In addition to the legal and professional fees and expenses incurred by the Plaintiff in respect of the above and in mitigating its damages, the Plaintiff continues to incur legal and professional fees in respect of addressing the Defendant's deplorable misconduct.
45. But for the improper and unlawful conduct of the Defendant and, in particular, the defamation and breach of duties owed to the Plaintiff and to the public, none of these proceedings would have been commenced and the Plaintiff would not have incurred the damages, costs and expenses associated with these proceedings. As a result, the Plaintiff claims that the Defendant is obliged to reimburse and pay the Plaintiff's costs and expenses incurred in connection with these proceedings on a full indemnity basis.
46. The Plaintiff incurred special damages in the amount of \$61,535.
47. The Plaintiff is proposes that the trial of this action be held in the City of Calgary, in the Province of Alberta.
48. In the opinion of the Plaintiff, the trial of this action will not take more than 25 days.

**REMEDY SOUGHT AGAINST THE DEFENDANT AS FOLLOWS:**

49. An interlocutory order restraining the Defendant from further votes on the Landuse Application or any subsequent application(s) related thereto.
50. A declaration that the Defendant contravened Division 6 and 7 of Municipal Government Act, RSA 2000, c M-26 and a direction that she should be remove from public office.
51. Alternatively, a declaration that the Defendant had a disqualifying conflict in the nature of an inherent bias toward the Plaintiff and a direction that the City Council vote on the Landuse Application be quashed. Furthermore, the matter be sent back for a new public hearing without the involvement of the conflicted Defendant.
52. An Order directing that this matter be heard before a Jury pursuant to the *Jury Act*, RSA 2000, c. J-3.
53. An interim and interlocutory injunction extending until trial or other disposition of this Action prohibiting the Defendant, her agents or employees from destroying, altering, defacing or in anyway adversely dealing with material relevant to these proceedings



such as but not limited to computers, servers, cell phones, facsimile machines, and other such devices.

54. General damages for injurious falsehood and defamation in the amount of \$100,000 or such further and other amount as may be proven at the trial of this Action or in such amount as this Honorable Court deems fit to grant.
55. Special damages in the amount of \$61,535 or such further and other amount as may be proven at the trial of this Action or in such amount as this Honorable Court deems fit to grant.
56. Pecuniary damages including but not limited to loss of development and investment opportunities in such amount as may be proven at the trial of this Action or in such amount as this Honorable Court deems fit to grant.
57. Aggravated, exemplary, and/or punitive damages in the amount of \$50,000 or such further and other amount as may be granted by this Honorable Court.
58. Pre and post judgment interest on any amounts awarded in accordance with the Judgment Interest Act, RSA 2000, c.J-1.
59. Costs on a solicitor and his/her own client basis or such other basis as this Honorable Court deems fit to grant.
60. Such further and other relief as this Honorable Court deems fit to grant.

#### **NOTICE TO THE DEFENDANTS**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

#### **WARNING**



If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.