

IN THE MATTER OF AN ARBITRATION

BETWEEN:

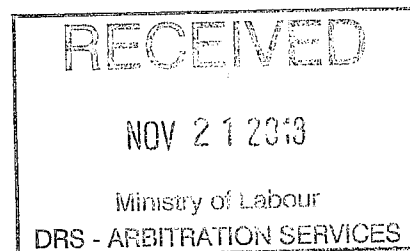
The Corporation of the City of Sault Ste. Marie

-and-

**Canadian Union of Public Employees,
Local 67**

Grievance of Peter Schell

Lorne Slotnick, Arbitrator



Representing the Employer – Mark Contini

Representing the Union – Felicia Forbes

Hearing – Sault Ste. Marie, Ont., November 14, 2018

A W A R D

The grievor in this case, Peter Schell, is a building inspector, empowered through by-law to enforce the Building Code, employed by the City of Sault Ste. Marie. His wife, Shelley Schell, is the city's Chief Financial Officer/City Treasurer. On Dec. 11, 2017, at a city council meeting, Councillor Ozzie Grandinetti made statements that suggested Mr. Schell was unqualified and held his job only because his wife is one of the city's senior managers.

Mr. Schell, upset by the councillor's comments, filed a grievance claiming the employer had failed to maintain a workplace free of harassment and discrimination. At the same time, he formally requested that the city's Integrity Commissioner investigate the remarks by Mr. Grandinetti, saying they violated the city's code of conduct for council members. Included in the code of conduct is a provision that council members have "the duty and responsibility to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment." It adds that councillors shall not use "indecent, abusive or insulting words or expressions" toward staff and others.

The union held the grievance in abeyance while the complaint under the code of conduct was being considered. In the meantime, I was advised, a proposed resolution that would have seen Mr. Grandinetti retract his remarks and state that they were incorrect, failed when Mr. Grandinetti did not attend the council meeting at which the retraction was to occur. (Mr. Grandinetti was later defeated in the municipal election on Oct. 22, 2018.)

I was also advised that the Integrity Commissioner, Antoinette Blunt, decided the matter was not in her jurisdiction, relying on a clause in the code of conduct that refers to grievances. The provision, in Appendix A of the code, regarding complaint procedures, states as follows:

3. Upon receipt of a complaint or request for inquiry, the Integrity Commissioner shall first determine if it is within his/her jurisdiction and whether there is a procedure under other legislation or City policy to deal with the complaint. If it is determined that other procedures apply, the Integrity Commissioner shall refer the complainant to the appropriate person or agency to follow that process. This would include such matters as:

(a) The grievance provisions of a collective agreement;

...

Decision

In my view, the law is clear that a municipality, in its role as an employer, cannot be held responsible for statements made by an elected councillor (see *St. Elizabeth Home Society v. Hamilton (City)* 2005 CarswellOnt 7298 (Ont. Sup. Ct.), and *J. R. v. Springer Estate*, 2004 CanLII 7093 (ON SC), both referred to in *Re City of Hamilton and CUPE* 2017 CanLII 4772 (ON LA) (Slotnick).

For this reason, I believe the Integrity Commissioner incorrectly concluded that she lacked jurisdiction to deal with Mr. Schell's complaint just because a grievance had been filed. Simply put, the Integrity Commissioner has the power to make a finding on whether a councillor has breached the code of conduct, while a labour arbitrator's jurisdiction arises from the collective agreement between a union and employer and does not include the power to sanction municipal councillors over their comments, as elected officials are not the employer. The office of the Integrity Commissioner was the proper forum for Mr. Schell's complaint.

[4]

At the hearing of this matter, the city agreed it would write a report to council specifying that Mr. Schell did not obtain his position with the city through nepotism, and that the city dissociates itself from any comments suggesting otherwise. The city advised it would request this report to go before council. I direct the city to comply with this agreement.

I will remain seized.

A handwritten signature in black ink, appearing to read "Lorne Slotnick", written over a horizontal line.

Lorne Slotnick, Arbitrator
November 19, 2018