

IN THE MATTER OF AN ARBITRATION
Pursuant to the *Labour Relations Act*, R.S. 1995

BETWEEN:

THE ONTARIO NEW DEMOCRATIC PARTY CAUCUS (“ONDP Caucus”)

– and –

**THE CANADIAN OFFICE AND PROFESSIONAL
EMPLOYEES UNION, LOCAL 343** (“Union”)

SOLE ARBITRATOR: Jasbir Parmar

On Behalf of the ONDP Caucus:

Sukhmani Viridi, Counsel, CaleyWray Lawyers
Nivine Zaher, Director, Human Resources and Operations, ONDP Caucus

On Behalf of the Union:

Katie Rowen, Counsel, Ursel Phillips Fellows Hopkinson LLP
Jordyn Gooden, Counsel, Ursel Phillips Fellows Hopkinson LLP
Geraldine McMullen, Labour Relations Specialist, COPE Ontario
Grievor

Hearing held via videoconference on July 25, 2024.

INTRODUCTION

- [1] I have been jointly appointed by the parties to determine two grievances. Both grievances were filed on behalf of the same individual, who the parties have agreed shall be referred to as the “Grievor”.
- [2] The events leading to the filing of these grievances involved Member of Provincial Parliament (“MPP”) Michael Mantha. The ONDP Caucus provided notice of this arbitration proceeding to MPP Mantha on May 14, 2024. He has not sought to participate in this hearing.

THE GRIEVANCES

- [3] The first grievance, filed on November 29, 2022, alleges a failure to maintain a workplace free from harassment and discrimination, contrary to the collective agreement, the *Human Rights Code*, and the *Employment Standards Act*. The grievance seeks a variety of remedies, including compensatory remedies, damages, and a range of systemic remedies.
- [4] The second grievance, filed on January 26, 2024, alleges that the Grievor was terminated without just cause, and seeks reinstatement and damages for any losses that may have occurred.

FACTS

- [5] The ONDP Caucus is a party to a Collective Agreement with COPE Local 343. The collective agreement governs the terms of employment for all employees in the ONDP Caucus Members’ constituency offices. MPP Mantha was, until 2023, a member of the ONDP Caucus, representing the riding of Algoma-Manitoulin. In other words, his constituency office fell within the scope of the collective agreement.
- [6] The Grievor commenced employment as a Constituency Assistant in January 2015. Her location of work was the constituency office for MPP Mantha, in Elliot Lake, although occasional travel to Toronto and other locations was required.
- [7] On or around August 15, 2022, the Grievor raised concerns to the ONDP Caucus about an unsafe work environment. At the same time she commenced a paid leave of absence. On November 29, 2022, the Union filed a grievance on behalf of the Grievor, raising specific allegations of workplace harassment by MPP Mantha during the period of the Grievor’s employment in MPP Mantha’s constituency office.

- [8] On January 23, 2023, the ONDP Caucus, through its counsel, retained Mireille Mortimer, of MortimerKhoraych Workplace Investigations, to conduct an investigation into the allegations raised by the Grievor (the “Mortimer Investigation”).
- [9] The Mortimer Investigation was conducted between January 31, 2023 and July 6, 2023. The investigation included:
- phone calls, email exchanges and several investigative interviews with the Grievor;
 - phone calls and email exchanges with the MPP Mantha and/or his legal counsel;
 - investigative interviews with three witnesses who had direct knowledge of the facts underlying the allegations;
 - review of substantial video evidence, as well as text messages and online communications;
 - review of a variety of relevant documentation related to the allegations such as meeting notes and correspondence; and
 - review of various workplace policies.
- [10] On July 18, 2023, the Mortimer Investigation issued its final report to the ONDP Caucus. Shortly after, on August 15, 2023, the ONDP Caucus provided a summary of the findings of the report to the Grievor, the Union and MPP Mantha.
- [11] The Mortimer Investigation concluded, on a balance of probabilities, that allegations of workplace harassment, sexual harassment, discrimination on the basis of sex, abuse of authority and creation of a toxic workplace, had all been substantiated. All of these substantiated allegations were further found to be in contravention of the ONDP Caucus’s Workplace Harassment, Violence and Discrimination Policy. More specifically the findings of the Mortimer Investigation included the following:
- a) MPP Mantha pressured the Grievor to engage in non-consensual sexual interactions with him;
 - b) MPP Mantha required the Grievor to submit to his hugs on a regular basis;
 - c) MPP Mantha sexually harassed the Grievor on a regular basis in the office, engaging in several incidents of unwanted physical and sexual contact, notwithstanding the Grievor’s protests that he stop such conduct;
 - d) MPP Mantha requested that the Grievor send him sexually explicit photos of herself, advise him of any sexual dreams about him, and made comments about her appearance, including her makeup, hair, and clothes; and

e) MPP Mantha pressured the Grievor to work from the office more often so that he could physically have access to her and continue his practice of sexually touching her;

[12] Both parties to the grievances before me have accepted the findings of the Mortimer Report and I have not been asked to make any factual findings regarding the harassment allegations. However, the Mortimer Investigation's conclusions are relevant to the issues raised in the termination grievance and the circumstances by which the Grievor's employment with the ONDP Caucus came to an end.

[13] While the Mortimer Investigation was underway, on or about April 1, 2023, after receiving the particulars of the allegations being investigated, the ONDP Caucus removed MPP Mantha from the Caucus pending the outcome of the Mortimer Investigation. Given MPP Mantha's role as an elected official, and the seriousness of the allegations being investigated, the ONDP Caucus and its leader Marit Stiles confirmed via media release that MPP Mantha was being removed from caucus pending an independent investigation into alleged workplace misconduct.¹

[14] Subsequent to receipt of the Mortimer Investigation report, on or about August 15, 2023, MPP Mantha was permanently removed from ONDP Caucus. At that time, the ONDP Caucus and its leader Stiles confirmed via media release that allegations of workplace misconduct by MPP Michael Mantha had been substantiated by multiple witness interviews and video evidence².

[15] On January 19, 2024, the ONDP Caucus issued a termination letter to the Grievor. The letter asserted that, given the fact that that MPP Mantha no longer held an elected seat within the ONDP Caucus, the Grievor's employment "no longer fell within the purview of the collective agreement", and that her employment had terminated April 1, 2023. The employment of other Constituency Assistants similarly employed at that office had been similarly terminated at that time. The letter stated that the ONDP Caucus could not provide the Grievor with meaningful work within the COPE bargaining unit due to the absence of nearby constituency offices. As a result, the Grievor's position was deemed to be frustrated.

[16] In response, on January 26, 2024, the Union filed a grievance alleging that the Grievor had been unjustly terminated due to the ONDP Caucus's decision to remove MPP Mantha from Caucus, and that her termination was in contravention of the collective agreement, the *Human Rights Code*, the *Occupational Health and Safety Act*, and any other relevant legislation. The grievance sought reinstatement and a range of other compensatory and other remedies.

1 <https://toronto.ctvnews.ca/michael-mantha-removed-from-ontario-ndp-caucus-amid-workplace-investigation-1.6338711>

2 <https://www.cbc.ca/news/canada/sudbury/workplace-misconduct-investigation-independent-riding-northern-ontario-politics-1.6937460>

DECISION

- [17] Having heard the positions of the Parties, and reviewed the Mortimer Investigation Report and other relevant documents, I have concluded that the Grievor's employment was not terminated for just cause. Rather, as with the other Constituency Assistants in the office, the Grievor's employment with the ONDP Caucus was frustrated, through no fault of her own, following the removal of MPP Mantha from the ONDP Caucus based on the substantiated findings that he had engaged in sexual harassment, workplace harassment, discrimination on the basis of sex, abuse of authority and the creation of a toxic workplace in relation to the Grievor during the period of her employment.
- [18] As such, and on the joint request of the parties in the event of such a conclusion, I remit the matter of remedy arising out of the frustration of the Grievor's employment, as well as in respect of the workplace harassment grievance, back to the Parties.
- [19] I shall remain seized in the event the Parties are unable to resolve the issue of remedy in respect of these grievances.

DATED THIS 8th DAY OF AUGUST, 2024.

"Jasbir Parmar"

JASBIR PARMAR, SOLE ARBITRATOR