IN THE MATTER OF an arbitration under *The Labour Relations Act* and Union Policy Grievance 463-911-2016 (Respectful Workplace Complaint).

BETWEEN:

CITY OF WINNIPEG,

Employer ("the City"),

and

MANITOBA GOVERNMENT AND GENERAL EMPLOYEES' UNION, PARAMEDICS OF WINNIPEG, LOCAL 911,

Union.

AWARD

Appearances

John Jacobs, Counsel; Robert Kirby, Labour Relations Manager; John Dawson, Senior Labour Relations Officer; for the Employer.

Keith LaBossiere, Counsel; Ryan Woiden, Local Union President; Mike Sutherland, Labour Relations Officer; for the Union.

Hearing dates and location

October 11-13; November 20, 2017, in Winnipeg, MB.

Date of award

Issued February 28, 2018.

Overview

On August 28, 2015, Chief John Lane ("the Chief") of the Winnipeg Fire Paramedic Service ("WFPS" or "the Service") spoke on a workshop panel at an International Association of Fire Fighters conference in National Harbor, Maryland (known as the Redmond-Barbera), along with Alex Forrest ("Forrest"), President of the United Fire Fighters of Winnipeg ("UFFW"). The conference addressed occupational health and safety topics and fire-based emergency medical services (EMS) issues. The content of the Chief's presentation was not controversial. He had delivered it on a number of previous occasions to a variety of audiences, both local and national.

The Chief is a passionate proponent of Winnipeg's integrated Fire-EMS model in which medical calls are attended by either an ambulance with a paramedic team, a firetruck with firefighters cross-trained as primary care paramedics (PCP's), or both, depending on the circumstances. Low acuity calls can be handled by firefighter PCP's while advanced care paramedics (ACP's) can be reserved for the most serious medical issues. An integrated system can be efficient and effective. This was the Chief's message and it was all positive. However, the conference brochure description of the Chief's panel was extremely provocative and did not match the actual presentation. This set in motion a chain of events leading to the present grievance arbitration.

The Chief had been consulted about the brochure text and had suggested some revisions, but due to a mix-up on the part of conference organizers, the changes were

not made. Even with the revisions, the text would have been problematic. The Chief's panel was described in the published conference program as follows:

EMS FIRST RESPONSE:
FACTS VERSUS RHETORIC

Integrated fire & EMS departments provide service to almost 60% of Manitoba residents. Winnipeg's integrated model arose in the late 1990s due to the lack of capacity of the existing standalone EMS service. Using the inherent response capacity in the fire service, the department was able to expand services while avoiding significant duplication of resources. However, this fire-based model is continuously threatened by single role EMS providers and misinformed leaders. The speakers in this workshop will present how they use facts to thwart rhetoric and protect the service they provide.

PANEL
Alex Forrest
District Service Representative
IAFF 13th District
Winnipeg, Manitoba, Canada

John Lane
Chief
Winnipeg Fire Paramedic Service
Winnipeg, Manitoba, Canada

The brochure text was posted on Twitter by Forrest and quickly spread via social media to Winnipeg. It caused immediate outrage among members of the Union, most of whom are "single role EMS providers" as described in the program, meaning paramedics working on ambulances or EMS vehicles. Cross-trained firefighters are all members of the UFFW and are considered dual role EMS providers. The WFPS now consists of the Winnipeg Fire Department ("WFD"), Winnipeg Emergency Medical Services ("WEMS") and 911 Communications, three divisions led by a single management team and chief.

Reacting to the conference brochure, Union members rejected the assertion that Winnipeg's model is "continuously threatened" by paramedics and "misinformed leaders". They were offended by the suggestion that Forrest and the Chief have to "use facts" to "thwart rhetoric" from paramedics and thereby "protect the service". Members of the Union did not deny that Forrest was entitled to put forward controversial opinions in his role as head of the local firefighters' union, but they felt betrayed when the Chief, who ought to represent and support all members of the Service, appeared to be joining in a partisan position.

The Union filed a grievance and a respectful workplace complaint against the Chief and in July 2016, the complaint was sustained by an independent investigation. The Chief sent a written apology to all Union members, but not until November 2016. No other corrective action was taken by management.

At arbitration, the City accepted the investigator's report and admitted a breach of the respectful workplace policy. The Chief testified that the text in question was accurate albeit offensive and insulting to some paramedics, for which he apologized again. Specifically, he admitted to breaching the respectful workplace policy as found by the investigation. The Chief said he regretted the long delay in apologizing but explained that he was precluded from speaking out until the Complaint process had ended. Based on the foregoing, the City submitted the Chief has made sufficient amends and adjusted his thinking appropriately. There was no basis for any arbitral relief.

For its part, the Union argued that the Chief's apology was woefully late and completely insincere. He should be ordered to apologize again, in terms drafted by the Union, and take respectful workplace training. The Union sought a series of

declarations and remedies including a formal corrective action plan, damages for undermining the Union and significant damages payable to all individual members of the Union. The Union emphasized that this was not a dispute between the paramedic and firefighter unions. The members of UFFW and MGEU Local 911 respect each other and work well together on a daily basis. The Union has brought the present grievance because of the Chief's failure to respect paramedics and their leadership.

At the outset of the arbitration, I ruled that the hearing would be open to the public pursuant to section 122 of *The Labour Relations Act* ("the Act") and members of the media, along with television cameras, were entitled to remain in the hearing room. Labour arbitration hearings are presumptively open to the public. The Act provides as follows:

> **Hearings open to public**
>
> 122 Every hearing held by an arbitrator or arbitration board shall be open to the public except that the arbitrator or arbitration board may hold the hearing in camera where the arbitrator or arbitration board is of the opinion that
>
> (a) intimate financial or personal matters may be disclosed during the hearing; and
>
> (b) the desirability of avoiding disclosure of the intimate financial or personal matters outweighs the desirability of adhering to the principle that hearings be open to the public.

No intimate financial or personal matters were raised as a possible basis for closing the hearing or barring the media. The City argued that since the case involves a respectful workplace complaint, which is a confidential process under City policy, the requisite confidentiality could only be maintained by closing the hearing. This alone is not a sufficient basis to exclude the public. Most, if not all personnel and

labour relations matters are handled confidentially but the legislature has determined that an arbitration hearing under the Act will be open unless the statutory test has been met for a closed sitting. By definition, all exhibits filed in evidence are also public unless a restriction can be justified under section 122 of the Act.

As for cameras, while the City said that they could have a chilling effect on witnesses, I allowed the cameras to remain as long as there was no interference with the proper conduct of the hearing. I invited the City to renew its objection if there was a concern relating to a specific witness or some specific conduct by a member of the media. No further concerns were raised.

At the request of the parties, I conducted a mediation prior to and during the arbitration hearing, but it was not possible to reach a mutually satisfactory resolution to the grievance. Nothing said or done by the parties during the mediation has been taken into account in rendering this award.

Chronology of events

The material facts in this case were essentially undisputed. There was significant disagreement about the appropriate conclusions to be drawn from the facts.

In response to the Chief's conference appearance on August 28, 2015, the Union quickly drafted and circulated a Respectful Workplace Complaint (Ex. 6, "the Complaint") under Administrative Standard No. HR-002, Respectful Workplace (Ex. 8, "the Policy"). The Complaint was filed with the Manager of Human Resources for the City on September 4, 2015. Ultimately 156 paramedics and emergency communications employees signed the Complaint.

Respectful Workplace complaint
Employees of WEMS
MGEU 911
(list attached)

In accordance with the City of Winnipeg's Respectful Workplace Policy, Administrative Standard No. HR002, we are formally filing a respectful workplace complaint for immediate investigation and action. We believe this to be an urgent matter and ask for the assistance from the Department of Human Resources and the Wellness and Diversity Branch as outlined in the policy.

As Employees of the Winnipeg Fire Paramedics Service Emergency Medical Services and 911 Communications Divisions we are professionals dedicated to patient care, to the citizens of this City and take pride in our role as paramedics and emergency communications personnel.

Through Social Media, we have recently become aware of a Fire Service industry conference attended by Alex Forrest, President of the United Fire Fighter of Winnipeg IAFF local 867, and John Lane, Chief of the Winnipeg Fire Paramedic Service. We attach a scanned document which indicates the topic of the conference for the morning of Friday August 28, 2015. …

…

The above statement, in general, is insulting and disrespectful to our members. It has jeopardized employee morale, dignity and well-being and has the potential to undermine work relationships and productivity. As the Chief of the Winnipeg Fire Paramedic Service, John Lane has the responsibility to uphold the welfare, morale and dignity of all of the women and men who work under his leadership without bias or preference. It is unacceptable the Chief Lane would participate in a presentation to any third party or outside organization where the accusation was made that, "…this fire-based EMS model is continuously threatened by single role EMS providers and misinformed leaders".

Although paramedics represented by MGEU local 911 function in many roles within the WFPS, we interpret the reference to "single role" as referring to non-Winnipeg Fire Department Fire Fighter paramedics. Furthermore, "single role EMS providers" make up MGEU Local 911 almost exclusively, precluding the possibility that these offensive and disrespectful accusations could be referring to a group of EMS providers other than Local 911.

The distinction made and accusation that single role providers are "threatening" is inflammatory and has resulted in our members feeling disrespected by Chief Lane and is viewed as a form of workplace harassment and bullying and has the very real potential to create a disruptive workplace.

Furthermore, the assertion that the leaders of the Single Role EMS providers are "misinformed" and the assertion that the speakers (Alex Forrest and Chief John Lane) use "facts to thwart rhetoric and protect the service they provide" is insulting and offensive to the Local 911 executives and stewards.

These statements have left many members feeling as though any suggestions for improvements to this service model are being viewed as rhetoric and any concerns they would come forward with will be seen us unfactual or disingenuous. As professional paramedics, we have a legal, professional and ethical obligation to bring forward concerns about patient care.

Under the Paramedic Association of Manitoba Code of Ethics, Paramedics have a "*responsibility to expose incompetence or unethical conduct of others to the appropriate authority*".

We believe reporting incidents of concern regarding patient safety and patient care and forwarding suggestions for improvements to the service delivery model are elements of our professional and legal obligations. There is potential that Chief Lane's use of the words "threatened", "misinformed" and "rhetoric" could stifle reporting of critical incidents or incidents of patient safety concerns.

Under the City of Winnipeg's Statement of Commitment to a Respectful Workplace, it is clearly outlined that:

The City of Winnipeg recognizes its responsibility to build and maintain a respectful workplace where all employees enjoy an environment free of behaviours such as unlawful discrimination, harassment, disruptive workplace conflict, disrespectful behaviour and violence in the workplace.

The City recognizes that disruptive workplace conflicts and disrespectful behaviour can jeopardize an individual's dignity and well-being and/or undermine work relationships and productivity. The City commits to providing a workplace built upon the principle of fair and respectful treatment in order to minimize these conflicts.

It is our assertion that the Chief of the Winnipeg Fire Paramedic Service, and therefore the leader of both the Winnipeg Fire Department represented by UFFW local 867 and the Winnipeg Emergency Medical Services represented by MGEU local 911, must be held to the highest standard in all his words and actions, must exhibit behaviour consistent with impartiality and avoid the appearance of favouritism and must strive to provide and maintain an environment respectful of all divisions under his leadership.

The term "they provide" implies that only the dual role paramedic members of the WFD are providing medical services to the public that meet the approval of Chief John Lane. This is extremely disrespectful of all providers of emergency medical services in MGEU local 911. We provide excellent services and care to the citizens of Winnipeg

> and will continue to do so. We question the motives of Chief Lane in his words and actions and find them offensive, disrespectful, biased, and harmful to the morale and well being of our members.
>
> In addition to the aforementioned City of Winnipeg Respectful Workplace policy, we rely on the Workplace Health and Safety Act. …
>
> We ask that the City support us by taking immediate action in conducting a full investigation using the City of Winnipeg and WFPS Respectful Workplace Policies, the policies governing the use of social media and the WFPS employee code of conduct, before further dignity and well being are jeopardized, and take the necessary steps to stop the undermining of work relationships and productivity.
>
> Our complaint contends that the abusive conduct includes physical and mental maltreatment and the improper use of power. It also includes a departure from reasonable conduct. In this instance, this is an abuse of power and cannot be representative of the City of Winnipeg, its leaders or employees and not even the Chief of the Winnipeg Fire Paramedic Service is exempt from such conditions.

Along with the Complaint, the Union filed a grievance under the collective agreement, but held it in abeyance.

The Policy recognizes the City's "responsibility to build and maintain a respectful workplace where all employees enjoy an environment free of behaviours such as unlawful discrimination, harassment, disruptive workplace conflict, disrespectful behaviour and violence in the workplace." Implementation of the Policy is guided by the Respectful Workplace Protocol (Ex. 11, "the Protocol") which defines essential terms and sets forth procedures to be followed. Relevant to the present case, the Protocol includes the following definitions:

> **Disrespectful Behaviour** is behaviour that is improper, unwelcome and/or inappropriate in the workplace. It may happen once or continue over time. It can include:
>
> - Rude comments and swearing as well as spreading rumours that damage peoples' reputations.
> - Actions that invade privacy or personal property, or unwelcome gestures.
> - Displays or distribution of printed or electronic material that offends.

> A **Disruptive Workplace Conflict** is defined as an ongoing dispute or a communication breakdown between two or more individuals that impacts their ability to work productively and cooperatively in the workplace.

When a non-violent respectful workplace issue arises, the Protocol lays out steps to follow in resolving the problem. Step 1 is to approach the person who caused the offensive behaviour and ask that the behaviour stop. If this step is not appropriate, alternatives are to contact Human Resources, the employee's union or the respondent's supervisor. Step 2 is to attempt an early resolution with the immediate supervisor. Management will meet separately with the parties and prepare a corrective action plan with time frames and implementation activities. If the issue cannot be resolved in this manner, Step 3 allows for a formal investigation. The Protocol details the procedures to be followed during an investigation including a confidentiality requirement. The following steps are specified, including a corrective action plan:

- Investigators will submit the report to the Manager who requested the investigation.
- Management will prepare a corrective action plan based on the findings.
- Management will meet with the parties to advise them of the investigation findings and the steps that will be taken to ensure a respectful workplace.
- A copy of the report must be disclosed to the complainant, the respondent, the Department Head, the supervisor, the Departmental Human Resource Representative, the Union, and to the Wellness and Diversity Branch for record keeping purposes.
- If an employee is not satisfied with the outcome of the complaint, he/she may proceed to file a grievance … .

The collective agreement between the Union and the City (Ex. 24) includes a Letter of Understanding (p. 69, "the LOU"), affirming that every employee shall be entitled to a respectful workplace. The LOU states: "The parties recognize that disruptive workplace conflicts and disrespectful behaviour can jeopardize an individual's

dignity and well-being and/or undermine work relationships and productivity." The LOU provides that the Respectful Workplace Administrative Directive (the Policy) shall be followed and reiterates the right to grieve.

Following the filing of the Complaint, MGEU Provincial President Michelle Gawronsky wrote to the Paramedic Chiefs of Canada on September 14, 2105 to express "profound disappointment" over the Chief's participation at the IAFF conference in August. The Complaint itself was not referenced but the conference brochure text was forcefully refuted, as follows (Ex. 33):

> It is our firm belief that ambulance-based paramedics are not a "threat" to the service delivery model in Winnipeg. In fact, paramedics represented by MGEU believe that are an integral part of the paramedic services provided to the citizens of Winnipeg, representing the Advanced Care Paramedics, the Community Paramedics, the Tactical Paramedics, the Interfacility Transfer Paramedics, and all Ambulance based Primary Care Paramedics. They are proud of the service they provide, and work cooperatively with their coworkers in the fire service.
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> They believe their continuous efforts to engage in respectful and professional dialogue aimed at identifying areas for improvement in patient care and system improvements with all stakeholders is a professional, ethical, and in many cases a legal obligation. They are disheartened to find that these efforts are being labeled as "rhetoric". In addition, Paramedics of Winnipeg Local 911 members take exception to the characterization of our leaders as "misinformed".
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> They feel confident that the Paramedic Chiefs of Canada also agree that as paramedics we have the responsibility to continually work towards system improvements in order to provide optimal patient care.
>
> …
>
> We sincerely hope that Chief John Lane has not damaged the reputation of Winnipeg's "single role" paramedics in the opinion of the Paramedic Chiefs of Canada.
>
> We look forward to continuing a professional and productive relationship with The Paramedic Chiefs of Canada and apologize for any offence that Chief Lane may have caused.

On September 25, 2015, Lianne Mauws ("Mauws"), Manager of Human Resources for the City, confirmed to the Union that an external independent investigator would be retained to deal with the Complaint (Ex. 11). Mauws emphasized the need for confidentiality during the process and undertook to provide the Union with a copy of the report once it had been received by her. "The Department will then meet with you to review the findings of the investigation and any subsequent recommendations." She enclosed a copy of the Protocol to ensure that the Union was aware of the process involved. The City contracted with Pamela Clarke ("Clarke"), a local lawyer and workplace consultant, to conduct the investigation.

On October 13, 2015, after meeting with the parties to discuss the allegations in the Complaint, Clarke filed a preliminary assessment with City management (Ex. 14). She concluded that the Complaint fell within the parameters of the Policy and should be advanced to a formal investigation. She also raised the prospect of resolution through an informal settlement process if the parties were prepared to make such an effort. Over the next several months, the Union met several times with management to discuss how the parties might deal with the Complaint. Mediation was considered. Options for settlement were canvassed. In February 2016, Clarke was retained to proceed with a formal investigation.

The Chief submitted a written response to the Complaint on April 4, 2016 (Ex. 16), taking an aggressive approach and characterizing it as a blatant and cynical misuse of the Respectful Workplace Policy. He said the allegations had been contrived by the Union Executive. Given that the sincerity of the Chief's apology was a central issue in this case, his response letter to Clarke is noteworthy:

I appreciate the opportunity to respond in detail to the allegations set out in the noted complaint. I consider the allegations to be contrived and promulgated by the executives of MGEU Local 911. The use of the respectful workplace policy in this matter is the antithesis of the policy's purpose and intent. Arguably, it is unlikely this complaint would ever have arisen without the posting of the conference program paragraph on Alex Forrest's Twitter account. However, the subsequent agitation of Local 911's membership, the apparent manner in which signatures of the membership were affixed to the complaint, and the filing of the complaint were unwarranted and reprehensible.

It is important to understand the history of the labour representation for the ambulance paramedic group of the Winnipeg Fire Paramedic Service, as the evolution of MGEU's involvement is germane to the complaint. Indeed, a brief history of the service is likely appropriate. I hope to demonstrate that this complaint is just one more example (albeit a particularly vexatious one) of MGEU's attempts to undermine an emergency medical services delivery model that is among the most efficacious, efficient, and safe in Canada.

…

In approximately 2009, PPAW [Professional Paramedic Association of Winnipeg] sought membership in MGEU. MGEU also represents the majority of Manitoba's ambulance paramedics outside of Winnipeg, with the notable exceptions of Brandon and Thompson where the fire services have provided emergency medical services for many years with cross-trained firefighter-paramedics. The firefighter-paramedics in Brandon and Thompson are members of the IAFF.

Since assuming the representation of Winnipeg's ambulance paramedics, MGEU has publicly engaged in efforts to undermine the integrated service delivery model despite clear independent evidence of the comparatively favourable efficacy and efficiency of the model. In the spring of 2015, the Local 911 executive held meetings with several City of Winnipeg councillors during which the model was criticised, and non-specific allegations of lapses in quality of care and patient safety were made. Incidentally, no specifics of these allegations were ever brought forward to WFPS management. Concurrently, the provincial president of MGEU published articles in the local press that were critical of the model, which prompted a response from me. Weblinks are provided for a few examples …

…

The allegedly offensive program text was not written by me. I was asked for input to the text via email from the conference organizers, who sent me a draft that was very close (possibly identical) to the published text. While the text is accurate, it was undoubtedly provocative, and I requested that changes be made. Drafts went back and forth by email, which I will provide to you. The final draft was markedly different than

> the published text. The program was given to attendees as they registered at the conference. I did not read the final text until the complaint was brought forward.
>
> Despite not being responsible for the actual text, I do not deny responsibility for presenting under its content. Indeed, the content is accurate – there is substantial evidence in mainstream and social media of attacks on Winnipeg's integrated model by ambulance-only sources from across the country. In fact, the provincial president of MGEU, Michelle Gawronsky, who is a paramedic in a non-integrated Manitoba ambulance service, publicly posted numerous letters and articles critical of our service model. One such example is attached. However, the basis of the complaint is incorrect. MGEU Local 911 seems to consider its members to be "single role providers". This is not correct, and further illustrates MGEU's concerted efforts to undermine the Winnipeg model. Members of Local 911 are employees of the Winnipeg Fire Paramedic Service, which by definition is dual role. Their characterization as single role providers is materially false. From my perspective, all employees of the Winnipeg Fire Paramedic Service are dual role providers. Any suggestion to the contrary is essentially denial of a process that has been underway for over 16 years, and is nothing more than a semantic contortion of reality.
>
> …
>
> Paramedics employed by the Winnipeg Fire Paramedic Service are in fact bound by the requirements of the regulator (the Province of Manitoba) and the requirements of the Winnipeg Regional Health Authority (WRHA). In practice, critical incidents and patient safety concerns are promptly and regularly reported through an automated process integral in our electronic patient care reporting system. Reporting of such incidents is required by both the regulator and the WRHA.
>
> It is interesting that no mention is made of the content of the presentation. In fact, the content extolls the virtues of the model including the work of all employees. Moreover, the executive of MGEU Local 911 had seen the presentation at a meeting of all labour leadership in June of 2015.
>
> In conclusion, this complaint is a blatant misuse of the City of Winnipeg's respectful workplace policy. While the program text is provocative, it is accurate. More importantly, it does not refer to any employee of the Winnipeg Fire Paramedic Service, and any portrayal to the contrary is false. If my actions have truly offended anyone, I will apologize to them unreservedly. However, I believe that at its core, this complaint is a cynical and vexatious use of the respectful workplace policy. This perspective is supported by the release of the complaint to local media …and by a letter written by Michelle Gawronsky to the Paramedic Chiefs of Canada … . These actions violate the confidence in which the respectful workplace complaint is intended to be managed.

Clarke recommended interviewing a selected number of paramedics but at the insistence of the Chief, arrangements were made to interview all employees who

signed the Complaint and wished to meet with the investigator. Between mid-April and mid-June 2016, Clarke conducted 142 interviews with signatories to the Complaint. She interviewed 16 other persons including four deputy and assistant chiefs, Mauws, Forrest and two conference organizers, as well as the Chief. She reviewed a large volume of documents and heard about a number of ongoing labour relations issues in the Service.

As noted above, a recurring topic during the investigation was the reporting of critical incidents. In the Union's perspective, the care provided by firefighter PCP's has not always met the required professional standard and mistakes have not been properly documented or reviewed. The Union has pursued this issue as a serious matter of legal and ethical obligation. Management has resisted taking appropriate action, in the Union's view, and has threatened discipline if paramedics bypass City procedures by reporting directly to the Winnipeg Regional Health Authority. In this context, the conference brochure reference to "rhetoric" and a model "continuously threatened by single role EMS providers and misinformed leaders" was an especially sensitive point. The management representatives interviewed by Clarke acknowledged that critical incident reporting was an issue at the time and said they were actively working on it. The Chief denied any implication that "rhetoric" as referenced at the conference meant the Union's patient care concerns.

During the investigation, Clarke was also told that there was a poor relationship between the Chief and the Union Executive. The Union perceived that the Chief favoured the firefighter union. It was alleged that he once told the Executive that paramedics would have been "better served" by joining the UFFW. The Chief denied the comment but conceded he may have "lamented" that amalgamation had

not pared down the number of bargaining units in the Service. He said every union he deals with gets equal attention.

As a desired resolution, the Union told Clarke it wanted to be able to voice the ideas and concerns of its members without being viewed as a threat to the service delivery model. The Executive said it wanted to work with the Chief and for him to take a less partisan role. They would have expected him to defend them against the commentary in the conference brochure. They expected an apology from the Chief that would be as public as the offensive brochure.

On July 12, 2016, Clarke submitted her report to the City. It was lengthy and comprehensive. The Chief's power point presentation itself was not offensive, she concluded. Regarding preparation of the brochure text, she found the Chief attempted to remove the terms "fire-based", "threatened", "single-role EMS providers" and "misinformed leaders", but accepted the phrase "use facts to thwart rhetoric and protect the service they provide". At the time the brochure was being drafted, he knew the text was inappropriate and could be offensive, so Clarke concluded his subsequent response to the Complaint was inconsistent. She found that Union members were genuinely offended and even the management witnesses could see it would be a problem. After detailed review, she found that the Chief was acting on misinformation when he accused the Executive of contriving a vexatious complaint. Finally, Clarke held (p. 36) that the Chief's association with the conference brochure "had the effect of making every member of the Complainant Group feel undervalued in their role and it either perpetuated the low morale that was already in place or brought back the low morale that has characterized much of their time" in the WFPS. While the Chief claimed he was always prepared to offer

an apology, "in the end he did not specifically request the HR committee leading the informal talks to table this in an attempt to resolve the matter."

On the subject of breach, Clarke dismissed the harassment claim but found the Chief guilty of two violations (p. 36-37):

> Based on the above, there is no question that the Respondent's presentation at the Conference under the "banner" of the impugned topic summary did in fact violate the Policy. …
>
> The Respondent's actions clearly contributed to a "Disruptive Workplace Conflict" as defined in the Policy. The Respondent was well aware that MGEU EMS providers have expressed interests that conflict with firefighter/paramedics in terms of training standards and the perceived "double standard" between ambulance paramedics and fire paramedics when it comes to patient care. If the only thing offensive about the conference topic summary was the sentence that the Respondent sought to remove, I might not make this finding because it seems harsh to hold someone accountable for mere oversights and the administrative errors of others. However, he allowed the language to be published presenting non-fire EMS providers as spewing "rhetoric" that firefighter paramedics need to "thwart" with "facts" and he should have known that the City's ambulance paramedics would view this as criticism directed at them if it came to their attention. The Respondent's suggestion that they only saw it because UFFW President posted it to Twitter shows a lack of appreciation for the omnipresence of social media in every aspect of their lives. There is no question that the Complaint Group has felt compromised in their relationship with the Respondent, not only because of these comments but because he failed to make any subsequent attempt to offer an explanation for them.
>
> The facts also trigger the Policy's definition of "Disrespectful Behaviour." This is not a legal concept. It is a type of behaviour that the City has prohibited under this Policy, presumably because it seeks to establish a workplace that is as comfortable and respectful as possible for all workplace parties. It sets a higher standard of behaviour that a strictly "Anti-Harassment" policy would. … . Certainly this clause should have particular application to senior leaders such as the Respondent who is expected to lead the WFPS by example. The comments in the conference topic summary are insulting toward ambulance-based paramedics whether they are considered by Respondent and the IAFF to be true or not. To be expressed by a fire union leader may be acceptable as opinion or fair comment. But to say it as the Chief of Winnipeg's Fire Paramedic Service can reasonably be expected to insult MGEU paramedics and undermine them in their roles.

> It was improper for the Respondent to present in association with this summary. He may not have known that his changes had not been made but he should have checked. Even if the most offensive sentence had been taken out, he should have given some thought to how the reference "rhetoric" would be taken. "Rhetoric" is never a complimentary term. Members of the Complaint Group had an accurate understanding of the negative connotation connected to this term (i.e. marked by exaggeration, contrived, unsubstantiated, lacking true meaning) and the offense they took was not unreasonable. Finally, for the Respondent to take the position in this investigation process that words he previously found problematic are now not offensive suggests that an animus toward the Executive developed over time that clouded his ability to see the words as objectively as he had previously been able to do.

During the course of her reasons for rejecting the Union's harassment allegation, Clarke listed a number of mitigating considerations (p. 38). She noted that "the language in the summary was reflective of a topic of valid interest within the North American Fire/EMS system". The Chief did not consider the reference to "rhetoric" offensive although he did fail to appreciate how paramedics would perceive it. He recommended changes to the text and "it was not unreasonable for him to think he had paid an appropriate amount of attention to the draft". Attending and speaking at industry conferences is reasonable and expected for the Chief. Here the language used caused offense "but it was through inattention, not a conscious effort to demean or belittle Winnipeg paramedics." Moreover, the Chief did not have the Union's patient care concerns in mind when he referred to "rhetoric". Rather, he was thinking of "commentary from leaders in the EMS industry about the viability of fire-based EMS delivery models." Clarke made a finding that "the harm is not lasting in the sense that people are not able to do their jobs". The Chief's actions were not abusive.

Finally, Clarke found the Union acted in good faith by filing the Complaint and participating in the investigation. There was no evidence that the Executive used pressure tactics in gathering signatures. The members she interviewed generally

gave balanced statements of concern. The workplace did not become hostile after the Complaint was filed, as suggested by the Union. Labour relations can be tense by definition and it was not necessarily improper for management to suggest discipline for failing to follow City policies (such as critical incident reporting). While the Chief's language in his response was "strident", it was not abusive or pejorative to anyone on a personal level, and he made his points in a forthright manner. There was no retaliation against anyone. The Union alleged a breach of confidentiality when the Chief mentioned the Complaint during an ACP training class, but Clarke held that neither party had violated the confidentiality cautions issued both by her and City HR staff.

Union Representative Mike Sutherland ("Sutherland") wrote to Mauws on July 14, 2016 asking for a copy of the Report (Ex. 30, email chain). Mauws replied that it was in the hands of Chief Operating Officer (COO) Michael Jack ("Jack"). She listed the following steps as provided in the Protocol: management will prepare a corrective action plan based on the investigative findings; management will meet with the parties to advise of the findings and the steps that will be taken to ensure a respectful workplace; a copy of the Report must be provided to the complainant, the respondent, the supervisor and department head, HR, the Union and Labour Relations. Sutherland followed up and continued to press for the Report, even if the corrective action plan was not yet complete. On August 2, 2016, Mauws reiterated the provisions of the Protocol and stated that the action plan precedes disclosure of the Report. It was summer and the COO was away on vacation, she noted. Sutherland replied, observing that it was "counter intuitive" for a corrective action plan to be prepared before the main parties were even aware of the findings.

The Report was ultimately released to the Union Executive and the other enumerated parties on August 19, 2016. However, due to confidentiality restrictions, copies were not provided to the complainants. The Union met with Jack on September 20, 2016 and indicated it would hold its grievance process in abeyance until the City determined its course of action regarding the Complaint (Ex. 31). On October 18, 2016, having heard nothing, the Union filed an amended grievance and requested to proceed directly to arbitration. Sutherland told Jack (Ex. 32) that in the minds of the membership, "this entire matter has dragged on for far too long."

The amended grievance (Ex. 20) was as follows:

> The MGEU hereby grieves that the Employer has failed to employ reasonable due diligence in addressing the entire respectful workplace complaint in a timely fashion. Furthermore the Employer has employed undue, unnecessary, unreasonable and unwarranted delay in providing a copy of the investigative report to the Union as required, or proceeding expeditiously in addressing the matter as required by its own standards and policy. The Employer has improperly and inappropriately miscategorised the respectful workplace complaint, and the origin of it, and failed to properly recognize and address the issues and concerns giving rise to the complaint. It has thoroughly failed to comport itself in accordance with its own stated standards of respectful workplace conduct. It has exacerbated delays, treated the complaint with derision and disdain, and categorized the complaint essentially as a fabrication and exaggeration by the Union executive. In light of the above, the MGEU also says that the Employer has unreasonably, unjustifiably and without valid reason, interfered with its administration – causing significant impact on both the MGEU and its members, and serving to undermine the MGEU in the eyes of its members.

On October 21, 2016, Jack notified Sutherland that the Chief anticipated issuing a message to staff in the first half of November. Jack made no reference to a corrective action plan or any other possible steps flowing from the Report.

The Chief wrote individually to each complainant on November 10, 2016, apologizing in the following terms (Ex. 21, 22):

I am writing to address an issue that has been outstanding since September of last year; specifically a respectful workplace complaint against me from a number of members of MGEU Local 911. The complaint concerned language contained in a written summary of a presentation that I gave at a large bi-annual EMS and Health and Safety Symposium hosted by the International Association of Fire Fighters in Maryland in August 2015. An exhaustive investigation was undertaken by an independent workplace consultant retained by the City. The investigation is now complete, which allows me to address the issue directly as I have wanted to do since I became aware of the complaint. I write to you personally on my own volition; it has not been prescribed or required by any policy or individual.

First and foremost, I offer my unreserved and sincere apology to you for the language that was contained in the written summary and the offense it caused. The text that was published was an early draft, and the words were not entirely mine. I submitted revisions months before the conference that more accurately represented our staff and service. Unfortunately, due to administrative errors, those revisions were not reflected in the final published version. Nevertheless, I accept full responsibility for having presented under the banner of the published summary. Furthermore, I did not check the written program to ensure the final version of the summary was the correct version. This was not duly diligent on my part, which I regret sincerely. Ensuring the accuracy of published presentation summaries and other items will be a routine part of my practice in the future.

Secondly, I offer apology to the leadership of MGEU Local 911, specifically President Ryan Woiden, Vice-President Troy Reidy, and Chief Steward Joshua O'Keefe for my erroneous conclusion that they promulgated this complaint among the Local 911 membership. Early in the process, I received incomplete information that prompted this conclusion. However, the investigator's interviews clearly demonstrated that a groundswell of concern was expressed by the membership when the summary was broadcast on social media, compelling the executive to act. I sincerely regret my error in this judgement.

It is disappointing the executive didn't approach my office before engaging the formal complaint. The intent and spirit of the respectful workplace policy is to achieve resolution of concerns as quickly as possible through less formal avenues. Regrettably, no such options were explored and going forward, I welcome informal discussions. That said, proceeding directly to formal complaint was undeniably within the executive's prerogative. The investigator found that most members felt an apology was in order, and many wondered why I was not prompt in offering one. The delay was an unfortunate consequence of the formal complaint process. As the respondent to the complaint, I was forbidden from doing anything that could be seen to interfere with the process. With its conclusion, I am glad to finally be able to provide that apology.

I am under no illusion that this letter alone will completely and forever resolve the offense that has occurred. I do hope this is a major step forward in the process.

> I am immensely proud of the Winnipeg Fire Paramedic Service. I am steadfast in my belief that we provide highly effective, efficient, and safe service in all of our service areas. We consistently compare very strongly to our peers across the country and internationally. Of course, there are improvements that can and should be made, and we are working very hard at the administrative level to develop a comprehensive plan that will incorporate these improvements as we move forward. Our people are at the heart of all of our services, and I value the contributions of each and every member of this department.
>
> Our service model is undoubtedly unique, and often generates controversy. I will continue to defend and promote the Winnipeg Fire Paramedic Service model without reservation. Obviously, I am not infallible and there will almost certainly be future instances that will cause angst. Please be assured that I will make every effort to ensure that my words and actions reflect my deep commitment to the Winnipeg Fire Paramedic Service and its people. I encourage all members to focus efforts on enhancing our existing service model.
>
> Sincerely,
> John A. Lane, BSc
> Fire & Paramedic Chief

The Union did not accept the Chief's apology to the members as adequate or sincere and provided a revised form of apology (Ex. 26) to the City prior to the arbitration hearing on a "With Prejudice" basis. The Union said its version of the apology would substantially assist in resolving the grievance, but if the Chief refused to sign and issue it, a copy would be filed in evidence. On September 29, 2017, the City declined to issue the revised apology (Ex. 25). Both versions are lengthy letters and both purport to be unreserved and sincere apologies. The following summarizes the revisions sought by the Union as compared to the initial apology issued by the Chief in November 2016:

1. *Delay in the apology:* The Chief's letter stated that he was "forbidden" from acting sooner because it could have been seen as interfering with the Complaint process. He wanted to address the issue ever since he became

aware of the Complaint but the "delay was an unfortunate consequence of the formal complaint process."

The Union version makes the opposite point, stating that in hindsight, "I should indeed have apologized fully and forthrightly shortly after receiving the complaint." There were a number of factors and the Chief accepts "significant responsibility" for the manner in which the whole situation unfolded. He admits his delay likely only exacerbated the situation.

2. *Acceptance of responsibility*: The Chief's letter apologized for the language and "the offense it caused." Due to administrative error and his lack of due diligence, his revisions were not reflected in the program. The words were not entirely his own.

   The Union version is much stronger. It says the words were "entirely unfair, disrespectful and improper." The text and content was inaccurate. The Chief acknowledges he should have been more forceful and diligent in reviewing the text. Moreover, the text failed to reflect the dedication of paramedics to providing the utmost in patient care.

3. *The paramedic role in the WFPS model*: In his letter, the Chief expressed pride in the Service and said he will defend and promote the model. He said he values the contribution of each and every member of the department.

   The Union version speaks directly to paramedics: "you, as WEMS paramedics are a crucial piece of our model and contribute largely to the successes we

have achieved to date." The letter acknowledges paramedics' dedication and integrity.

4. *Contravention of confidentiality:* The Chief did not mention this subject.

   The Union version proposes an admission of inadvertent contravention of the confidentiality rules in the complaint process by making comments in two classes at the academy. "When held in contrast to the delay in apology, I can appreciate it may likely have left many of you bewildered as to the timing of those comments compared to the date on which you received my formal apology letter."

5. *Patient care concerns raised by the Executive*: The Chief did not mention this subject.

   The Union version acknowledges paramedics' commitment to patient care and positive outcomes. It states that paramedics have raised legitimate patient care process concerns with the Chief. "Unfortunately my reaction at times … did not always convey the regard for which I held them, their motive and purpose in bringing these issues to our attention. I accept that we could and should have handled things better."

6. *Absence of an initial informal approach before a formal complaint:* The Chief wrote as follows: "It is disappointing the executive didn't approach my office before engaging the formal complaint. The intent and spirit of the respectful workplace policy is to achieve resolution of concerns as quickly as possible

through less formal avenues." However, he acknowledged the Executive's right to proceed directly to a formal complaint.

The Union's letter does not mention this subject.

7. *Motives of the Executive in filing the Complaint*: The Chief specifically apologized to the Local Union leadership for his erroneous conclusion that they "promulgated" the complaint among the membership. The investigation showed there was a groundswell of concern and the Executive was compelled to act.

   The Union letter addresses this subject at length. In its version, the Chief recognizes the burden of leadership and the responsibility to foster a spirit of respect and inclusiveness among all stakeholders. He was misinformed about the intentions of the Executive. He should have been more diligent in examining information he was given about the Complaint before letting it affect his response. "I ascribed ill motives to the union executive when there were none." This exacerbated an already tense situation, which is the antithesis of positive leadership.

8. *Rebuilding a relationship with the Union:* The Chief made no direct reference to this subject beyond a general commitment to the Service and its people. He also wrote he was "under no illusion that this letter alone will completely and forever resolve the offense that has occurred. I do hope this is a major step forward in the process."

The Union version is specific to the Employer-Bargaining Agent relationship: "I offer not only my apology, but my sincere desire to rebuild and work vigorously towards a constructive and respectful relationship, that is punctuated by a tangible sense of sincere appreciation for our respective roles and responsibilities." The letter closes with a commitment to work to maintain the Union's trust and confidence.

Union testimony

Troy Reidy

Troy Reidy ("Reidy") is an ACP who has been employed by the City for 13 years and has 17 years of paramedic experience. He is currently Vice President of the Union and previously served as a Shop Steward. He explained the terminology that has been used in this case. A single role EMS provider is a dedicated paramedic delivering services off a platform. Reidy and other Union members are single role providers, working in Winnipeg EMS, a Division of the Service. By contrast, fire paramedics are dual role providers. They are firefighters who are certified as PCP's, the same as paramedics at the PCP level working in Winnipeg EMS. Fire paramedics are members of the Fire Department, which is also a Division of the WFPS. They are members of the UFFW. Medical calls are handled by either paramedics or firefighters, depending on the dispatch, and sometimes both. On scene, the crews make determination of how best to handle the needs of the patient.

Reidy explained the Union's perspective that it represents not just the members but also the interests of Winnipeg citizens in receiving quality paramedicine service. For this reason, the Union raises concerns with Service management when it sees a need

for improvement. Issues have included training, standards of care, documentation and critical incidents. The Chief has taken this as a lack of support for the integrated model, but he is mistaken. When the current Executive was elected in September 2014, this was the priority. Quality of service issues have been raised at labour management meetings, especially the need for a clear incident reporting structure. As a result, the WFPS began working on an Emergency Operating Procedure (EOP). Reidy said the Union has tried to work with the Chief but the relationship has been "lousy", especially after the Complaint was filed in 2015. By contrast, the UFFW and Forrest in particular seem to have a close ongoing relationship with the Chief. Forrest and the Chief are often seen together at functions, travelling and at conferences. It is not the same with the MGEU leadership.

As an example of its efforts in pursuit of better patient care, the Union tendered an analysis of WFPS Electronic Patient Care Reports (EPCR's) for the period 2013-2016 obtained under provincial access to information law after an appeal to the Ombudsman (Ex. 28). The Union sought the information because it had doubts about the veracity of the Chief's public statement (Ex. 29) that in thousands of calls handled by fire paramedics, "a review confirmed that all care provided was appropriate in these cases." The EPCR document showed that there were documentation deficiencies in hundreds of calls – for example, vital signs not taken, no paper report found or incomplete report. The Union wondered if the review had really been done given that some calls had *no* documentation. These were calls where, pursuant to Winnipeg's integrated system, firefighters were dispatched instead of ambulances. The Union stressed that its concern was patient care and system improvement. It wanted to be involved in the process.

Reidy testified he was distressed and shocked when he first learned about the conference brochure via Facebook and tweets. There was no issue about the content of the presentation, which the Union had seen before. While paramedics may doubt some of the facts as presented, there was nothing offensive or disrespectful in the Chief's power point. However, the language of the brochure was meant to malign paramedics and their leadership, namely the Union Executive. As a result, the Union filed the Complaint. Reidy was the principal architect. Initially he thought they would get a couple of dozen signatories but the reaction grew organically as the word spread. Suddenly there was a huge list of members signing on to the Complaint. The Union decided not to approach the Chief directly: "He was the bully. Ask him to stop shoving us around? No. He was the person at the top." They wanted a formal process and someone to assist them.

Clarke was engaged as the investigator and they met her on October 7, 2015 (Ex. 27). They were suspicious at first about her impartiality and grilled her a bit. She told them it seemed to be a very public insult and might be harassment, but the Chief was not prepared to apologize. He thought they were "making a big deal of nothing, creating the problem through our actions." Still, said Reidy, the Union initially felt it might just be a misunderstanding that could be fixed, especially once the Chief saw that over 150 employees had signed the Complaint.

However, when the Union received a copy of the Chief's written response to the Complaint (Ex. 16) in April 2016, they asked Clarke if they could file *another* complaint. The Chief's response was far more disrespectful than the original offending conference text. He said the Complaint was contrived and reprehensible, cynical and vexatious. He repeated that the text was accurate although he didn't write it. He even denied that Union members were single role EMS providers. He

offered to apologize if anyone was truly offended, but why would he apologize if the text was true? The Union felt the Chief was not taking any responsibility. When the Report was finally released to the Union on August 19, 2016, again they had the impression the Chief was deflecting and denying. "He didn't seem to get it."

Reidy said the Union was relieved by the findings and felt it had held the Chief accountable. They expected to be invited back to the table to discuss next steps. They assumed a restorative process would be undertaken. However, there were delays and they couldn't get anything specific from COO Jack, except that he expected the Chief would issue an apology. As a result, the Union revived and amended its grievance on October 18, 2016. The apology came out on November 10, 2016 and it was problematic to the Union. Why had it taken so long? Nothing prevented the Chief from dealing with the issue much earlier. Knowing the Chief's position during the investigation, the Executive was not satisfied. The Chief was doubling down. The Union was also concerned that its members were receiving individual apology letters but had no knowledge of the full background. The Report itself was still confidential so they were unable to brief the membership. Meanwhile the City was not proposing to take any other action to deal with the Complaint.

According to Reidy, Union members feel like second class citizens in their own organization. They handle 80% of the calls, work long hours and face difficult conditions that take both a physical and psychological toll. The Chief's conduct in this case had a demoralizing effect. It has led many members to lose hope that working conditions will improve. Paramedics are passionate about their vocation but the Chief's lack of leadership makes them wonder if he values their contribution. He apparently sees them as trying to harm the model. They feel like outsiders. As an example, Reidy cited a recent visit by the Prime Minister to Station 4 on Osborne

Street where he was hosted by firefighters and discussed the model, but no paramedics were invited to participate. Similarly, firefighters were on the football field for First Responders Night with the Blue Bombers, but paramedics were excluded, except that they worked that night to provide coverage in the stands. All this is seen as disrespectful by the members and the Chief's apology failed to move the bar. His apology letter indicated he welcomes informal discussions with the Union going forward, but he has made no approach to the Union.

Reidy testified that all the foregoing has had an impact on the Union. Stress has been created. The Union has been unable to reach a contract settlement and other initiatives have not been met. It may be only a perception but paramedics feel like outsiders, despite the great work they do every day. The Chief's apology did not shake the perception. The Union's proposed version of an apology was rejected without explanation.

Cross examination of Reidy

Under cross examination, Reidy was led through the City's policy statements on Respectful Workplace and agreed that when disputes arise, they should be dealt with in a timely and productive manner. Discussion is better than litigation, he confirmed. The Protocol states that the first step in addressing a problem is to approach the person causing the offensive behaviour and to ask that the behaviour stop. Reidy was challenged on his testimony that the Union could not have gone to the Chief as a first step because he was "the bully". He conceded it might have gone differently if the Union had done so. Alternatively, the Union might have approached a Deputy Chief or Jack, who as COO is the Chief's superior. Reidy admitted they could have brought the issue to Jack but they did not. At times in the past, it has proven

productive to deal with Jack, Reidy agreed. Another option was to approach Human Resources. Yes, said Reidy, they could have inquired with HR. Admittedly, the Union cannot say whether the problem may have been worked out, had they not filed the Complaint right away.

Reidy confirmed that in the collective agreement, the LOU directs the parties to follow the Policy, which in turn references the Protocol. Therefore, the Union has agreed to comply with the Protocol. He recalled a meeting held on September 17, 2015 between the Union and Deputy Chief Christian Schmidt ("Schmidt"), Mauws and Simon Gillingham, Human Rights and Workplace Consultant. The Complaint was discussed and there were discussions about ongoing Twitter activity. Schmidt asked Reidy to help calm down the social media activity about the conference issue. Reidy agreed that this meeting was the first full discussion between the parties about the Complaint; it was brief.

It was suggested to Reidy that MGEU President Gawronsky's letter to the Paramedic Chiefs of Canada (Ex. 33), an outside organization, referenced the fact of a Respectful Workplace complaint having been made. This letter was sent on September 14, 2015, before the parties had an opportunity to meet on September 17 and discuss the Complaint. Reidy replied that the letter outlined similar concerns about the Chief's role at the conference but did not disclose the Complaint. Reidy confirmed that the fact of the Complaint was reported in the Winnipeg Free Press on September 21, 2015. He agreed that without the press leak and the Gawronsky letter, the dispute would have remained a more private issue for the parties. The parties met again on September 25, 2015 and the City advised the Union that it would retain an outside investigator. Thereafter the parties met a number of times and explored potential settlement options. Counsel stipulated that the start of the investigation

was delayed by these efforts and no timeliness issue is being raised with respect to completion of the investigation.

In redirect examination, Reidy said the decision not to approach the Chief informally before filing the Complaint was influenced by the Chief's past statement to the Union that they would be "better served" by joining the UFFW. In any case, the Union filed in good faith, as held by Clarke in the Report, rejecting the Chief's criticism of the Executive. Yes, there were meetings in the fall of 2015 before the investigation got under way, but neither Jack nor the Chief gave any indication that the Chief was prepared to take responsibility for the disrespectful conduct. In fact, at the first meeting with Clarke, she conveyed to the Union that the Chief was unwilling to apologize. As for Jack, he never suggested to the Union that as COO, he would be willing to get involved and deal with this dispute.

City testimony

Deputy Chief Christian Schmidt

The Deputy Chief has held his position for five years and previously served as Assistant Chief of EMS Operations and in various other management roles. He started as a paramedic in 1993, progressed to the ACP level and also cross trained as a firefighter. In his view, the integrated service model works well and provides benefits to the community. There are constant inquiries from other jurisdictions about the unique structure of Winnipeg's model.

Schmidt did not attend the August conference but became aware via social media that there was controversy brewing (Ex. 34, 35). A tweet was circulating with the

brochure description of the Chief's panel. He recognized right away that this would cause trouble for the Service. As it happened, he had a previously scheduled meeting with Jody Possia, then President of the Paramedic Association of Manitoba (PAM) and an employee of the Service. He raised the subject of tweeting about the conference because some PAM executives were doing it. He assured Possia that management would look into the matter but asked her to stop the tweeting in the meantime, as it was not at all helpful. She agreed to speak to the executive and the tweeting stopped.

Schmidt had no advance notice of the Complaint and learned about it only when he received and read it. He and other City management discussed it with the Union at a meeting on September 17, 2015. They also discussed the tweeting and Reidy agreed to request that it cease. The group met again on September 25, 2015 and the City suggested an independent investigation, which the Union supported. Clarke was retained and prepared a preliminary assessment. Mediation was one option that was discussed as well as doing a full, formal investigation. According to Schmidt, "we were in uncharted territory" and no one on either side was quite sure what would be the best course of action. There were further meetings between the parties and consideration of potential settlement options. By February 2016, it was decided to proceed with the full investigation. It was expensive, but the City agreed to pay the cost. "It's a City-owned process," Schmidt said. To ensure confidentiality, a field office was set up and Clarke conducted her interviews there.

Schmidt testified he was present with the Chief at an ACP training class in the fall of 2015 when the Chief attended to address the class. The Chief told students that he was aware of the Complaint and said it was under review but gave no detail and made no comment on the merits. Later, the Union raised concerns about the Chief's

statements. Under cross examination, Schmidt confirmed the account of this session that he gave Clarke (Ex. 18, p. 27). The Chief stated "if it is found that I have done anything wrong, I will apologize." Schmidt agreed that this sounded like someone who doesn't believe he has done anything wrong.

Under cross examination, Schmidt agreed that a higher standard of conduct applies to workplace leaders, especially in an organization like the WFPS which serves the public. If you make a mistake, you should admit it. Taken through the impugned conference brochure, Schmidt said "we don't have misinformed leaders". The WFPS model is not "continuously threatened by single role EMS providers", which means paramedics in this context. They are not using "rhetoric" to undermine the model, he said. The brochure text was unfair if applied against the Local Union. He personally would have taken steps to remove this language from the brochure. If he found out it had been used, he would have immediately apologized.

When he saw the tweets about the conference, Schmidt realized this was reflective of the feelings of the local membership. "I concluded this is big, it's appropriate for an independent investigation. This can't be resolved over an informal conversation." Was it appropriate for the Union to invoke the complaint process in this case? "The process is in our directive. I'm not critical of the Union for making this choice but there are steps available, you can engage with a party early on." He presumed that in this case, there was not enough of a relationship and a comfort to do so. There are situations where it is appropriate to make a formal complaint and the Union believed this was such a case.

Chief John Lane

The Chief assumed his present position in April 2014 after working as a fire chief in Prince George and serving in a variety of roles, both fire and paramedic, in Ontario. He has 36 years of experience as a paramedic or managing paramedics. He holds a Bachelor of Science degree from McMaster University, several certificates in management and paramedicine, and is presently studying for his MBA, expecting to graduate in 2019.

The Chief testified that he first saw the conference brochure for his panel when the Complaint was delivered to him in September 2015. He was horrified. When he was asked for input during preparation for the conference in March 2015, he recognized there were inflammatory statements in the draft and responded with more accurate text reflecting the Winnipeg model. He communicated with the Assistant to the General Canadian President of the IAFF. They agreed on a final version for the brochure but it was not the one distributed at the conference.

The Chief said he contacted Mauws when he saw the Complaint and told her that this was a terrible situation. "I was willing to and intended to apologize as soon as possible." The problem was that there was now a formal written complaint and plans for a thorough investigation, so he felt bound. He could not apologize. He testified that he may have been advised by Mauws not to do anything spontaneous because there was a prescribed process to follow. His initial view of the Complaint was that it was *bona fide*. The text was there even though he had tried to change it. Then he learned that there may have been duress exerted against some paramedics and the full text of the Complaint was not made available to some signatories. For these reasons, he urged Clarke to fully investigate.

The Chief recalled attending an ACP training class in the fall of 2015. He does this to recognize members who, at the ACP level, are reaching a milestone in their careers. He wanted to provide a presentation on where he saw the Service going. Typically, he would cover the same topics as he did at the Redmond-Barbera conference. There was silence in after he made the presentation and he concluded people may have been uncomfortable because of the pending Complaint. So he addressed it as "the elephant in the room." He said he could not talk about the Complaint but they could discuss anything else. He did not believe he referred to any of the allegations. "There is sanctity to that process." From reading the Report later, he realized that he did make some reference to the merits, in that he said he would be eager to apologize if the Complaint was upheld.

The Chief testified that when he received the Report in August 2016 he was on vacation. He said he was "mortified", but immediately withdrew that description as too strong and clarified that he felt "sad". His belief that the Complaint had been stirred up by the Executive was corrected by Clarke in the Report. There was no duress. He realized that the brochure had caused offence. Reaction among the members had developed organically. So he was eager to apologize. Jack phoned him and described the steps for distributing copies of the Report. The Chief told Jack he intended to apologize, which Jack said would be appropriate. Jack gave him no specific direction.

Over the next few weeks, said the Chief, he sent HR some corrections to be passed on to Clarke for her review. September 2016 was a busy time and he also attended a chiefs' conference in St. John's, adding on some additional personal vacation time to the trip. He took two further weeks of vacation in October. His plan was to

produce a video apology and he wrote the script (Ex. 36) while on holidays. However, on November 2, 2016 management disallowed the use of a video format. He converted the script into an apology letter addressed to all members who signed the Complaint. The text was checked by HR, Labour Relations and Jack. Only minor revisions were made.

The Chief issued his apology letters on November 10, 2016 (Ex. 22) in which he offered his "unreserved and sincere apology". He testified he meant every word he wrote. As he acknowledged in the letter, this alone cannot completely resolve the offense, but it was full and forthright. He commits to be more collaborative in future.

The Chief responded to Reidy's evidence about exclusion of paramedic participation during the Prime Minister's visit and the Blue Bomber game event. Forrest alone organized the visit to Station 4 and WFPS management had no advance knowledge that it was happening. The Bombers have honoured various uniformed personnel including paramedics and fire paramedics.

The Chief completed his direct examination at 4:30 pm on October 30, 2017 and by agreement, the hearing was adjourned to the following day for cross examination. The Chief received the usual caution given to witnesses entering cross examination that they must not discuss their evidence with anyone until they have completed their testimony. He undertook to abide by the directive.

Cross examination of the Chief

Admission of breach

Under cross examination, the Chief readily admitted that he breached the Respectful Workplace Policy, as found by Clarke in her Report. He clarified that the power point presentation itself was not offensive. It was the act of presenting under the conference brochure heading and text that constituted the breach. This was his reading of the Report (p. 36). As held by Clarke, "he allowed language to be published presenting non-fire EMS providers as spewing 'rhetoric' that firefighter paramedics need to 'thwart' with 'facts'". Yes, he conceded, paramedics felt "compromised in their relationship" with him because of these comments and his subsequent failure to offer an explanation (p. 36). However, said the Chief, the context was that they were in a process and he could not explain himself. Yes, coming from him as Chief, the language was insulting to paramedics and would undermine them in their roles (p. 37), although he qualified that they were words he did not use. "I didn't want them in." Pressed to admit that during the investigation he denied the words were offensive, he agreed. He told Clarke "It's a stretch for me to see how this could be offensive" (p. 16). He concurred that as the WFPS leader, he is obligated to meet the highest standards of trust and integrity, and must be held to account if he falls short.

Relationship with WFPS bargaining units

The Chief was cross examined extensively about his relationship with the different bargaining units in the Service. He said he has a collegial business relationship with firefighter president Forrest. They speak often, Forrest calls and emails, at times

they text. He confirmed that on September 21, 2015, Forrest called the Chief to say that MGEU had "gone to the media" about the Complaint and to offer support for the Chief (Ex. 37). The Chief testified this was appropriate. He has offered support to Forrest at times, the same as with other unions. He confirmed as well that they sometimes attend conferences together and drive together, as Reidy stated in his evidence.

Union counsel asked the Chief to produce his mobile phone for inspection and the Chief complied without objection. It appeared the Chief had a text at 1 am that day from Forrest, responding to the Chief's text. First the Chief denied sending Forrest a message, but then he admitted it. Counsel pointed out that the Chief's message was not on the phone. The Chief said it was auto-deleted, but when pressed, he acknowledged he himself deleted it. As a result, his original message no longer appeared on the phone and could not be examined. He could not recall what he had written. In reply to the Chief's message, Forrest wrote: "Oh god. Barf. And thanks for thinking of Ontario. That is one reason they are doing this as they want to stop you from giving presentations." (Ex. 41). The Chief testified Forrest asked him how the testimony went and he replied he could not say because of the undertaking he had given the arbitrator. As well, he avoided looking at the news coverage for the day.

At 8:21 am there was another text from Forrest to the Chief. Forrest said he had reviewed media coverage of the hearing and it was not wide spread, only two local sources. Forrest expressed the opinion that MGEU was damaging its relationship with the Mayor's office and senior administration. "You apologized but they are not interested in that but to drag our system through the dirt." Forrest added that he had heard from many city councillors who have said "this is total crap." The Chief

testified, as a comment on the foregoing text exchange, that there had been "options to avoid this" (the public arbitration process), for the Union as well as himself. He repeated that he would have apologized from the start. "Only I can attest to the sincerity of my apology."

Forrest sent another text immediately following the above, saying a Readers Digest story was coming out soon that would concentrate on "the success of our system". He said "we will bring the noise on that story and will distribute it across Canada on our social media networks and to all city politicians." Under questioning, the Chief agreed that Forrest's intent here was to deflect attention from the conference controversy and help the Chief. "I have helped him out, the same as with any other union members."

The Chief was directed to a Winnipeg Free Press op-ed article he wrote, published on March 19, 2015, responding to a story by Mary Agnes Welch on March 11, 2015, one week earlier. Welch's story was entitled "Firefighters skilled at manipulating the political system" and described how the UFFW has long acted aggressively in the political arena to promote its interests. Forrest and the firefighter union "have a reputation for strong-arming politicians, for threatening and manoeuvring, for getting their way." By contrast, wrote Welch, the paramedics have been "so low-key as to be invisible." Part of the story discussed issues around the integrated EMS model and whether or not it has saved money or created a more efficient system. Welch cited the viewpoint, which she attributed mostly to paramedics, that the model is driven by a need to keep firefighters relevant and immune to job cuts, not by the best possible patient care. The Chief's published response was rapid and addressed "the imbalance in reporting". He presented a strong rejoinder in defence of Winnipeg's integrated service model, while avoiding the political topics. Under

cross examination, he agreed that in doing so, he was acting as a leader and defending first responders. He circulated a copy of his article and emphasized that as a city, "we must ensure that our facts are clear and correct, and that our language cannot be misconstrued" (Ex. 40). The Chief's article was posted to the UFFW website.

It was put to the Chief that he does not have the same relationship with the Union Executive as he does with Forrest and the UFFW. "Not by choice," he answered. He was accused of never reaching out to the Union. He denied it. Since the Complaint was filed, has he reached out? He was bound by the process, he said. Didn't that process end in 2016? Not until November 2016, when the apology went out, noted the Chief. Relationships are built on trust and trust has been undermined by two consecutive Union Executives. He recalled initiatives he took with all the front line unions when he first arrived on the job. He briefly met Gawronsky and said "let's get together". Later she published a critical article in the press urging an independent review of Winnipeg EMS, despite "years of rigorous review". Challenged that this was part of a union's role, raising concerns and representing member interests, the Chief agreed, "depending on the context." Here it was odd, he said, given the independent evidence already available.

The Chief described his initial meeting with the new Union Executive. They made it a social outing and he bought the beer. He denied telling them that paramedics would have been "better served" by joining UFFW. The meeting was not explicitly off the record, but "there is an element of trust." The Executive broke the trust by inaccurately reporting his comment. As he told Clarke during the investigation, he would not be stupid enough to wade into labour relations in that way. At the meeting, he was talking about amalgamation and wondering how things would have

gone if potentially the bargaining units had been merged. He raised the fact that MGEU took over and missed a bargaining notice deadline, leading to a zero percent wage increase that year. He expressed that it was unfortunate and asked whether that wouldn't have been different with the fire union. Pressed to concede this was problematic at a first meeting as the new Chief – *ie*, suggesting UFFW would have served the paramedics better – the Chief answered, "I can't say."

Asked for his explanation for the loss of trust in the relationship, the Chief replied, "It's the context." He described events relating to the acquisition of promised new uniforms. The issue remains outstanding, but people "forget it had to be within budget." The Union has been very critical of the integrated model on social media but denies responsibility for the website that carries the criticism. The Chief said he has "invested in trust" but it was not reciprocated. Then came the Complaint. He confirmed declining a dinner invitation in November 2015 from two executive members of the Paramedic Association of Manitoba, one of whom was a signatory to the Complaint: "it is not appropriate for me to meet privately with you in any capacity until this complaint is resolved" (Ex. 42). Referring to his relationship with the Union, the Chief acknowledged that since November 2016, "I have not decided to build that bridge."

The conference appearance and brochure

Turning to the conference, the Chief confirmed that he attended with Forrest and there was no paramedic Union presence. Firefighter organizations paid for his flight, hotel and per diem. There were other members of WFPS management who also attended and their costs were covered by the City. The purpose of his involvement was to promote the Winnipeg integrated model. He agreed the model has two parts

– firefighter and paramedic – but the conference appearance occurred without one of the unions. In this regard, the Chief was pressed on the meaning of the terms "dual role EMS provider" and "single role provider". He resisted, but then conceded that paramedics have a single role. Previously, in his response to the Complaint (Ex. 16, p. 2), he had criticized the Union for describing paramedics as single role EMS providers, stating that this characterization was "materially false" and "a semantic contortion of reality."

The impugned brochure text was as follows (numbering added for convenience):

> **(1)** Integrated fire & EMS departments provide service to almost 60% of Manitoba residents. **(2)** Winnipeg's integrated model arose in the late 1990s due to the lack of capacity of the existing standalone EMS service. **(3)** Using the inherent response capacity in the fire service, the department was able to expand services while avoiding significant duplication of resources. **(4)** However, this fire-based model is continuously threatened by single role EMS providers and misinformed leaders. **(5)** The speakers in this workshop will present how they use facts to thwart rhetoric and protect the service they provide.

It was put to the Chief that the text was offensive and disrespectful. He said it was determined that sentence 4 could readily be interpreted by the Union as such. He was pressed to admit that both sentence 4 and sentence 5 were offensive and disrespectful. He replied that sentence 4 "could be interpreted that way" but denied that sentence 5 was offensive. He explained that he has "taken ownership" but the rhetoric does exist. In this wording, he did not intend to reference patient care concerns "that the Union professes to have." Counsel pointed out that both sentences 4 and 5 were held to be a breach of the Policy by the investigator. Yes, the Chief confirmed. So does he now disagree with the findings? "There is context. In the context, it could be seen to be offensive to Local 911 and it was." Counsel pressed the point and asked again whether sentence 4 and sentence 5 were offensive. The

Chief did not respond. He returned to the conference preparation history, pointing out his initial objection to the phrase "continuously threatened" and his attempt to substitute different wording. He confirmed his reaction to those words at the time (March 26, 2015): "Yikes! I'll get lynched!" He asked for something "a touch less 'confrontational'". Yes, he said, he is careful with words. His focus during preparation of the brochure text was not on the Union or its leadership. Rather he was thinking about external forces that continue to berate the model.

It was put to the Chief that "Rhetoric" as used in the heading "Facts Versus Rhetoric" was not a positive word. He answered, "It stands on its definition." He was pointed to his email from March 2015, "Not that I want to cross [IAFF Assistant to the General President] but I have to work with 4 other bargaining units back in the 'Peg." Yes, he was worried about offending people at home. Pressed further about the phrase "continuously threatened", he conceded that it was offensive. That was why he had questioned it and suggested replacement wording. His proposed version of sentence 4 was as follows: "However, this integrated model is frequently misunderstood and unjustly criticized by those who prefer to minimize other services' involvement in EMS delivery." It was accepted by the organizers but not entered in the program. The Chief's proposal for sentence 5, however, was the same as the printed conference text ("use facts to thwart rhetoric").

Initial reaction to the Complaint

Coming back again to the conference text as printed, the Chief said he was horrified when he saw it in one of Forrest's tweets about the conference. It was not the language he submitted. Yes, he agreed, it was offensive, untrue and disrespectful. Moreover, he was horrified and mortified to receive the Complaint, signed by 156

of his staff. It was put to the Chief that nevertheless he decided not to apologize when he reviewed the Complaint. "I was counselled at that time," he said. "I said to Lianne Mauws that I should – I'm willing to apologize right now." But Mauws counseled against it because there was a formal complaint and it needed to go through the process, said the Chief.

The City did not call Mauws as a witness although she was present for much of the hearing.

It was put to the Chief that Mauws was interviewed by Clarke and did not recall giving such advice or direction. According to the Report, Mauws said the Chief "wanted to apologize to members who were offended and/or if he was found to have violated any Policy standards", but it was subject to a process protocol. Mauws told Clarke she did not recall the Chief indicating he wanted to offer an apology to the Executive (Ex. 18, p. 26). In response to the foregoing, the Chief testified, "I know my recall, it's clear. It was terrible, the language in the program. I said I need to apologize. I was always prepared to apologize if there was validity to the complaint."

The Chief then clarified that his initial reaction was that he would apologize, but evidence came up that there may have been ulterior motives in filing the Complaint. He was told that some employees may have signed under duress. At that point, he wanted an investigation to be done. He conceded that the duress report, whether true or not, did not change the offensive nature of the brochure text. Counsel asked, isn't there a difference between accepting full responsibility and offering to apologize if you're found to be wrong? "The context is important," replied the Chief. Pressed on the question, the Chief answered, "Yes, I agree."

The Chief admitted that the only basis he had for suspecting duress was information from Schmidt, who reported he was on a ride-along with two paramedics who complained they felt "corralled" when a number of them were approached by the Union President and asked to sign. These members said they thought it was a petition, not a complaint. They said they were shown only the conference summary. The Chief then added to his testimony regarding his suspicions about the Complaint. There were actually three contributors to his negative opinion at the time. First there was Schmidt's report. Second was the fact that the Complaint appeared two weeks before the Union and the City began an interest arbitration. The timing was curious, he said. The third factor came later, at the beginning of 2016 when there were settlement talks and the Union offered "a non-sequitur settlement". It had nothing to do with the Complaint. The Chief said that doubts were raised about the context of the Complaint "so we sought the truth."

Pre-investigation stage

When the Chief met with Clarke in October 2015 during her pre-investigation phase, he told her he would not apologize. By then he had his doubts about the nature of the Complaint. Yes, he acknowledged, that did not change the offensiveness of the text. The Chief said he "backed off, to be sure the complaint was *bona fide*." But why did that matter if the brochure was offensive? The Chief responded that "It's in the eye of the beholder." Was he now retracting his prior admission that the text *was* offensive? No, he answered. It was put to the Chief that if the conference text was in fact offensive, he should want to apologize. Again he replied, "It's in the eye of the beholder." He repeated that he was told by Mauws he couldn't apologize because of the complaint process. He was horrified and the text was offensive and

disrespectful, but it was problematic to him that the Complaint may have been promulgated by the Executive. "For anyone who saw the post and took offence, I was ready to apologize. It's the same today. I accept responsibility and I apologize. But if that reaction had been stirred up, the context was different."

Counsel put it again to the Chief that he didn't really want to apologize; he denied it. Didn't he tell Clarke that the Union was making a big deal out of nothing? Didn't he say that they created the problem by their own actions? He did not recall that. But he took the Complaint at face value until he heard Schmidt's report from the ride-along? Yes, replied the Chief, he withheld an apology until he was told he did something wrong. So he has not in fact delivered an unreserved apology, suggested Counsel. The Chief denied it. So he believed he was right? No, said the Chief, he never thought the language was acceptable. His initial reaction was "I own it – if the Complaint is validated."

The Chief rejected the idea that his apology, finally issued on November 10, 2016, more than a year after the Complaint, was late and insincere. Admittedly, it took a long time but the context was that the process had to be completed. It was put to the Chief that nothing in the process precluded an earlier apology. He responded that the point of the process was to establish the validity of the Complaint. So he would not apologize until the Complaint was validated? Not so, he replied, he was always eager to apologize to anyone to whom he caused offence, but he was unclear about the nature and validity of the Complaint. Yes, he understood that paramedics felt insulted and degraded, and he wanted to apologize immediately. That desire never changed. But the question remained whether he had truly caused offence to all the people who signed the Complaint. Counsel put it to the Chief that if he had just apologized right away, as he claimed he wanted to do, then an investigation would

have been unnecessary. No, he answered, the Complaint itself requested a thorough investigation.

The Chief's formal response to the Complaint

Clarke reported that in her interview with the Chief in May 2016 he stated (Ex. 18, p. 17) that this would not have "caused a ripple unless it had been fanned by the executive." In the same interview, he said "It's a stretch for me to see how this could be offensive" (p. 16). He told Clarke he didn't consider that anyone in the Service had a "single role" because "we are a dual role service." The model is only threatened by "a few individual members – like the executive members" (p. 16). It was put to the Chief by counsel that he has deflected responsibility throughout this affair, and that's why an arbitration was necessary. The Chief responded that the Complaint was filed, an investigation was conducted and it was clear that he violated the Policy. He apologized on his own volition, earnestly and sincerely. "We are here because the Union is concerned about speed, sincerity and substance." He said he has explained the delay and he reiterated his sincerity. He insisted his interpretation of the words in the brochure has been consistent, only his view of the Complaint has changed. Yes, he admitted, that doesn't change the fact that the words were insulting.

Asked whether he was angry over the filing of the Complaint, the Chief said no, "anger is not a workplace emotion." But his written response (Ex. 16) called the Complaint "reprehensible". He wrote that the Union has made "concerted efforts to undermine the Winnipeg model" (p. 2). In testimony, the Chief said "I was wrong here." But he repeated his doubt that 156 employees were truly offended and repeated, "It's in the eye of the beholder." He does not deny that the text was

offensive but "it was accurate, as I said several times." The words were offensive "empirically" but his question at the beginning of the investigation was whether members were truly offended.

Counsel asserted that the investigation was only necessary because the Chief would not acknowledge what he had done. Not true, he answered. The Chief was then taken through his written response dated April 4, 2016 (Ex. 16), prior to Clarke's commencement of investigative interviews.

The first two paragraphs of the Chief's letter contained harsh criticism of the Union. Next came four paragraphs of Service and labour relations history. Then more criticism of the Union. The Chief wrote that MGEU has engaged in public efforts to undermine the integrated service delivery model. "[T]his context is essential to understanding the genesis of the complaint," he wrote at the time. The Chief agreed that next, he stated in his letter that while the text was provocative, it was accurate. By way of explanation, he testified that "there were and are forces that continually publish rhetoric about our model." The letter then repeated that the conference brochure "content is accurate." Moving to "single role EMS providers", the letter stated again that the Union has made "concerted efforts" to undermine the model by characterizing themselves as single role providers, which is "materially false". Cross examined on this point, the Chief admitted that in fact the Union's position is true. They *are* single role providers. He conceded the Union's position was not "a semantic contortion of reality" as he wrote in his response letter. Finally, the letter closed by asserting that the conference text was accurate and the Complaint was a blatant, cynical and vexatious misuse of the Policy.

The Chief testified that "at this point in time, I had significant doubts about the validity of the Complaint." If paramedics were not offended, he testified, he did not want to apologize.

Delay in apologizing

When pressed again on the sincerity of the apology he eventually issued, the Chief insisted it was genuine. He reviewed the chronology of events as he saw it. He received the Complaint in early September 2015, he was horrified and felt he needed to apologize. He was willing to apologize. Then Gawronsky wrote her letter dated September 14, 2015 to the Paramedic Chiefs of Canada complaining about the same issue. She was acting completely outside the bounds of the prescribed process under the Policy. She ignored the requirement for confidentiality. "It was bad form to write to my colleagues at the Chiefs' association. We had a 30 second introduction and then she attacks our model in the media."

The Chief was cross examined on the delay between his receipt of the Report on August 9, 2016 and his written apology issued on November 10, 2016. It took three months. He explained that he submitted corrections to the Report that were not finally addressed until late September. He was on vacation but worked at preparing a video script during October. However, the video format was rejected by management. He admitted that throughout this time period, he knew he had been found in violation of the Policy and he did not challenge Clarke's findings. Counsel pointed to the Chief's rapid response when Mary Agnes Welch wrote her newspaper story critical of the UFFW. Within eight days he had prepared and submitted an op-ed response. Yes, said the Chief, but the context was different.

The Chief was challenged on his position that the apology could not be issued until the process for dealing with the Complaint had been completed. He made this point in the first paragraph of his apology. Under cross examination, he admitted there is nothing in the Policy that prohibits an apology before the end of the process. However, he maintained that he always wanted to apologize and reiterated that the apology as delivered was sincere and unreserved.

He testified he was "contrite" in apologizing to the Union Executive for his erroneous conclusion that they promulgated the Complaint among the membership. He conceded that he made no reference in his apology to the harsh criticism he directed at the Union in his April 2016 response to the Complaint. Why not? Because the apology was for the membership, not the Executive, and it was about the offensive wording of the brochure. It was put to the Chief that his apology itself blames the Executive for failing to use an informal approach before filing the Complaint. "There were options," he answered, but he acknowledged that the Executive had the prerogative to lodge a formal complaint.

Why did he not reach out, if he believed that an informal process was better? By then the Complaint was underway along with a grievance and it was difficult to talk, he replied. The Chief testified that the Complaint rattled his confidence. Before it landed, he still believed they could begin to make a relationship.

Rejection of the Union's version of the apology

Taken through the Union's alternative apology letter, the Chief confirmed that he received it and refused to sign it. He did not propose any revisions for consideration

by the Union. Under line by line cross examination, he did not object to the substance of the Union's draft but noted this was not his own phrasing.

Regarding patient care concerns raised by the Union in the past, he agreed this has been a point of contention, but affirmed it was legitimate for the Union to pursue these issues. He noted there is a process within the Service for dealing with patient care and reporting, and he personally is removed from that process. He accepted that he "could and should have handled things better" on this front, as stated in the Union's version of the apology.

Counsel asked the Chief why he rejected the "With Prejudice" apology offer when, upon reviewing it line by line, basically he seems to agree with it. He replied, "I go back to the three bases for this arbitration – speed, sincerity and substance. I was not aware I could suggest revisions. This is all Mike Sutherland. It would be obvious this was Mike Sutherland's writing. That can't be sincerity."

Lastly, the Chief was directed to the statement in his own apology letter that "I am under no illusion that this letter alone will completely and forever resolve the offense that has occurred." He reaffirmed this point.

Union final argument

On behalf of the Union, Mr. LaBossiere began his submission by stating, "We shouldn't be here." The arbitration was unnecessary. Because the Chief refused to do the right thing, there has been a public dispute festering for two years. In September 2015, the Chief should have apologized immediately and resolved the issue. Deputy Chief Schmidt testified that's what he would have done. On the

evidence, it is clear the Chief *never* wanted to apologize and did so only when forced to act. The City condoned the Chief's behaviour. Overall, there has been a failure of leadership and for that reason, a comprehensive arbitral order is required to remedy the damage.

Union members feel like second class citizens and the Chief's own testimony showed that he treats them as such. This was the tense background to the Chief's Redmond-Barbera conference appearance and the offensive brochure produced for his panel. Word spread organically among paramedics but the City's only response was to ask the Union to stop the tweeting, which the Union did, to its credit. The fix was easy but nothing was done by the Chief. As he told Clarke, the Union was making "a big deal out of nothing." Now he states that the Union should have approached him informally instead of filing the Complaint. Clearly that would never have worked. Schmidt testified that this was a big problem and needed a formal process of investigation. There was not sufficient trust and comfort in the relationship to work it out informally, Schmidt said. Clarke endorsed this view. Only the Chief and City management are persisting in the idea that the Complaint was unnecessary. It was telling that the Chief acknowledged in testimony that he won't even meet with the Union to work on the relationship.

The Union submitted that the Chief's written response to the Complaint was shameful. It was not a spur of the moment reaction. It was submitted six months after the Complaint. The Chief says he is careful with his words. In April 2016, he wrote that the Complaint was contrived, unwarranted, reprehensible, vexatious and an attempt to undermine the model. He claimed it was a blatant misuse of the Policy. He deflected any personal responsibility. The wording was "allegedly offensive" but not written by him. He repeatedly stated that the conference text was provocative

but nevertheless accurate. In his meeting with Clarke, he told her, "It's a stretch for me to see how this could be offensive." Yet during pre-conference discussion with the organizers, his reaction to the draft text had been, "Yikes! I'll get lynched!" He knew immediately that the wording was offensive and insulting. The Union argued that the Chief's response to the Complaint totally contradicts his assertion during testimony that he always wanted to apologize. In reality, he never went beyond saying he would apologize *if he was found to be wrong*.

In its opening statement, the City accepted the findings of the investigator (Ex. 18, p. 34-36) and so did the Chief in his testimony. The Union therefore asked that the award declare the findings to be reasonable and formally sustain them.

Reviewing the Chief's excuses for not apologizing until mid-November 2016, the Union argued they were not acceptable. The extended delay was contrasted to the Chief's rapid response in March 2015 when firefighters were criticized in the press and the model was impugned. It only the Chief took one week to get a reply written, vetted and published in the Winnipeg Free Press.

In his apology letter, the Chief said he had wanted to apologize since he became aware of the Complaint. This was untrue. He said his apology was "unreserved" but it made no mention of his baseless attack on the Union during the Complaint process. Even worse, the apology criticized the Union for not making an informal approach with its concerns before resorting to the complaint process. However, under cross examination, the Chief admitted his unwillingness to take initiatives to repair his relationship with the Executive. As the arbitration hearing drew near, the Chief knew his apology had been rejected as inadequate by the Union but he refused to sign the Union's version or even propose revisions that might have proven

mutually acceptable. Under cross examination, he essentially concurred with the Union's version but still declined it. "No one tells me what to do," was his message.

In a discipline context, arbitrators take into account the timing and content of an apology made by a grievor. Similar considerations should apply in the present case, said the Union, where the Chief failed to apologize until after he was found to have breached the Policy. As explained in *Re Province of Manitoba and MGEU (Reid Grievance)*, [1997] M.G.A.D. No. 25 (Hamilton) at para. 79:

> … On the one hand, I recognize that an expression of regret, remorse or "sorry" can reflect the fact that an employee is sorry only because he has been caught and is not truly reflective of remorse for the conduct itself. When remorse is expressed at a late date it does attract suspicion as to its sincerity. On the other hand, I also recognize that if one is to disregard an expression of regret or an admission of wrong doing simply because it follows the actual discovery of an offence or occurs at a later time, then an admission would rarely carry weight in any circumstances. Therefore, an arbitrator has to assess the quality and nature of the admission. In many respects, I do not question the sincerity of the Grievor's apology or expression of remorse at the third stage … or before me but, in my judgment, this has to be counterbalanced against its belated nature and the fact that the conduct itself took place over a considerable period of time following [a reprimand]. In my view, the actual conduct of the Grievor and the circumstances surrounding the apologies proffered … blunts their effect to a considerable degree.

Similarly, in *Re Greater Toronto Airport Authority and Public Service Alliance of Canada (Fortier Grievance)*, [2002] C.L.A.D. No. 201 (Brandt), the effect of an apology was discounted because it was not offered until the end of a meeting during which the grievor was being told that his misconduct had been observed. Also, the grievor was still not being fully candid with the employer about his behaviour. In *Re Sheridan College Institute of Technology and Advanced Learning and Ontario Public Service Employees Union (Rowe Grievance)*, [201] O.L.A.A. No. 632 (Burke), it was stated that an apology tendered well after the fact "tells us nothing of a grievor's contrition or culpability, and may be indicative of nothing more than

a grievor's ability to follow advice" (at para. 60). In *Certainteed Insulation and Unifor Local 80-0 (Zimba Grievance)*, [2015] O.L.A.A. No. 19 (Tremayne), it was stated (para. 53): "Most arbitrators find that an early and sincere apology is a sign of remorse and that it shows an acceptance of responsibility. An apology made at the hearing, which in this case was many weeks after the incident, does not, in my view, have the same effect."

In *Re Quality Meat Packers Ltd. and UFCW, Local 175 (Rodrigues Grievance)*, [2002] O.L.A.A. No. 431 (Abramsky), the grievor gave an apology the Union said was analogous to the present case, and the arbitrator accorded it little weight (at para. 51):

> … In my view, his apology was lacking in both remorse and understanding. He said: "I'm sorry that all this happened. All this should never have happened. If I caused grief, I'm sorry. If I knew that I would be fired, it would never have happened." His apology was much more a statement of regret that he got fired for what occurred than a real understanding that what he did was wrong.

The Union characterized the Chief's performance in testimony as evasive, shifting, disingenuous, stubborn and petulant. He put most of his answers "in context" to avoid responding directly. It was not credible evidence and should be rejected. The Union drew a contrast with Schmidt's testimony. He was clearly uncomfortable given the circumstances, but his responses were direct and he accepted the reality of the situation. Most shocking, said the Union, the Chief discussed his evidence with Forrest despite the arbitrator's caution and an undertaking to abide by it. The Chief was not forthright. First he tried to say there were no texts with Forrest and then he tried to say his texts auto-deleted. In fact, he deleted his own messages to Forrest so they could not be seen. Testifying just after 9:30 am, he claimed he could not recall the messages he sent to Forrest a few hours earlier.

In addition, the Chief testified he was told by Mauws not to apologize up front because the process had to be completed first. The City failed to call Mauws as a witness. The Union asked that an adverse inference be drawn on this point. The arbitrator should find that had she testified, Mauws would not have corroborated the Chief's claim.

The evidence in its totality simply did not support the Chief's position that he has always wanted to issue an apology. Contrary to the City's opening statement, the Chief has not changed his thinking or made amends. Having violated the Policy and the collective agreement, the Chief gave an apology that was both late and insincere. The Chief has been unwilling to take responsibility throughout this affair. The City itself did nothing other than arrange for the investigation. Once the Report was received, no corrective action plan was ever prepared. The City never met with the Union to discuss and ensure a respectful workplace. It allowed a toxic environment to continue. There is an ongoing bias in favour of firefighters and against the paramedics, said the Union. The Prime Minister's visit incident was a prime example. It was considered normal for Forrest to take over a fire hall for a political event without even informing management. This reflects the prevailing culture at WFPS. But when the Report documented a respectful workplace breach by the Chief, no steps were taken by the City to deal with the violation in a meaningful way. It was a failure of leadership and also a breach of legal duty.

An employer's duty to investigate allegations of harassment or discrimination includes the obligation to follow up the investigation and take action to provide a healthy work environment: *Sears v. Honda of Canada Mfg., a division of Honda Canada Inc. and Proper*, [2014] O.H.R.T.D. 44 (Keene) at para. 161; *Morgan v.*

University of Waterloo and Mackay, [2013] O.H.R.T.D. 1659 (Whist) at para. 82, citing *Wall v. University of Waterloo* (1995), 27 C.H.R.R. D/44 at para. 160. In *Wall*, the tribunal listed six elements of a reasonable employer response: a prompt reaction; corporate awareness that the conduct is prohibited; the matter is dealt with seriously; there is a complaint mechanism in place; the employer acts so as to provide a healthy work environment; and management communicates its actions to the complainant. In the present case, said the Union, the City failed to carry out the latter two steps and accepted an inadequate apology as the entire corrective action.

The Union characterized the City's conduct as constituting bad faith in the administration of the collective agreement and requested a forceful denunciation in the award. In particular, it was bad faith for the Chief to say he will not meet with the Union going forward because they complained about him. While both parties play a role in achieving harmonious labour relations, in these circumstances there was an onus on the Chief to seek to bridge the gap. If not bad faith *per se*, there was an absence of the required good faith on the part of an employer. In this regard, the Union referred to section 80(1) of the Act requiring the employer "to act reasonably, fairly, in good faith and in a manner consistent with the collective agreement as a whole." The Union also referred to *Bhasin v. Hrynew*, [2014] SCJ 71, which held that honest and reasonable good faith performance is a general principle in the common law of contract. Arbitrators have recently suggested that *Bhasin* is applicable in a labour context to collective agreement administration: *Re Bell Canada and Unifor, Local 34-0*, [2016] CanLii 11573 (Sturdykowski) at para. 38-39); *Re Greenwood Forest Products (1983) Ltd. and United Steelworkers, Local 1-423* [2015] B.C.C.A.A.A. No. 86 (Dorsey) at para. 33-34.

The Union also cited section 6(1) of the Act prohibiting interference with the administration of a union or representation of employees by the union.

Given the importance of good faith contract performance and the vital role of the bargaining agent in labour relations, there must be a large financial penalty ordered as a disincentive to repeated misconduct by the City, argued the Union. The authorities support awarding significant damages to individual employees even without proof of monetary loss.

The board in *Re West Park Healthcare Centre and S.E.I.U. Local 1.ON,* [2005] O.L.A.A. No. 780 (Charney) ordered $10,000 to the union and $1,000 to each employee after the employer implemented a restructuring plan without notifying the union. The collective agreement required that the union "shall be involved in the planning process as soon as practicable" and in any event prior to action being taken. The employer argued, similar to the present case, that no relief was necessary other than a bare declaration. There was no wage loss in the end, there was no malice or bad faith, it was an isolated incident and there was no expression of contempt toward the union. The board held (at para. 11):

> In these circumstances, although we are not persuaded that restoration of the pre-existing *status quo* is possible at this time, a declaration is not a sufficient remedy. While the monetary loss is not specific, the union and the employees are entitled to damages: the employees for denial of the benefit of union representation, and the union for denial of its right to represent the employees pursuant to Article 10.01, as well as for the injury to its reputation as an effective bargaining agent in administering the terms of the collective agreement. The union was not only marginalized; to all intents and purposes, it was ignored. The rights of the union and the employees have intrinsic value and compensation is warranted for their deprivation. Moreover, it is not just the employees who were reassigned who were affected by this deprivation, but all employees in the bargaining unit, to whom the message was clear that the union could not protect them when the need arose. While punitive damages are not an appropriate remedy in labour relations matters, compensation is appropriate for the violation of

> rights with intrinsic value, and as a deterrent to the repetition of further such conduct.
> …

The Union argued that it too was marginalized and ignored in the present case. This was an interference with the Union's representative role on behalf of paramedics. City management condoned the Chief's behaviour. The *West Park* principles call for substantial damages on the present facts.

In *Re Government of Alberta and Alberta Union of Provincial Employees (Employee Privacy Rights Grievance)*, [2012] A.G.A.A. No. 23 (Sims), there was an admitted breach of employee privacy rights due to unauthorized credit checks on 26 employees, carried out contrary to legislation. An overzealous investigator was looking for employees in financial trouble, which might have indicated a motive to commit fraud, but parties outside of government were determined to be responsible for the fraud in question. A series of systemic reforms was undertaken to ensure no further breaches of privacy. Within three weeks of complaints being filed with the Privacy Commissioner, each employee received a written apology from the Deputy Minister of Justice, as follows (para. 4):

> RE: Credit Checks, Maintenance Enforcement Program
>
> I have investigated the matter of credit checks conducted on you and other Maintenance Enforcement Program staff. I have found that proper procedures and established government-wide protocols were not followed.
>
> I take this matter very seriously and have further instructed that internal mechanisms are established and followed to ensure this type of error does not occur again. I have been assured that all records pertaining to the credit checks have been destroyed.
>
> Any expenses you incurred as a direct result of the credit check will be reimbursed. These should be provided to the Executive Director, Maintenance Enforcement Program with supporting documentation for reimbursement.

> On behalf of Alberta Justice and Attorney General, I apologize that the credit check was done and I would like to thank you for bringing your concerns forward.

The arbitrator found this was a case for "a modest award of damages for each grievor", which were set as $1,250 each in all the circumstances (para. 32-33):

> … I accept the point … that steps taken to correct a breach do not mean no breach occurred. Here, a breach did occur, and one of real significance in terms of the grievors' privacy rights and their sense of security and wellbeing as employees. Paragraph 12 of the agreed facts confirm damages, although they are intangible in nature. The Assistant Deputy Minister's reply at Level II of the grievance procedure speaks of "an environment of mistrust" having been created.
>
> The Department's clear and unrestrained admission of error and its apology goes some considerable distance in rectifying that mistrustful environment and must have, to a significant degree, calmed the employees' anxieties over the Employer's attitude towards their right to privacy. …

In the present case, said the Union, each paramedic experienced a loss of dignity as a result of the offensive words used in the brochure text. Every member suffered damages, although intangible in nature, as in *Government of Alberta* case. Unlike *Alberta*, there was no "clear and unrestrained admission of error," no sincere apology and no corrective action.

The Union cited other cases in which even higher damages were ordered payable to individual employees. In *Re Ontario (Ministry of Community Safety and Correctional Services) and Ontario Public Service Employees Union (Bisallon Grievance)*, [2016] O.G.S.B.A. No. 49 (Herlich), a local union president was put on paid suspension for alleged bullying and harassment of a co-worker. The arbitrator concluded the charges were unfounded and made in bad faith, at least partly due to anti-union animus and a desire to banish the grievor from the workplace. The grievor was awarded $5,000 in compensatory damages and the union received $20,000. The

arbitrator observed that economic loss is not a prerequisite to a damages award (para. 153-154):

> The suggestion that an arbitrator has the authority to award compensatory damages flowing from the breach of a collective agreement is hardly surprising. Frequently, those damages are tied to readily quantifiable economic loss. There is no such loss in the instant case. However, as the cases referred to amply demonstrate, the absence of economic loss is not a bar to an award of damages where the breach of the collective agreement has caused harm. And neither is any difficulty in the quantification of such damages a basis for avoiding the exercise.
>
> In the instant case, the employer's conduct damaged the reputation of and interfered with the grievor and the union's ability to represent its members in at least three respects …

While the present facts are different, the Union pointed to Clarke's finding (Ex. 18, p. 37) that "an animus toward the Executive developed over time" that clouded the Chief's ability to see the words in question as offensive.

In *Canada Post Corp. v. Canadian Union of Postal Workers*, [2013] B.C.J. (C.A.), the union grieved when the company held regional forums with employees to discuss changes in the economy and the impacts on company finances and employee benefits. After some skirmishes, union representatives were restricted from attending the meetings. The union alleged interference with its right to represent the employees. The grievance was upheld and the arbitrator awarded $500 in damages to each union director, $5,000 to an individual union staff member who was banned and $25,000 to the union. The award was ultimately sustained in the appeal court. The Union also cited *Re Aheer Transportation Ltd. and Unifor Vancouver Truckers Association*, [2017] B.C.C.A.A.A. No. 83 (Dorsey), where two employers were each ordered to pay $45,000 in damages to the union for deliberately breaching an agreement not to challenge certain container trucking regulations. The following

principles regarding the authority for non-monetary damages were endorsed (at para. 260):

> The redress must be commensurate with the wrong and the purpose of relief is remedial not punitive. Monetary damages may be warranted for non-monetary losses if such is appropriate to ensure the breach of the collective agreement is adequately addressed and other remedies are insufficient. In some instances, where there have been persistent breaches of a particular provision of the collective agreement, damages may be suitable as a deterrent against future violations. Damages may be awarded to the union for violation of its rights under the collective agreement, independent of any contravention of the rights accruing to individual employees. A collective agreement is fundamentally different from an ordinary commercial contract or contract of employment and that gives rise to different approaches and policy considerations in addressing remedy.

The Union also referenced *United Steelworkers v. Winnipeg Dodge Chrysler Ltd. et al.* (2014), 249 C.L.R.B.R. (2d) 98 where the employer held captive audience meetings and was found to have violated section 6(1) of the Act. The Board ordered damages of $2,000 to the union and $250 per employee. The Act has a cap of $2,000 for non-monetary losses due to an unfair labour practice: section 31(4)(e) and (f). The Union submitted that in any event, more recent decisions have established a much higher level of damages payable for non-monetary injury suffered by employees and their unions, which is more relevant in the present case. In *Re City of Winnipeg and CUPE, Local 500 (X. Grievance)* [2016] CanLII 85345 MB LA (Graham) involving a failure to accommodate an employee with mental health and disability issues, the grievor was awarded $50,000 in human rights damages.

As held in *Nor-Man Regional Health Authority v. M.A.H.C.P.*, [2011] 3 S.C.R. 616, arbitrators are empowered to "develop doctrines and fashion remedies appropriate in their field" (para. 45). It is a "broad mandate" flowing from the distinctive role of arbitrators in "fostering peace in industrial relations" (para. 47). Section 121 of

the Act requires an arbitrator to consider "the real substance of the matter in dispute" and "provide a final and conclusive settlement" of the matter. In the present case, the substance of the dispute is the ongoing culture of disrespect toward the Union membership and its leaders. The City tolerates an unhealthy workplace and took no corrective action after the Report was released. The court in *Nor-Man* endorsed a creative remedial approach by labour arbitrators in fulfilling their statutory and collective agreement mandate. The Union invited me to be creative in fashioning a meaningful remedy. As for damages, $50,000 for the Union and $1,500 per member would be fair and reasonable in the present case.

The following declarations and orders were sought by the Union:

1. That the grievance be upheld;
2. That the findings in the Clarke Report are accepted;
3. That Chief Lane and the City have breached the relevant provisions of the Collective Agreement and the Respectful Workplace Policy as outlined in the Clarke Report;
4. That Chief Lane's apology was both late and insincere;
5. That the City's response to the findings and the manner in which they addressed those findings amount to bad faith and is deserving of damages;
6. That Chief Lane be ordered to issue the apology that has been drafted and is attached as exhibit 26. Such apology is to be signed and published forthwith to all members of the WFPS;
7. That Chief Lane be ordered to attend remedial Respectful Workplace Training at a course that is certified as acceptable for employees of the

City of Winnipeg. Such training is to be completed within 6 months and confirmation of the completion shall be provided to the Union;

8. That Chief Lane or members of his management team undertake not to develop or speak at any forum regarding the WFPS model alongside either the UFFW or MGEU, Local 911, unless both are invited to participate;
9. That both Chief Lane and the City meet with Local 911 forthwith with a view to providing them with the "Corrective Action Plan" and to advise them of the steps that will be taken to ensure a respectful workplace as contemplated in the Collective Agreement;
10. That the City has undermined and interfered with the administration of the Union;
11. That the City be ordered to pay to the Union a sum of $50,000 in damages for the breach of the Collective Agreement, the LRA and for both undermining the Union as the exclusive bargaining agent and acting in bad faith;
12. That the City be ordered to pay to each of the members of the Local 911 bargaining unit the sum of $1500 each for all of the breaches noted above; and
13. In the alternative, the City be ordered to pay each of the signatories to the Respectful Workplace Complaint a sum of $1500 for all breaches noted above.

Employer final argument

On behalf of the City, Mr. Jacobs acknowledged that this is a case in which historical problems dating back to the amalgamation of the fire and paramedic services boiled

over, triggered by the Chief's participation at the Redmond-Barbera conference. But the Chief arrived in Winnipeg only three years ago. The tensions between firefighter and paramedic roles long pre-dated him. While there is no question that working relationships need to be fixed, the remedies sought by the Union will not help the parties. In fact, some of the orders may worsen the problem. The City urged that the focus remain squarely on the Complaint and the grievance as filed. The Union has strayed far beyond the proper scope of the grievance.

The brochure for the Chief's presentation contained offensive text, due to an error in production, and led to the Complaint, which was thoroughly investigated at significant cost to the City. The parties made a serious effort to resolve the dispute in the early stages of the process but were unable to reach agreement, so a Report was prepared and issued by Clarke. The Complaint was sustained in part. The City has accepted the findings and so has the Chief. His conduct was held to be disrespectful toward paramedics and their Executive. The Chief realized he made mistakes, adjusted his thinking about the events in question and sent every complainant a signed apology. The apology was fulsome and sincere and unreserved. It was as timely as it reasonably could have been. It was important to the Chief that he convey the message in his own words, which he did. He has learned from the whole experience.

The City rejected the Union position that the apology was insufficient, insincere and late. This is the issue to be decided in the arbitration. However, the scope of the grievance extends only to compliance with the Protocol and the adequacy of the Employer response to the Complaint.

In Reidy's testimony for the Union, he was guarded and suspicious, reflecting well known tensions in the workplace. He expressed disappointment in the Chief's leadership. However, from the City's perspective, it is the Union that has not reached out. It is a two-way street. When the conference brochure was circulated on social media and paramedics were offended, no effort was made to contact the Chief about the Union's concerns. If it was too awkward to raise the issue with the Chief personally, the Union could have contacted his superior or someone at Labour Relations. The City emphasized that it was not alleging a violation of the Protocol. There is a right to file a complaint. Still, the Union's conduct was telling. The Executive was mistrustful. What would have been the result if less drastic means had been chosen?

In the same vein, Reidy assumed that the Prime Minister's visit to Station 4 was known to the Chief and that the City deliberately excluded paramedics from a high profile event. This was untrue, but the Union interpreted the facts in the worst possible light. The City submitted that these relationship problems need time and work, but they will not be cured by a forced apology and an order to pay a large sum of money. The thrust of the Policy is restorative. Instead, the Union has proposed penalties.

Contrary to the Union's argument, the City described the Chief's testimony as forthright in the face of a searing cross examination. The Chief did not waiver in his evidence. He stated he was horrified to receive the Complaint, signed by 156 employees. He should be believed in this regard. He testified he was advised by Mauws not to apologize at the beginning. The City confirmed that Mauws could have been called as a witness on this point but was not. However, the Protocol establishes a process to be followed and the Chief participated as prescribed,

expressing his understanding of events at the time. He wanted a full investigation of the facts.

The Chief was both sad and horrified to read the Report. He accepted that, contrary to his initial opinion, the momentum to submit the Complaint was organic and not contrived. He had been wrong and he admitted it. There was no duress exerted by the Executive. Paramedics truly were offended and hurt, a point he was unsure about when the Complaint was first filed. As he said in cross examination, he accepted that the words in the brochure could reasonably be taken as offensive. The references to "single role EMS providers" and "rhetoric" were meant to refer to external parties in the industry, not actions by the Union in Winnipeg. However, the Chief took responsibility for the negative effect of the wording. As a result, once the Report was complete in September 2016, he began working on an apology to all paramedics.

The Chief explained why it took some time to issue the apology. There were blocks of vacation and pressing demands on the job. He wanted to do a video as a more personal form of apology but the concept was overruled by management. Jack had told the Union that there would be an apology and it was released as he said it would be in November 2016. The apology was sincere and it covered the outstanding issues. The City argued this was a sufficient response to the findings in the Report. While the Union now complains that there was no other corrective action taken, it never proposed any specific steps to the City and even the detailed remedial order now being sought only asks for a meeting on the subject (para. 9). After all this time, the Union seems unable to say what it believes the City should do by way of corrective action. The other particulars in the requested order have never been seen before by the City.

A forced apology is unwise, especially in this case where the Chief has already written and delivered his own apology. Arbitrators have been reluctant to order an apology in such circumstances. In *Re Thames Emergency Medical Services Inc. and Ontario Public Service Employees' Union, Local 147 (Management Conduct Grievance)*, [2006] O.L.A.A. No. 201 (P. Knopf), a paramedic case, the grievor raised a number of complaints about allegedly arbitrary and discriminatory action taken by management towards him. The issues were held to be moot since they had essentially been resolved in the workplace. The union continued the grievances in order to get apologies for each violation. The union acknowledged that it is uncommon for arbitrators to order an apology but argued it was an appropriate remedy where there was ongoing and persistent harassment (para. 12). The arbitrator noted: "The purpose of arbitration is to enforce substantive rights and/or correct a continuing problem. If the problem has been remedied, no purpose can be served by holding a hearing" (para. 14). As for the requested apologies, she held as follows (para. 17):

> … The only remedy that the grievor seeks, which has not already been accorded to him by the Employer voluntarily, is an apology. While it may be within an arbitrator's remedial authority to order an apology, such a result is rare. This is partly because an ordered apology is considered to be a hollow apology. It does little good. Further, it would be unusual to order an apology unless there are particularly egregious or continuing violations of the collective agreement apparent from the evidence.

In *Re City of Toronto and CUPE, Local 79 (Wilson Grievance)*, [2002] O.L.A.A. No. 592 (Starkman), the employer was held to have violated the collective agreement by filing to accommodate the grievor's disability in a timely manner. The union sought damages for pain and suffering, assurance of an accommodated work assignment and a written apology. In the course of his reasons, the arbitrator referred

to *Re Fording Coal Ltd. and United Steelworkers of America, Local 7884*, [1999] B.C.C.A.A.A. No. 22 (Coleman) where the union was ordered to apologize but the employer deemed the apology inappropriate, late and insincere. It had been delivered over the phone. The company requested another apology, in a specified form and this time in public. A further apology was ordered, albeit in private personal meeting, and Arbitrator Coleman noted that the company's proposed version "was more in the nature of punishment" (para. 18). The purpose of the apology was "not to publicly pillory" anyone but to acknowledge the wrong done.

Applying *Fording Coal* in *City of Toronto,* Arbitrator Starkman declined to order an apology, holding as follows (para. 16-17):

> In my view, to order an apology in the circumstances of this case, would be more punitive than compensatory. If a party wishes to apologize for their actions, they can always choose to do so. An involuntary apology which is ordered by fiat of an arbitration board may be perceived as lacking in sincerity. In this regard I share the view of Professor Hunter as expressed in *Audrey Styres v. Sam Paiken*, (1982), 3 C.H.R.R. D/926 at para. 8248 where he states:
>
> > ... In any event, I regard an apology made under duress as an exercise in hypocrisy. An apology voluntarily offered and sincerely meant is fine; a coerced apology cannot but be insincere and pointless.
>
> As well, if an apology is ordered in instances in which an employer is found to have discriminated against an employee, then it is understandable that grievors will request apologies for other employer violations of the collective agreement, and conversely, employers will request apologies from grievors or unions for proceeding with grievances that make unfounded allegations against the Employer. In this scenario, an apology will become *de rigeur*, and its significance and impact will be further diminished because it will become the normative relief order in grievance arbitration decisions.

The City argued that the foregoing considerations apply in the present case. The Union demand for a prescribed form of further apology has punitive elements and would hardly advance a healthier relationship between the parties. Looking to the

future, it is not a good idea to rub the other side's nose in the dirt, said counsel. An apology written by the Union and enforced by arbitral order would be the very definition of insincere. The Union may believe there are imperfections in the Chief's apology but that does not render it insincere or invalid. In *Re Manitoba Lotteries Corporation and M.G.E.U. (MacAuley Grievance)*, [2002] M.G.A.D. No. 70 (Peltz), reinstatement was ordered despite the employer's argument that the grievor's apology was "too little too late" and reflected a refusal to take responsibility (at para. 77):

> I would not go quite so far. Certainly, the grievor was evasive and unhelpful to some extent during the investigation. He minimized his misconduct and continued to do so in some aspects of his testimony before me, such as his explanation of the meaning and significance of the poem. His written apology was narrow in scope, alluding only to the February 15, 2002 incident of slapping Ms. Casavant. However, I accept the sincerity of the apology delivered at the arbitration hearing, which was unreserved and genuinely intended to show remorse and new insight. Human behaviour is complex. It may not be a contradiction to say that the grievor is truly sorry and yet still partially in denial. Without a doubt, he is sorry in large measure because he was caught and has been terminated by the Employer. But I find that his current declarations go beyond merely thinking of himself.

The City submitted that the Chief's written apology, followed by the present public hearing in which the Complaint and the Report have been fully revealed to all, suffices as a corrective response to the Policy violations. Lessons have been learned. Nothing further is needed, especially not punitive measures.

The City insisted there was no evidence of bad faith in the City's response to the Report findings and there is no basis to award damages. The Union cited *Bhasin*, *supra*, but it adds nothing to the existing statutory duty of good faith. No losses have been alleged by the Union. There were no lost opportunities. There was no interference with the Union's administration of the collective agreement.

Notwithstanding much personal criticism of the Chief and his leadership style, there has never been a failure to meet and engage in collective bargaining or meet the City's other obligations as an employer. The City has a labour relations team. The Chief's reluctance to sit down with the Executive or meet with the provincial paramedics organization during a time of particular tension is not *per se* a breach of any duty.

When the Complaint was filed, the City was responsive and met all its obligations under the Respectful Workplace Policy. The City was willing to search for a mutually satisfactory resolution and when this failed, the City agreed to a fulsome, independent investigation. Remarkably, every paramedic had a personal opportunity to meet with Clarke and express themselves. All the leading players were interviewed in depth. Clarke was apprised of the historical factors. In the end, the Report was comprehensive and made reasonable findings, which the City has accepted. The Chief also accepted the findings and apologized. On these facts, there is no simply case for damages to the Union or its members.

The City distinguished the authorities cited by the Union on quantum of damages based on their markedly different facts. Those cases involved direct interference in a union's core representative function (*West Park Healthcare, Ontario Community Safety and Correctional Services, Canada Post Corp., Aheer Transportation, Winnipeg Dodge Chrysler, supra*), a serious infringement of personal rights (*Alberta Government, supra*) or significant human rights violations (*Sears v. Honda* at para. 222, *City of Winnipeg and CUPE*, at p. 21). The City submitted that a review of cases with comparable facts indicates a much lower scale of damages, if damages are warranted at all.

In *Re Inco Ltd. and United Steelworkers of America (Retirement Incentive Grievance)*, [2006] O.L.A.A. No. 540 (Rayner), the employer made payments to selected employees so they would delay their retirement and keep working while the refinery was prepared for closure. The company was worried that otherwise many employees would retire right away and leave, given the dislocation. This was held to be a violation of the exclusivity principle: "An offer of a substantial sum of money to a selected number of bargaining unit employees, albeit a large number, to forgo their right to retire for a stated period does relate to their conditions of employment and is a violation of Article 2:01" (para. 27). However, there were good business reasons for the payments and there was no bad faith. There was no attempt to undermine the union. "These reasons alone would be sufficient to limit the relief to the declaration claimed" (para. 31). The union sought compensation for senior employees but no monetary award was made.

In *Re Toronto Police Services Board and Toronto Police Association (OPC Costs Grievance)*, [2008] O.L.A.A. No. 479 (Tacon), the employer unilaterally implemented a reimbursement program for police college tuition costs. This was held to be a violation of the union recognition clause in the collective agreement. The union asked for $100,000 in damages plus other relief. However, the arbitrator held that only nominal damages of $1,000 should be awarded, especially in light of the union's lengthy unexplained delay in filing the grievance. The other relevant factors were summarized as follows (para. 60):

> To reiterate my finding of the Board's contravention of the collective agreement, the gravamen of the offence was the violation of the clause recognizing the Association as the sole and exclusive bargaining agent, the retention/service provision and the remuneration provisions more generally. The Association's assertion that the Board's policy was tantamount to bargaining in bad faith was rejected. Moreover, I was not persuaded that the Association suffered a loss of opportunity to bargain the tuition

> reimbursement policy for reasons which have been delineated earlier and need not be repeated. Although the adoption of the initiative was clearly deliberate, the tuition reimbursement policy was grounded in a legitimate business purpose, namely, the retention of trained personnel. The Board wrongly relied on its management rights clause to sustain the decision. On the other hand, it cannot be said that the decision was in any way motivated by anti-union animus. There was no individual bargaining with employees as occurred in several of the decisions cited. The Board simply disagreed with the Association's position that the policy initiative could not be implemented unilaterally.

In *Re Canadian Airlines International Ltd. and International Association of Machinists and Aerospace Workers*, [1999] C.L.A.D. No. 299 (Ready), the agreement required meaningful discussion before work was contracted out and the company repeatedly ignored the provision. The arbitrator held there was a need to compensate for the lost opportunity to consult as well as a need to deter future violations (para. 18). As to quantum, the amount should be more than nominal and sufficient to give the employer "a meaningful inventive to comply" with the agreement (para. 19). The award was $1,500 payable to the union. Similarly, in *Re B.C. Rail and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local No. 170*, [2004] B.C.C.A.A.A. No. 305 (Hope), the issue was breach of notice to contract out work. There was no pattern of bad faith by the employer (para. 28) and therefore punitive damages were denied. Based on the principle that there must be a "meaningful incentive to comply", $2,000 was awarded.

In *Re Open Learning Agency and B.C. Government Employees and Service Employees' Union (Coles Grievance*), [2005] B.C.C.A.A.A. No. 31 (Steeves), the grievors were discharged without notification of the discipline meeting and the opportunity to attend with a union representative, in violation of the collective agreement. The arbitrator characterized these as significant employee rights (para. 19, 27) but was not prepared to declare the terminations void. He rejected the

employer position that a declaration was sufficient and awarded monetary damages at a level that would provide a deterrent against future breaches. Each grievor was awarded $2,500.

The City submitted that the most significant authority is *Re University of Manitoba and CAW, Local 3007*, [2011] M.G.A.D. No. 10 (Peltz), a harassment case where two of the grievors experienced what the City characterized as egregious racist and homophobic mistreatment. The employer was ordered to pay $1,000 for condoning racist remarks and $1,000 for affront to dignity (para. 144-145).

The City therefore submitted that no damages award should be made in the present case. There was no reason shown for the Chief to be ordered to take respectful workplace training. The idea has never been mentioned over the past two years. Restriction of the Chief's public speaking would be an unjustified infringement of management rights and would be an excess of arbitral jurisdiction. There is no need for a corrective action plan at this stage. The City reiterated its position that it has always acted in good faith and there is no basis for any monetary award. If there is an award of this kind, it should not be payable to all Union members because many of them had no injury or loss at all. It cannot be assumed that the members were universally offended by what took place at the conference.

Union reply argument

The Union rejected the City's claim that the Chief has learned from this experience and accepted responsibility for his wrongdoing. He was dishonest in claiming he always wanted to apologize. Clearly he did not. The evidence on this point was overwhelming. The witness who might have corroborated the Chief's story was not

called. The Union agreed that there is a broad context to the present case and that the arbitrator is limited to the grievance as filed. However, all the remedial orders sought by the Union are rationally connected to the City's violations and should be granted. The Union noted that the Respectful Workplace violations were worsened by the Chief's performance during the arbitration, and for that reason, systemic remedies were added to the Union's claim for relief.

The Union acknowledged that a forced apology may be hollow but here, the Chief did not disagree with the essential content of the Union's version. He agreed, but still refused to sign it. He claimed to be sincere but his reaction to the "With Prejudice" offer proved otherwise.

As for damages, the Union clarified that there is no intent to punish the City. The purpose of the proposed award is deterrence. The authorities are clear that monetary loss is not a prerequisite. The City's case law was not relevant because this is not a situation where employer interference with union representation of employees is the sole issue. The City's cases are also outdated. In recent times the scale of non-monetary damage awards has escalated. Arbitrators and tribunals are now awarding significant sums for violations of labour and human rights.

University of Manitoba, supra, cited by the City as its most significant authority, was a case where almost all the claims of racially based harassment were rejected. The Union submitted that the damages award must be understood in light of the limited factual findings, as follows (para. 49-53):

> Considering the foregoing, I am unable to make a specific finding of racist treatment directed toward Ozzie based on the present evidentiary record.

> Nevertheless, I find that some employees on occasion have used the word "nigger" in the workplace and I must emphasize that I find this shocking, whatever may have been the context. This was unacceptable language even allowing for the extended boundaries of shop floor talk.
>
> …
>
> I therefore find that Ozzie's allegation of discriminatory treatment and the Union's argument of employer condonation were not proven. However, I find on a balance of probabilities that there was, over a period of time before the grievance filing window, an unhealthy work environment in the Fort Garry Shop in which periodic racist remarks were made by some employees and tolerated by local management. I infer from the evidence that Ozzie sensed the hostility inherent in such an environment ("they looked on us as savages"), whether or not he specifically heard the offensive remarks. This was clearly damaging to his well being as a person and an employee. A personal grievance in this respect would have been out of time but because the present matter was initiated under Article 14.7 as a Union grievance, there is jurisdiction to determine the issue of racist comments and grant such remedy as may be appropriate. I order the University to pay damages to the Union in the amount of $1,000, with a recommendation that the money be forwarded by the Union to Ozzie in recognition of injury to his feelings and dignity.

In closing, the Union requested an award of damages based on the current state of the law and the heightened importance of the right to a respectful workplace.

Analysis and conclusions

Clarification of the issues

The grievance as amended in October 2016 presented a series of allegations: delay and failure of due diligence in addressing the Complaint; failure to follow established procedures in responding to the Complaint; treating the Complaint as an exaggeration and a fabrication by the Union Executive; undue delay in providing a copy of the Report to the Union; and failure to recognize and address the issues and concerns giving rise to the Complaint. The grievance recited that in light of the

above, the City unjustifiably interfered with the administration of the Union and undermined the Union in the eyes of its members.

Significant events occurred after the date of the grievance. In November 2016, the Chief sent his personally signed letter of apology to every paramedic. Prior to the arbitration hearing, in September 2017, the Union made a "With Prejudice" offer to the City consisting of a revised form of apology which the Union asked the Chief to issue. The offer was declined. Both parties made reference to these post-grievance matters. As the hearing came to a close, it was apparent that the timing, sufficiency and sincerity of the original apology were central issues in the case. The Union also argued that the Chief's conduct as a witness at the hearing aggravated his respectful workplace violations. As a result, the Union requested several systemic remedies that had not been previously identified. In final argument, the Union raised a further allegation of bad faith in responding to the Complaint and proposed a substantial award of damages.

The parties stipulated that due to settlement efforts which regrettably did not succeed, there was delay in completing the Report. Therefore, no timeliness issue would be raised in respect of the completion of the Report. Clarke prepared a preliminary assessment but she was not appointed for the investigation itself until February 2016. She submitted the Report in July 2016. The Union maintained its position that *after* submission of the Report, there was undue delay in providing a copy to the Union. I agree that City administration could have been more prompt but I also recognize that there are multiple competing demands on senior City officials. The issue was not urgent although clearly it was important. In argument, Union counsel did not press this aspect of the grievance although it remained part of the overall narrative.

The grievance alleged that the City treated the Complaint as an exaggeration and a fabrication by the Union Executive. The evidence showed that this was the Chief's reaction early in the process. He was the named respondent and when he filed his formal response, he called the Complaint contrived, promulgated, unwarranted, reprehensible, cynical and vexatious. However, the City *qua* Employer never took this position. Quite the contrary, the Complaint was treated seriously and the need for outside investigation was quickly identified, given the circumstances. This was consistent with the City's legal obligations at that stage: *Wall v. University of Waterloo, supra*. Clarke was retained on September 21, 2015, about two weeks after the Complaint was filed. By October 13, 2015, she had met with the main parties and submitted a preliminary assessment. The City participated in discussions with a view to early resolution. Schmidt testified that they were in "uncharted territory" and no one on either side was quite sure how best to proceed.

On these facts, I do not find that the City treated the Complaint as an exaggeration and a fabrication. In my view, the "fabrication" issue goes to the timeliness, sufficiency and sincerity of the Chief's eventual apology, which in turn is directly relevant to the claim for damages and systemic relief. I will deal with those issues accordingly.

As for the grievance allegation that the City failed to follow its own procedures in responding to the Complaint, the main issue raised during the hearing was the absence of a corrective action plan as prescribed by the Protocol. According to the Protocol, once the investigator's report has been submitted, "Management will prepare a corrective action plan based on the findings." The language is mandatory. The Protocol then specifies that management will meet with the parties to advise

them of the findings and the steps that will be taken to ensure a respectful workplace. The Protocol states that the report must be disclosed to both complainant and respondent but does not clearly specify *when* disclosure must occur.

At the time the Union was pressing to receive a copy of the Report, it noted the incongruity of an action plan being prepared before the complainants had even seen the findings. This was the City's proposed course of action at the time. I believe the Protocol was drafted to deal with more ordinary workplace problems involving two or a small number of protagonists. In that context, it probably makes sense for the employer to present the findings and its corrective measures at the same time, as long as management remains open to dialogue with the parties. The present case is unique in scale and intensity. It would have made more sense to release the Report, with or without a draft corrective action plan, and then meet with the Union as the representative of the 156 complainants to consider next steps. Even if the City believed that nothing more was required than an apology by the Chief, it should have met to express this position and hear from the Union. Ideally, a respectful discussion at this point may have dampened down emotions that were running high and pointed the way to a potential reconciliation. This was a lost opportunity.

In summary, I agree with the Union that the Protocol was breached when the City failed to meet and discuss the steps to be taken. I will take this fact into account as part of the overall remedy.

Generally, the evidence revealed a fraught relationship between the Chief and the Union Executive. The Union perceives hostility or indifference toward paramedics' concerns and demonstrable favoritism toward the firefighters' union. By contrast, the Chief believes "it's a two-way street" and feels he did not have a fair chance to

launch a relationship with the Executive when he assumed the position in 2014. In particular, he was stung by ongoing public criticism from the MGEU President over the integrated model. Even today, there appear to be ongoing controversies relating to the operation of the Service and standards of patient care. These are not problems that can be solved by a grievance or an arbitrator. However, any remedial order in a case like this should take into account the labour relations realities and endeavor to assist the parties going forward.

The following are the issues to be addressed in this award:

Violation of the Policy by the Chief
Did the City act in bad faith?
Did the City undermine and interfere with the administration of the Union?
The timing, sufficiency and sincerity of the Chief's apology
Should the Chief be ordered to issue the apology drafted by the Union?
Should the City now be ordered to prepare a corrective action plan?
Should damages be awarded, and if so, in what quantum?
Should other systemic relief be awarded as requested by the Union?

Respectful workplace violations by the Chief

The City accepted Clarke's findings and so did the Chief in his testimony. The Union requested that the award affirm the findings as reasonable and I hereby do so. The entitlement to a respectful workplace is embedded in the collective agreement (LOU, Ex. 24, p. 69). The agreement specifically provides the work environment must be free of behaviour such as disruptive workplace conflict and disrespectful behaviour.

The Complaint was sustained but only in part. The Chief was cleared of harassment allegations that included bullying, abusive conduct, physical and mental maltreatment and abuse of power. Clarke found that the Chief's actions contributed to "Disruptive Workplace Conflict" and constituted "Disrespectful Behaviour" as defined in the Policy and the Protocol. She concluded that the complainants felt insulted, compromised in their relationship with the Chief and undermined in their workplace roles as paramedics.

Clarke distinguished between the legal obligation not to commit harassment and the "higher standard of behaviour" the City has sought to foster by enacting the Policy. The intent has been to "establish a workplace that is as comfortable and respectful as possible for all workplace parties" (Ex. 18, p. 36). She stated that this higher standard has particular application to senior leaders in the Service such as the Chief. It is a distinctive feature of the present case that the Chief as respondent was found not guilty of harassment but still violated respectful workplace norms implemented by the City.

The grievance is allowed and a violation of the collective agreement is declared, to the extent and in the manner found by Clarke in the Report.

Did the City act in bad faith?

On the evidence, I do not find bad faith. While some errors were made during the Complaint process and it proceeded slowly in some respects, overall I find the City made a legitimate effort to accept and process the Complaint in accordance with its policies. As for the broader relationship issues canvassed during the hearing, I agree

with the City's submission that there were labour problems in the WFPS before the Chief's arrival, especially tensions between firefighter and paramedic roles in the integrated model. Relationships remain in need of repair but this goes beyond the scope of the present grievance. Even if the Union is correct that the Chief's leadership style is deficient, or that he is too friendly with the UFFW, or that he has neglected to reach out to the Executive, I find that these alleged failings do not rise to the level of bad faith in the present case.

The Chief personally was the respondent in the Complaint, but he was also acting as the head of the WFPS. I therefore agree that his conduct may be cited as evidence against the City as employer for purposes of the bad faith allegation. While the Chief committed violations of the Policy, the most serious allegations, involving harassment and abusive conduct, were unfounded. Disrespectful and disruptive behaviour is inappropriate in the workplace but does not equate to bad faith. The Union pointed to the Chief's aggressive response to the Complaint, but as Clarke stated (Ex. 18, p. 38), "he has the right to defend himself" as the respondent. She added: "While his language was strident, it was not abusive or pejorative to anyone on a personal level and I found him to present his perspective in a forthright manner" (p. 38-39). The Chief was wrong in his belief that the Complaint was contrived but the process allowed him to make his case. Finally, Clarke found there was no breach of confidentiality and no retaliation (p. 39).

In my view, the Chief's handling of this affair was flawed from the outset. In particular, a sincere apology at the earliest possible opportunity would have mitigated the damage but as discussed further below, this did not happen. Still, an arbitrator should not conflate poor leadership and bad faith.

As an alternative position, the Union tried to recast its argument based on an "absence of good faith", citing section 80 of the Act and the new *Bhasin* principle of good faith contract performance. The above analysis applies. I find no failure to act in good faith.

Did the City undermine and interfere with the administration of the Union?

I agree with the City's submission that there was no evidence of a failure to engage in collective bargaining or to fulfill the City's other legislative obligations. Reidy testified that the Union experienced stress and had difficulty achieving a contract settlement, but no particulars were provided. It was argued that the Chief refuses to meet with the Union. However, the City has a labour relations team and the Chief is not legally obligated to meet with bargaining agents personally. Good leadership practice must be distinguished from statutory duty. Neither was there any specific interference alleged with the Union's function in administering the collective agreement. Reidy said that Union representatives were told there could be discipline if paramedics opted to report critical incidents directly to the Winnipeg Regional Health Authority instead of internally through the WFPS administration. The City was entitled to give such a direction and the Union was free to grieve if it felt there was a need to do so. The Union was not prevented from playing its proper role in defence of collective agreement rights.

The Union pointed to Clarke's observation (Ex. 18, p. 37) that the Chief seemed to develop "an animus toward the Executive" over time that clouded his ability to see the wording of the conference brochure as offensive. However, this was not a finding of conduct that undermined or interfered with the Union. Clarke stated that for the Chief "to take the position … that words he previously found problematic are

now not offensive suggests that an animus toward the Executive developed over time that clouded his ability to see the words as objectively as he previously had been able to do." This was a reference to the Chief's aggressive posture as respondent during the investigation.

At its highest, the Union's argument was that by disparaging the Union leadership at the conference, the Chief undermined the Union's effectiveness as the exclusive representative of members of the bargaining unit. This allegation is not sustainable on the present facts. The Chief spoke at a conference under a program banner that blamed "misinformed leaders" for continuously threatening the fire-based EMS model. Facts are needed to "thwart rhetoric" and protect the service, said the banner. I agree that this wording was reasonably interpreted by paramedics as a reference to their Executive, even if the Chief believed it was directed at broader external forces in the industry. However, the Union is not entitled to demand immunity from critical commentary on public policy issues in health care.

The Union and its leaders believe they have a professional and ethical duty to speak up for optimal paramedical patient care. The Union is active in the public square, as are many unions, in pursuit of this laudable goal. However, the Union is not so fragile that a single critical paragraph in a conference brochure can undermine its ability to represent the membership, at least not in the present factual context. The Executive felt compelled to respond and did so effectively, holding the Chief to account under the Policy for his disrespectful behaviour. If anything, the facts in this case demonstrate the Union's strength and resolve in representing paramedics during challenging times.

On the evidence, I do not find that the City undermined or interfered with the administration of the Union.

The timing, sufficiency and sincerity of the Chief's apology

The Union was extremely critical of the Chief's apology letter but much of the content was appropriate and positive. The apology was stated to be "unreserved and sincere." Conference administrative errors and lack of due diligence were admitted. The Executive members were listed by name and a specific apology was made to them relating to how the Complaint was initiated. In his letter, the Chief said he recognized that the apology alone would not resolve the offense but he described it as a major step forward in the process. He declared his pride in the Service and said he valued the contributions of every member. In closing, the Chief called for everyone to focus on enhancing the existing service model. To his credit, the Chief opted to send each complainant a letter signed personally by him.

Nevertheless, the Union argued that the apology was late, insufficient and insincere. For the reasons that follow, I agree.

On the question of timing, the Chief testified that he was horrified when he first saw the conference brochure as published. He maintained that he always wanted to apologize as soon as possible. In particular, he testified that when the Complaint was received, he told Mauws, Manager of Human Resources for the Service, that he *should* apologize and was willing to do so immediately. He claimed he was prevented from following through on his intent by the Complaint process, which had to be followed to completion. He also testified that Mauws counselled him not to apologize at the outset because of the necessity to follow the process. Other than the

statement that he was horrified to see the final wording of the brochure, I reject all of the foregoing elements of the Chief's evidence.

First, there was nothing in the Protocol or the Policy that precluded an early and fulsome apology. The Chief admitted this under cross examination but it is an obvious point. As soon as he saw that inflammatory language had been published, the Chief should have conveyed to the Union that there had been a mistake for which he took responsibility and apologized. This would have been both prudent and respectful. Deputy Chief Schmidt was unequivocal in his evidence that the text was false and unfair if taken as applicable to the Union and its members. If it had been him, he would have immediately apologized, he said. I find this to be significant evidence and commend the Deputy Chief for his candor.

Second, I do not accept the Chief's testimony that he was counselled or directed by Mauws not to apologize at the outset. This claim was raised during the investigation but not verified by Clarke. Mauws was available to give corroborating evidence at the arbitration hearing but was not called as a witness. No explanation was provided by the City for not calling its Director of Human Resources on a pivotal issue of fact. I was asked to draw an adverse inference and I do so. I find that if Mauws had testified, she would have disputed the Chief's evidence. In reality, it was his own decision.

The investigative process was delayed in starting and took months to complete. None of this was the Chief's fault. However, when the Report was released in August 2016, the allegations of disrespectful and disruptive behaviour were sustained against the Chief. At this point, the Complaint was nearly a year old. It had been signed by 156 members of the WEMS. By any measure, this was a massive

repudiation of the Chief's conduct. Regardless of what corrective measures the City as Employer might eventually decide to take, the need for a fulsome personal apology was crystal clear at that point. It appears from the evidence that senior management left the question of apology in the Chief's hands although Jack told him it would be appropriate to apologize. I have considered the Chief's explanation for another three months of delay but it rings hollow. He simply failed to make it a priority.

In sum, I find that the November 2016 apology issued by the Chief was not timely. It came far too late and as noted by Clarke, the delay compounded the damage caused to the complainants. As held by the arbitral authorities cited earlier, an apology late in the narrative is entitled to some weight but will be discounted, depending on all the circumstances. In the present case, aside from unreasonable delay, the sufficiency and sincerity of the November 2016 apology were also in issue.

On the question of sufficiency, I find that the apology was both incomplete and misleading. First, the Chief's letter referred to "the language that was contained in the written summary and the offense it caused" without ever acknowledging that the message itself was offensive and insulting, nor that some assertions in the brochure were false (sentence 4, "model is continuously threatened …"). In this regard, the letter reads more as an expression of regret over an inapt choice of words than an acceptance of responsibility for disrespectful conduct. At no point does the Chief refer to the findings against him in the Report and admit his culpability. He merely states that "the investigation is now complete." This is an important omission because at the time, only the Union Executive had seen the Report. Due to the confidentiality requirement, members who were receiving and reading the Chief's

apology letter did not have access to Clarke's findings and could not assess the adequacy of the apology.

Second, while the Chief admitted a lack of due diligence in checking the final conference text, he implied that his intended version of the summary was appropriate. He wrote that his submitted revisions "more accurately represented our staff and service." Clarke had found the contrary in her investigation. Regarding Sentence 5 ("they use facts to thwart rhetoric"), she stated that "rhetoric" in this context had a negative connotation and was reasonably perceived as offensive by paramedics.

Third, the portion of the apology directed to the Executive is framed as admission of an error in "judgment" based on incomplete information about the manner in which the Complaint was "promulgated" among the membership. In fact, the Chief's April 2016 reply to the Complaint was a strident attack that extended beyond the issue of how signatures were gathered. He accused the Union of making concerted efforts to undermine the Winnipeg model and stating material falsehoods. In argument, the Union described the Chief's written response to the Complaint as "shameful." I would not go that far, recognizing that a respondent has the right to make full answer and defence to a workplace complaint, but the tenor of the Chief's reply was completely inappropriate. A truly unreserved apology would have made amends for the excesses of that response as well as the so-called error in judgement.

Finally, the Chief's apology was insufficient because he launched a fresh criticism of the Union Executive even as he was answering for his original misconduct. He wrote that it was disappointing there had been no informal approach before the Union filed the Complaint, implying that the Union had ignored the intent and spirit

of the respectful workplace policy. The Chief added that a formal complaint was within the prerogative of the Executive. In my view, this whole subject had no place in the apology because, as the Chief noted, *there is a right* to file a formal complaint. In cross examination of Reidy, the City sought to show that an informal approach to the Chief or others in management might have led to a more favourable outcome for all parties. It may have, but Clarke found the Union acted *bona fide* and reasonably in filing the Complaint as it did. The City eschewed any argument that the Union breached the Protocol by not exhausting informal means. This leaves only the propriety of the Chief's decision, for his part, not to apologize as soon as the controversy began, which clearly would have been in keeping with the spirit of a respectful workplace.

On the question of sincerity, perhaps the most important aspect of any apology, again I find against the Chief. He issued his November 2016 letter because he felt he had to do so. From the beginning, the Chief's desire to apologize was qualified at best. Sorting through the narrative facts and the Chief's constantly shifting testimony, I conclude that he felt he should apologize but only if the Complaint was validated and only if it was established that a significant number of paramedics were truly offended by what he had done. With great difficulty, Union counsel extracted from the Chief an admission that there is a difference between accepting full responsibility and offering to apologize only if and when you are found to be wrong.

It is difficult to distill the Chief's position on whether the brochure text was accurate and whether it was offensive. During the investigation and again at arbitration he insisted the wording was accurate though provocative. In March 2015, reacting to an early program draft, he wrote, "Yikes! I'll get lynched!" Yet during the investigation, he told Clarke "It's a stretch for me to see how this could be

offensive." Speaking to the Report findings in direct examination, the Chief accepted that the brochure caused offense. But when pressed vigorously in cross examination, he prevaricated. Sentence 4 ("model is continuously threatened") could be interpreted as such but not sentence 5 ("use facts to thwart rhetoric"). Clarke found it all offensive, yes, but there is context. "In the context, it could be seen to be offensive to Local 911 and it was," he testified. Eventually he said that the phrase "continuously threatened" was offensive but as for the word "rhetoric", "It stands on its definition." As cross examination wore on, the Chief appeared to retract his admission that the text was offensive, stating repeatedly that "It's in the eye of the beholder." The words were offensive "empirically" but he expressed continuing doubt that 156 employees were offended. Then he reversed course again. He had been horrified to discover the text, and agreed it was offensive and disrespectful. Nevertheless, if the Executive had stirred up the reaction, the context was different. So he withheld his apology until the Report determined that he had done something wrong.

The Chief testified that his initial reaction was, "I own it – if the Complaint is validated." I find this was his attitude from start to finish. Taking this into account along with my findings on delay and sufficiency, I find the November 2016 apology was not sincere.

In considering the credibility of the Chief's testimony that he sincerely meant every word of the apology, I have been influenced by his lack of forthrightness in explaining his text communications with Forrest during the arbitration hearing. It also appears that the Chief breached his undertaking not to discuss the evidence in the case while under cross examination. I hasten to add that I am unable to make a definitive finding because the Chief deleted his text messages to Forrest, leaving

only the messages sent by Forrest to the Chief on the phone and open to inspection. To say the least, this episode was damaging to the Chief's credibility as a witness. However, I would have reached the same conclusion about the Chief's sincerity based on the rest of the evidence, even without his unfortunate lapse.

As noted in *Manitoba Lotteries Corporation, supra* (at para. 77): "Human behaviour is complex. It may not be a contradiction to say that [an employee] is truly sorry and yet still partially in denial. …". In the present case, I sense the Chief lost sight of the realities of the situation. He seems to have convinced himself that he has acted honorably and has now brought this long dispute to a reasonable conclusion by apologizing. With regret, I record my finding that the Chief is mistaken.

Should the Chief be ordered to issue the apology as drafted by the Union?

I decline to order another apology. I adopt the City's submissions and authorities on this point. While it always remains a matter of arbitral discretion, directing an involuntary apology is rare, as noted in *Thames Emergency Medical Services, supra*: "… an ordered apology is considered to be a hollow apology. It does little good. Further, it would be unusual to order an apology unless there are particularly egregious or continuing violations of the collective agreement apparent from the evidence" (at para. 17). In the present case, the Union pointed to a continuing strained relationship with the Chief but not to any ongoing violation of the agreement.

The purpose of an apology should not be to "publicly pillory" anyone but rather to acknowledge a wrong done: *Fording Coal, supra*, at para. 18. The Chief has issued an apology in his own words. It fell short, as reviewed above, and therefore a more

robust remedial order will be required. At this stage, forcing the Chief to sign an apology drafted by others would be "more punitive than compensatory", as held in *City of Toronto, supra*, at para. 16. It would not be perceived as sincere by paramedics and therefore would not advance the restorative objectives of the Policy. In any event, it is now a matter of public record that the Chief essentially agreed with the terms of the Union's draft version of an apology. He just could not bring himself to sign such a personal and sensitive document when he himself had not composed it.

Should the City now be ordered to prepare a corrective action plan?

While I have found that the City breached the terms of the Protocol by failing to meet and discuss "the steps that will be taken to ensure a respectful workplace" (Ex. 11, p. 7), in the exercise of my discretion, I decline at this stage to make the order requested by the Union.

The Protocol does not dictate the form of corrective action management must take in any particular case. It depends on the circumstances. In the present case, it was open to the City to determine that an apology was the appropriate response by the Chief, without more. However, if this was the City's inclination, it was still obligated to meet with the Union (on behalf of the complainants) and discuss the options. I agree with the City that the Union had an obligation of its own to provide input on a corrective action plan, recognizing that it is the employer that bears responsibility for maintaining a healthy and respectful workplace. Here the meeting prescribed in the Protocol was never held.

I decline to order a corrective action plan because the Union has not given any hint as to what kind of measures might, in its view, be part of such a plan. There has been a comprehensive investigation of the Complaint, a final Report with findings, an attempted apology, a grievance arbitration hearing and now the present award, which includes an order for the payment of damages (see below). At several points along the way, there were serious efforts by the parties to settle the dispute. What is needed now is finality. Ordering the City to prepare a corrective action plan at this juncture, followed by meetings to discuss the plan or absence of same, is likely to prolong the present dispute for no real purpose.

Should damages be awarded, and if so, in what quantum?

I do not accept the City's position that a bare declaration, confirming the findings of the Report, should be the sole relief granted to the Union. The authorities are clear that damages may be awarded even without proof of monetary loss if a simple declaration would not an adequate remedy: *West Park Healthcare, Government of Alberta*, *Ontario Ministry of Community Safety and Correctional Services, City of Winnipeg and CUPE, Canada Post, Aheer Transportation, supra*, and Palmer & Snyder, *Collective Agreement Arbitration in Canada, Sixth Edition*, at 5.246.

While I did not find bad faith or interference with the administration of the Union, the City accepted Clarke's findings that the Chief caused insult and offense to all complainants (p. 37). His participation at the conference "had the effect of making every member of the Complainant Group feel undervalued in their role" with the Service (p. 36). The Chief was guilty of disrespectful and disruptive behaviour, in violation of the Policy, the Protocol and the collective agreement LOU. The loss was intangible but very real nonetheless.

It follows from Clarke's findings that the dignity and well-being of all Union members was adversely affected, not just the individuals who signed the Complaint. This is precisely the harm sought to be avoided by the City's policies. In the absence of a timely, sufficient and sincere apology, it is just and reasonable to award damages. As the Union argued, early in the sequence of events in this case there was an "easy fix", but the Chief failed to grasp it. An immediate, forthright explanation and true unreserved apology probably would have defused the issue or at least significantly mitigated the damage. Clarke reported (Ex. 18, p. 23) that of 100 complainants she asked during her interviews, 48 said an explanation and a genuine apology would suffice to put this matter behind them. Another 12 complainants said an apology was overdue but should still be provided and 10 members felt it was too late. The obvious and best response to a single act of disrespect, as occurred at the conference in August 2015, was a sincere apology. It also would have been the least expensive resolution for the City.

The Union requested an award of $50,000 for breach of the collective agreement and the Act. I have found a breach of the agreement, which includes violations of the Policy and the Protocol. The City cited authorities holding that damages should be set at a level that provides the employer with "a meaningful incentive to comply" with obligations under a collective agreement, in the $2,000 range: *Canadian Airlines, B.C. Rail, Open Learning Agency, supra*. The breaches in the present case were far from the most serious on the harassment and respectful workplace spectrum. Even so, a nil or nominal award as suggested by the City would be inconsistent with its own Statement of Commitment to a Respectful Workplace (Ex. 7), which calls for fair and respectful treatment for all employees as a fundamental principle.

I award $10,000 in damages to the Union.

The Union requested an award of $1,500 payable to each member of the bargaining unit, or in the alternative, $1,500 payable to each signatory to the Complaint. Various arbitral authorities were cited by the parties on quantum of damages, but each case depends on its unique facts. The City emphasized the awards made in *University of Manitoba, supra*, arguing that if egregious racist and homophobic taunting only yielded $1,000 per employee, the Union's request for $1,500 in the present case was clearly unjustifiable. I agree with the Union that *University of Manitoba* must be read with care as a precedent. The allegation of racial discrimination was not proven in that case (para. 54). It was found there was an unhealthy work environment marked by periodic racist remarks and that the grievor "sensed the hostility", although not that he was targeted. The other grievor was subjected to homophobic behaviour by co-workers that was allowed to continue due to *laissez faire* management (para. 76). The grievance dated back to 2008 and prior years. As the Union argued, the quantum of awards for injury to employee dignity has been increasing.

In my view, a significant factor in setting individual damages in the present case is the nature of the harm suffered. Union members were offended and insulted by a written program banner under which the Chief gave a presentation at an out-of-country conference. It was not the words he spoke that offended but the header under which he appeared. The text conveyed a disrespectful message to paramedics. However, as Clarke found, this was not a conscious effort to demean or belittle the complainants. She said it occurred through inattention. This was not an act that occurred in the physical workplace. There was no ongoing repetition of the

impugned conduct. On the other hand, there was undue delay in delivering an apology for the disrespectful message. When it finally came, the apology was insufficient and insincere.

Clarke found there was no lasting harm in the sense that people have been unable to do their jobs, although I would add that this type of offensive message sent to committed professionals can cause continuing distress. In describing complainant reaction to the conference summary, Clarke listed the comments of five different individuals as reflecting the views expressed by many members (Ex. 18, p. 20), as follows:

> "This tells me they do not accept what we have to say is true. Rhetoric makes us look subversive."
>
> "To refer to our concerns about patient safety as rhetoric is extremely offensive and troubling."
>
> "He's saying we're threatening the betterment of the department …".
>
> "We are patient advocates and we speak out on those issues. It's not rhetoric … . That undermines our credibility as professionals."
>
> "It's like we're uneducated and everything we're saying is a bunch of nonsense."

While there was injury to dignity, I would distinguish it from cases where the collective agreement breach caused particular harm to individuals due to their personal circumstances. For example, in *West Park Healthcare, supra*, the employees whose jobs were restructured without proper notification to the union were awarded $1,000 each in damages. In *Government of Alberta*, *supra*, the personal privacy of 26 employees was violated when an investigator unlawfully reviewed the grievors' financial and credit information. Despite prompt corrective measures and an unrestrained apology, the arbitrator awarded each grievor $1,250,

described as a "modest" sum. Two grievors in *University of Manitoba, supra*, received $1,000 each for their individual loss of dignity in an unhealthy workplace, on limited findings. Larger individual damages were allowed when grievors were singled out and banished from the workplace based on anti-union animus ($5,000 in *Ontario Ministry of Community Safety* and *Canada Post, supra*.) In the present case, there is no evidence of unique harm to any individual or select group of employees within the bargaining unit. The conference text was offensive and insulting to all members equally. In essence, it was an affront to the dignity of the entire group.

In such circumstances, a lump sum award to the Union as representative of all employees might be considered, but this would deprive individuals of a tangible remedy for the harm they experienced. As a result, I am ordering individual payments, with one caveat. A different scale of damages may apply when a large number of employees are to be compensated for a common intangible loss. The global financial impact on the employer should be taken into account. The effect of the award should not be punitive and the total amount awarded should not be disproportionate to the nature and quality of the wrongful act.

Considering all these factors, I award $300 in damages to each employee who was a member of the bargaining unit as of September 1, 2015.

Should other systemic relief be awarded as requested by the Union?

I decline to order the Chief to attend remedial training as requested by the Union. The arbitration process and the determinations made in this award should have the necessary educational effect.

I decline the Union's request to restrict the Chief and his management team from public speaking about the WFPS model unless both UFFW and the Union are invited to participate. Based on simple common sense and recent history, however, it is obvious that this should become standard practice for the future.

As a restorative measure, I order the Chief and the Union Executive to meet within six weeks of the date of this award, in a structured session led by an external, professional workplace facilitator. The purpose is to begin an effort to repair the damage caused by this dispute to the parties' working relationship. The City will pay the cost of the session. Further sessions are in the discretion of the parties.

Summary of award and orders

The grievance is allowed and a violation of the collective agreement is declared, to the extent and in the manner found by Clarke in the Report.

The City did not act in bad faith or undermine and interfere with the administration of the Union.

The Chief's apology issued on November 10, 2016 was unreasonably late, insufficient and insincere.

The City will pay damages to the Union of $10,000 and damages to each member of the bargaining unit as of September 1, 2015 in the amount of $300 per member.

The Chief is not ordered to apologize again in the terms drafted by the Union, nor is the City ordered to prepare a corrective action plan. The Union's other remedial

orders are denied. However, the Chief and the Union Executive are ordered to meet within six weeks in a facilitated session, as described above.

Jurisdiction is retained to clarify the award as may be necessary and to deal with any implementation issue or dispute that may arise.

ISSUED on February 28, 2018.

ARNE PELTZ, Arbitrator