

Disabled ex-aide says he was bullied; Human rights tribunal to determine whether Nunziata discriminated

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Illustrations: George Berger, above, claims Councillor Frances Nunziata, left, forced him into taking a stress leave. RICHARD LAUTENS/TORONTO STAR

Six months after Councillor Frances Nunziata hired George Berger as an executive assistant, she said she wanted him gone, due to poor work performance.

Berger, who suffers from a hereditary condition that limits his mobility, accuses the veteran councillor of bullying him to the point he was forced to go on stress leave.

But to what extent did Berger's disability play a role in the conflict?

That's what Kaye Joachim, an adjudicator with Ontario Human Rights Tribunal, has been left to decide. Closing arguments in Berger's case against Nunziata, which dates to 2005, concluded Tuesday.

Berger has accused the city and his former boss of harassment and discrimination: Nunziata for making "humiliating and degrading" comments because of his disability, and the city for taking inadequate steps to resolve the issue.

Nunziata denies Berger's allegations, including an accusation that she rebuked him for standing up during a meeting when his back hurt. The only time Nunziata recalls Berger standing during a meeting, she says, was an occasion when he put his leg up and scratched his crotch.

Berger suffers from multiple osteochondromatosis, which produces cartilage growth on bones and joints. He testified that that scenario is impossible, since his disability prevents him from raising his legs.

The "assertion by the city that this was simply a difficult personal relationship between two personalities" in the workplace is not sufficient, argued Berger's lawyer, **Raj Anand**.

Anand said the "cumulative" effect of comments and actions taken by Nunziata, including admonishing Berger for purchasing a wireless mouse to accommodate his disability, unjustly criticizing his job performance and allegedly yelling and swearing at Berger, amounts to disability harassment.

Nunziata's lawyer, Michelle Henry, argued that even if the adjudicator believes Berger's accusations that Nunziata belittled him often, allegations she denies, that doesn't prove disability discrimination.

In one incident of alleged harassment, Berger accuses Nunziata of calling him a liar when he refused to reveal his computer password, citing city policy. Staff in Nunziata's office are expected to leave their

passwords behind prior to an absence so others can continue their work, Henry said.

"He has not established in this case he was singled out, much less singled out because of his disability," argued Henry.

Berger left Nunziata's office in October 2005, but the city agreed to pay him until the end of his contract the following November.

Berger, who worked 12 years for former councillor Norm Gardner, is seeking \$140,000 from the city for other wages, and \$30,000 for compensation for violating his rights.

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