

COURT OF APPEAL FOR ONTARIO

CITATION: Free v. Magnetawan (Municipality), 2015 ONCA 629

DATE: 20150917

DOCKET: C59459

Laskin, MacPherson and MacFarland JJ.A.

BETWEEN

David Free

Plaintiff (Appellant)

and

Municipality of Magnetawan, Richard Smith, Kris Nicholls, Patti Paul and Mark
Urbanski

Defendants (Respondents)

Marc A. Munro, for the appellant

Ian St. John and Jeffrey Rochweg, for the respondent

Heard and released orally: September 14, 2015

On appeal from the judgment of Justice Donald Gordon of the Superior Court of
Justice, dated September 8, 2014.

ENDORSEMENT

[1] The trial judge found the evidence of the appellant “troubling”. He accepted the evidence of the respondents and clearly preferred that evidence over that of the appellant. The only issue for determination was whether the appellant had

been hired for a three-year term. The language of the by-law appointing him to this position clearly states that he was “Acting CAO/Clerk”.

[2] It had been the municipality’s practice to initially appoint an interim acting CAO and have that person recruit candidates for the position on a permanent basis. The municipality followed its own past practice.

[3] Other documentary evidence supports the by-law including the appellant’s own extensive memo dated May 26 to council, the interview he gave to the local newspaper and the fact that he had to discuss the duration of any employment with his wife.

[4] The inconsistent positions taken by the appellant both in his original pleadings and at a summary judgment motion, belie the position he took at trial in relation to a contract with a fixed three-year term.

[5] There was no evidence the municipality had “purged” or “destroyed” its records in relation to these events. The municipality simply did not have the records. It was the appellant’s duty from the time he was hired until his temporary position was terminated to prepare and keep such records.

[6] Mysteriously, the email chain the appellant relies on appeared some four years after the events in question. It stretches credulity to think those documents, had they existed, would not have been produced much earlier in the proceedings and been referenced in the pleadings.

[7] The appeal is dismissed.

[8] Costs to the respondent municipality fixed in the sum of \$10,000 inclusive of disbursements and HST.

“John Laskin J.A.”

“J. C. MacPherson J.A.”

“J. MacFarland J.A.”