IN THE MATTER of the investigation into charges against Deputy Director David Griffin, alleging sexual harassment and a breach of confidence, by an independent person;

- and -

IN THE MATTER of the *City of Summerside Act, R.S.P.E.I., 1988, Cap. S-9.1* and the Summerside Police Department Rules and Regulations.

DECISION

Before M. Lynn Murray, Independent Person

Benjamin B. Taylor, Q.C.	Counsel for the City of Summerside
Charles C. Campbell	Counsel for Deputy Director David Griffin
Date and Place of Hearing:	August 16, 17, 18, 19, 20, 1999, Summerside, PE,
Date and Place of Decision:	November 30th, 1999, Charlottetown, PE,

Introduction:

1. On July 15, 1999, I was appointed by the City of Summerside (hereinafter referred to as the "City") to hear allegations relating to sexual harassment against David Griffin, Deputy Director of Police Services for the City of Summerside (hereinafter referred to as "Griffin").

2. After my appointment, I convened the hearing on July 28, 1999, to deal with a procedural matter, namely, the application of the City to close this hearing to the public. I ruled on August 10, 1999, that the hearing into the internal charges relating to sexual harassment against Griffin would be held "in camera", subject to the public release of this decision.

3. The hearing convened on August 16, 1999, "in camera" and continued on August 17, 18, 19, and 20, 1999, in the absence of the public. An exclusion order regarding witnesses was sought by Griffin and was granted. A list of the exhibits introduced by the parties is attached to this Decision as Appendix "A".

4. My ruling to hold this hearing "in camera" was to protect the privacy of the women to whom I have referred herein as the "complainants". However, as will become apparent later in this Decision, it may be that the term "complainant" is a misnomer in relation to either or both women. In addition, in this Decision I shall refer to them as Cst. A and C/M B. This Decision also refers to other individuals who were not called as witnesses and, on occasion, some of those individuals are referred to by the use of initials.

5. This matter and other issues involving the parties have received considerable media attention. My role is not to conduct an inquiry or investigation into all matters involving Griffin. My role is limited to hearing the evidence put before me by the respective parties through the witnesses they choose to call and the documents they choose to submit. I have no independent power to call witnesses. I adjudicate upon the charges before me based on the evidence presented by the parties and the law that affects these issues. While I have no doubt the parties are aware of my role, I make this comment to avoid potential misapprehension as to the scope of the matter before me.

Background:

6. Section 21(1)(j) of the *City of Summerside Act, R.S.P.E.I. 1988, Cap. S-9.1* gives the Summerside City Council (hereinafter referred to as "Council") the power to provide police protection and to discipline officers. Council also has authority over all matters relating to law enforcement. Council enacted By-law #70-26-84-3 (hereinafter referred to as the "Police By-law"), paragraph 12 of which indicated that Council may make Rules and Regulations respecting the conduct, duties and terms of employment of the police officers of the City. Council subsequently enacted the Summerside Police Department Rules and Regulations, (hereinafter referred to as the "Rules and Regulations"), Section 27 of which is entitled "Discipline Procedure" and Section 29 of which is entitled "Discipline Code".

7. The Rules and Regulations were introduced as Exhibit "C-5" and the relevant portions thereof are reproduced in Appendix "B" attached to this Decision.

8. Prior to the laying of the charges before me, Griffin had been suspended from duty, with pay. This was as a result of Griffin's failure to follow an order given by Director of Police Services, George Arsenault (hereinafter referred to as "Arsenault"), to investigate alleged offences under the City By-laws that Cst. Andrew Grimes (hereinafter referred to as "Grimes") was alleged to have committed on February 23, 1997. Griffin testified before me that he had made a decision that criminal charges should be laid against Grimes for Grimes' actions. Griffin subsequently was ordered by Arsenault to meet with the City solicitor to determine if there was enough evidence to proceed with internal charges against Grimes and he refused to do so. In January of 1998, Griffin was suspended from duty with pay due to his alleged failure to follow the direct order of Arsenault. A charge was then laid against Griffin on February 10, 1998, alleging Insubordinate or Oppressive Conduct contrary to Section 29(b)(i) and 29(b)(ii) of the Rules and Regulations for refusing to obey a lawful order. His suspension was ultimately terminated on March 30, 1998, and he was returned to his previous position without any negative employment consequences.

9. There was a series of legal challenges in relation to who might preside over those charges and the process to be followed, some of which will be mentioned in this Decision. On April

9, 1998, the Prince Edward Island Supreme Court in *Griffin v. Director of Police Services for the City of Summerside et al, [1998] 1 P.E.I.R 261* prohibited Arsenault from conducting the hearing into the charges of insubordination against Griffin. The Court determined that Griffin had a right to a hearing of the discipline charge before an independent tribunal in accordance with the common law rules of natural justice. The matter was then remitted back to the City to constitute a tribunal to hear and determine the charges against Griffin.

10. Immediately thereafter, the City amended Section 27 of the Rules and Regulations by the addition of certain sub-sections which provided for a hearing to be held by an independent person and provided for all discipline hearings to be closed to the public.

11. By September of 1998, the charges of insubordination brought against Griffin, in relation to his refusal to follow the internal orders that had been given, were still outstanding and a hearing on those charges was scheduled for later that fall. I am advised that the hearing eventually proceeded in January of 1999.

12. On January 13, 1999, Section 27(v) of the Rules and Regulations was struck down by Mr. Justice Jenkins in *Canadian Broadcasting Corporation et al.* v. *The City of Summerside, [1999] 1 P.E.I.R. 113 (P.E.I.S.C., T.D.)*. This Section, which required that all disciplinary hearings be closed to the public, was held to be unconstitutional because it infringed on the *Canadian Charter of Rights and Freedoms* (hereinafter referred to as the "*Charter*"). As a result of the foregoing decision, there is no provision in the Rules and Regulations to deal with whether a disciplinary hearing is open to the public or whether it should be held "in-camera".

13. John A. O'Keefe, Q.C. (as he then was) had been appointed to hear the charges at issue in the instant matter and had scheduled dates for the hearing on the merits during the week of August 16, 1999. Prior to dealing with the merits, Mr. O'Keefe heard a preliminary procedural issue when the City made an application to have the hearing closed. Mr. O'Keefe was not able to render a decision nor continue with the merits of the hearing, as he was appointed to the Federal Court, Trial

Division, in June of 1999. I was then appointed as the "Independent Person" pursuant to Section 27(t) of the Rules and Regulations to continue hearing this matter.

14. The incidents that I am concerned with surround certain events that occurred between June 1, 1997, and December 31, 1997.

Charges Against Griffin:

15. The original charges against Griffin were issued on or about November 9, 1998. The charges, as amended on consent on July 27, 1999, were introduced as Exhibits, and it is those amended charges which are outlined below:

(a) *PURSUANT to the Discipline Procedure set out in the Rules and Regulations for the Summerside Police Department, Acting Deputy Director of Police Services David Poirier charges that Deputy Director of Police Services David Griffin did commit an Offence Against Discipline, namely Discredited Conduct, contrary to s. 29(a) of the Rules and Regulations, in that on or about July 19, 1997, at Summerside, Prince Edward Island, he did sexually harass Cst. A* [sic] *by unwanted touching while she was on duty and he was in an apparent intoxicated state.* [Exhibit "C-1"]

(b) *PURSUANT to the Discipline Procedure set out in the Rules and Regulations for the Summerside Police Department, Acting Deputy Director of Police Services David Poirier charges that Deputy Director of Police Services David Griffin did commit an Offence Against Discipline, namely Oppressive Conduct contrary to s. 29(b)(ii) of the Rules and Regulations, in that between June 1, 1997 and December 31, 1997 at Summerside, Prince Edward Island, he did sexually harass Cst. A* [sic] *by creating and maintaining a hostile work environment by tolerating and encouraging sexually demeaning statements made by Mr. X* [sic]. [Exhibit "C-2"]

(c) *PURSUANT to the Discipline Procedure set out in the Rules and Regulations for the Summerside Police Department, Acting Deputy Director of Police Services David Poirier charges that Deputy Director of Police Services David Griffin did commit an Offence Against Discipline, namely Oppressive Conduct, contrary to s. 29(b)(ii) of the Rules and Regulations, in that between June 1, 1997 and December 31, 1997 at Summerside, Prince Edward Island, he did sexually harass C/M B* [sic] *by creating and maintaining a hostile work environment by tolerating and encouraging sexually demeaning statements made by Mr. X* [sic]. [Exhibit "C-3"]

(d) *PURSUANT to the Discipline Procedure set out in the Rules and Regulations*

for the Summerside Police Department, Acting Deputy Director of Police Services David Poirier charges that between October 19, 1998 and October 23, 1998 at Summerside, Prince Edward Island, Deputy Director of Police Services David Griffin did commit an Offence against Discipline, namely Breach of Confidence contrary to s. 29(e)(i) of the said Rules and Regulations in that he did release to the public media, the names of employees of the Summerside Police Services who had filed sexual harassment complaints within the Summerside Police Services. [Exhibit "C-4"]

Witnesses:

16. The City called six (6) witnesses, namely, Cst. A, Cst. Michael Rioux, Dave Holland, Mayor Basil Stewart, C/M B, and Arsenault. Griffin called five (5) witnesses, namely: Bill Kendrick, Sharon Griffin, Jean Griffin, Geraldine Grant and himself.

17. Griffin graduated from the Atlantic Police Academy in 1971 and became employed with the Summerside Police Department as a Constable in 1972. From there, he moved up through the ranks into investigation in 1978, eventually rising to the rank of Detective Sergeant and later becoming Deputy Director of Police Services in 1995, a position he has held since that time. Griffin is responsible for operations including all uniform/support system personnel, scheduling, reviewing all files, supervising all members, and dealing with various other situations. He indicated he had an open door policy and would have monthly meetings where he would ask for concerns of the officers to be addressed. Griffin has been responsible for discipline since 1995.

18. Sharon Griffin has been married to Griffin for twenty-three (23) years and they have one son. Jean Griffin is the mother of Griffin.

19. Arsenault became employed with the City in approximately 1963 as a Constable and held that position until 1988 when he was promoted to Sergeant. He became Chief of Police in 1990. When the City amalgamated in 1995, he became the Director of Police Services for the City, a position he still holds. He is responsible for making the policy decisions.

20. Basil Stewart has been the Mayor of the Town, and, most recently, the City of Summerside since 1985. He was formerly a police officer and had known Griffin since 1971 when they attended the Police Academy together.

21. Dave Holland and Bill Kendrick are affiliated with local media organizations, a local radio and television station, respectively.

22. Cst. Michael Rioux, the President of the Union that represents Police Officers, graduated from the Atlantic Police Academy in 1979. He had been employed in Edmonton, Alberta, for a period of thirteen (13) years. He returned to Prince Edward Island in July of 1992 and became employed with the Summerside Police Force on a part-time basis in May of 1993. At the date of the hearing, he was employed on a full-time basis with the Summerside Police Services.

23. Geraldine Grant, a civilian employee, commenced her employment with the Summerside Police Force in 1975 and continued in that capacity until March 31, 1997. She was the personal assistant and secretary to the Chief of Police (later the Director of Police Services) and sometimes the Deputy Director. She was the only woman in the office for many years. She wore a variety of hats, including Special Constable, Justice of the Peace, Commissioner of Oaths, spokesperson for the media, steno, and the person in charge of payroll and personnel records.

24. Cst. A, a graduate of the Atlantic Police Academy, had worked at Bridgefest during the May 31st-June 1st weekend of 1997 when the Confederation Bridge had its official opening. It was around that time that she was hired as a part-time Constable with the City of Summerside Police Services. Between June of 1997 and February of 1998, she was employed as one of four part-time Constables doing shift patrol and, on occasion, she would fill in as a dispatcher. In March of 1998, she was hired on a permanent basis as a dispatcher, working exclusively in the Telecommunications Centre. In August of 1998, she became employed as a full-time Constable. She continued in this capacity until mid-May of 1999, when she left the Summerside Police Services to become employed with a Police Force outside the Province.

25. C/M B is a civilian member who did some on-the-job training with the Summerside Police Force in December of 1994 through to the spring of 1995. Thereafter, she would often help out Geraldine Grant on her own time. C/M B commenced her current employment with the Summerside Police Services in January of 1997, on a part-time basis as a dispatcher, and became a full-time employee in May of 1997, completing her probationary period in May of 1998.

Lobster Carnival Incident - July 19, 1997:

26. Six of the witnesses gave evidence regarding events that took place at the Summerside Lobster Carnival Fairgrounds on Saturday evening, July 19, 1997. It is these events that form the basis of one of the charges against Griffin.

27. Cst. A testified that on July 19, 1997, her shift started at 8:00 p.m.. Shortly thereafter, she and Cst. Rioux attended at the Summerside Fairgrounds on patrol. They walked through the Fairgrounds towards the Racetrack and were returning to their vehicle when they encountered Sgt. David Poirier. Sgt. Poirier was off-duty at the time and was dressed in casual clothes. According to the testimony, he indicated that Griffin was on-site and that he appeared to have been drinking. He cautioned Cst. Rioux and Cst. A to be careful. [Sgt. Poirier, the Acting Deputy Director of Police Services at the date of the hearing and the officer who investigated Griffin in connection with the matter at issue here, was not called as a witness. I was advised he had no direct evidence to give.]

28. Soon after the discussion with Sgt. Poirier, Cst. A and Cst. Rioux were approached by Griffin and Mayor Basil Stewart, according to the evidence of Cst. A. She testified that Griffin had a cup in his hand and it looked like he was drinking, although she did not smell alcohol. Cst. A thought Griffin was weaving a little bit but not falling down; she would classify him as someone who had had too much to drink. She indicated that during the meeting, which lasted 5 to 10 minutes, Griffin was talking to Cst. Rioux, and she wasn't really listening or taking part in the conversation. Cst. A drew a diagram indicating the location of the four (4) individuals [Exhibit "C-6"] which demonstrated that Cst. Rioux was to her left and Griffin was on her right and the Mayor was across from her (between Cst. Rioux and Griffin). She indicated they were standing in a circle in an area

which was well lit and crowded. When Griffin went to introduce her to Mayor Stewart, whom she had met on two previous occasions, he indicated to the Mayor words to the effect "Mayor, this our newest female police officer". During and after the introduction, Cst. A testified, Griffin placed his hand on the middle of her back to begin with and he then proceeded to rub his hand up and down her back and to rub her back in a circular motion. Cst. A testified she felt extremely embarrassed and uncomfortable. Her face started to flush and everything went numb. She started to move away from Griffin to the point where she was standing on Cst. Rioux's boot, so that he couldn't move his foot. She testified that after she moved to her left, Griffin followed her by moving approximately half a step and he continued to rub her back. She testified she looked up at Cst. Rioux, who then said words to the effect "Come on, let's go" and the two officers proceeded to return to their vehicle and, ultimately, to the police station. Cst. A testified that, as Griffin was rubbing her back, a girl walked by, stopped and looked back towards Cst. A, who thought "Oh great, I don't want to be known as the new girl with the Deputy rubbing her back".

29. Cst. A did not doubt that the introduction was a friendly gesture on the part of Griffin and she did not have a problem with the introduction. Rather, she had a problem with Griffin putting his hand on her back and rubbing his hand up and down her back and in a circular motion. She indicated it was inappropriate behaviour and that rubbing her back for longer than one second was too long, although she could not state the exact amount of time involved in the touching. Cst. A stated there was no need for Griffin to put his hand on her back and haul her into the circle as she "hadn't been in the conversation by choice".

30. Cst. Mike Rioux, the officer on duty with Cst. A on the Saturday evening of July 19, 1997, confirmed that he and Cst. A had met Sgt. Poirier, who apparently indicated that Griffin and CD were in the area, were drunk, had offered Sgt. Poirier a drink, and to be careful and watch out for them. [CD was not called as a witness to testify.]

31. Cst. Rioux's evidence was that shortly after meeting Sgt. Poirier, the Mayor and Griffin showed up beside them. Griffin was not in uniform and had a coke glass in his hand. Cst.

Rioux felt that Griffin had had a fair amount to drink. Cst. Rioux testified he noticed Griffin's eyes were red, he was swaying and his speech was slurred. On a scale of 1 to 10 (1 being sober, 10 being intoxicated), Cst. Rioux felt Griffin would rate a 7. He indicated the four (4) individuals were standing in a circle with Cst. Rioux facing North, Cst. A being to his right, Griffin facing Cst. Rioux, and Mayor Stewart being to his left. Cst Rioux noticed that Griffin went to introduce Cst. A and stated words to the effect: "This is one of our new officers" or someone "who has just started with the Force". The introduction occurred around the time when Cst. Rioux noticed Griffin putting his hand on Cst. A's back and he noticed Griffin's arm going up and down behind Cst. A and, for a second, he thought Griffin's hand was on her shoulder. Cst. Rioux testified that Griffin's hand might have been on Cst. A's back for 6 to 8 seconds. The entire meeting did not last more than 1 minute, during which they might have been talking to the Mayor and Griffin for 20 to 40 seconds in total. Cst. Rioux observed Cst. A looking at the ground and she appeared to be uncomfortable. She took a side step towards him and started to walk away. He felt it would be better for them to leave and said words to the effect: "Let's move on" or "We better be going". As they were walking away, Cst. Rioux testified that Cst. A stated words to the effect: "Oh my God". [Cst. A did not testify to this fact.]

32. Mayor Stewart was at the Lobster Carnival grounds on the evening in question and had met Griffin somewhere outside the Cahill Stadium but he was not sure of the exact location. He did not notice anything unusual about Griffin. He did not see Griffin drinking nor did he smell Griffin's breath to see if he was drinking. He felt that if someone was intoxicated, he would have noticed and, if such was the case, the person, who was in an intoxicated condition around the Lobster Carnival, should have been arrested. He recalled meeting Cst. Rioux and being introduced to Cst. A, although he could not state whether or not this was the first time he had met Cst. A. He had no idea exactly where the parties were standing or how long the meeting lasted, although he did not recall it being long. He did not see Griffin touching Cst. A in an inappropriate manner nor did he notice if Cst. A was embarrassed.

33. Griffin described the events that occurred during the evening of July 19, 1997. Prior

to attending at the Lobster Carnival, he had been at home with his mother, his mother-in-law, and his wife. He had two drinks of rum and coke at his home before leaving to walk down to Cahill Stadium with the three women to watch the talent contest. Although he had seen CD several times during the evening, Griffin did not have a drink with CD, nor did he have anything to drink at the Fairgrounds. Griffin stated he did not see Sgt. Poirier nor did he offer Sgt. Poirier a drink.

34. After the talent show was over, Griffin was going out the front exit of the Cahill Stadium when he met the Mayor briefly just outside the main doors. Griffin saw Cst. A and Cst. Rioux on foot patrol when they were about 10 feet from him and he believed that they were heading towards the Racetrack. Griffin and the Mayor were stopped when the police officers approached Griffin and the Mayor. In relation to where Griffin was standing, Griffin testified on direct examination that he was not clear on where he was standing. However, he did indicate that after the meeting occurred, he went to introduce Cst.A to the Mayor. In doing so, he took his right arm, placed it around Cst. A (who was standing apart from the grouping), placed his hand briefly on Cst. A's back and briefly moved Cst. A into the group to introduce her to the Mayor. He specifically denied that he rubbed Cst. A's back. He testified the meeting was very brief, one minute at most, and the length of time his hand would have been on her back would have been for less than five seconds. He testified he had no sexual intentions with respect to Cst. A, never expressed any sexual intentions toward her and was never accused of such. He had no sense that Cst. A was uncomfortable and, in fact, he felt she was quite proud of the fact that he introduced her to the Mayor. He did not recall any conversation after the introduction was made and, when the meeting was over, he and the Mayor then proceeded to the Carnival grounds, where he eventually met up with his wife and others.

35. On cross-examination, Griffin testified that the Mayor was to his right, Cst. Rioux was to his left and Cst. A was to his right. Griffin then drew a diagram [Exhibit C-34] which indicated the parties were standing in a square, with Cst. A to his right, the Mayor to his left and Cst. Rioux was between Cst. A and the Mayor.

36. Sharon Griffin, Griffin's wife, testified. She confirmed that Griffin probably had a couple of drinks before he left their home to attend the Lobster Carnival for the country music event.

Her description of what happened as they were walking out of the main entrance of the Stadium was that she saw her husband meet the Mayor, saw two police Constables approach them, and saw her husband introduce one of the police Constables to the Mayor. She was standing a few meters away from her husband when she saw him put his right arm on the Constable's shoulder as they stood in a square formation.

37. Jean Griffin, the mother of Griffin, confirmed that the parties walked to the Carnival grounds, that Griffin indicated he wanted to introduce someone to the Mayor, and that Griffin and the Mayor and two police officers met and talked for no more than a few minutes. She never saw anything unusual and never heard any words of introduction.

38. Cst. A testified that she and Cst. Rioux left the Fairgrounds. They spoke about the situation briefly when they entered the police vehicle. However, Cst. A indicated she did not want to talk about the situation and she was going to forget about it, like it never happened and that was the end of the matter. Cst. A testified that Cst. Rioux said "I can't believe what just happened". [Cst. Rioux did not testify to this fact.]

39. Cst. Rioux testified that after they returned to the police car, Cst. A advised him that she didn't want any trouble and wanted to pretend it never happened, although he could not be exactly sure of what she said. Cst. Rioux indicated he did not speak to anyone else about the incident that he could recall. While he was a senior Constable to Cst. A, she had indicated she did not want the matter reported and he respected her wishes.

40. Cst. A testified that when she returned to the police station, she talked about the incident with another officer. Cst. A indicated that when she was coming off her shift the following morning, July 20, 1997, it appeared to her that others knew of the incident and were talking about it. She testified that Grimes had approached her and, while she did not tell Grimes anything, he had apparently heard it from someone else. She advised Grimes to mind his own business and told him that if he said anything, she "would deny it". She went so far as to contact the supervisor of Grimes, Cpl. Buell, and told Cpl. Buell to "keep a leash" on him [referring to Grimes]. Her direct testimony

on this point is outlined below:

> *Q.* *What did you understand to be the source of Chief Arsenault's information?*
>
> *A.* *If we can go back to July of '97 when the incident occurred, the very next morning at the change of shift, Andrew Grimes came to me alone, not in front of anyone else, and he said to me, you know, what has happened wasn't wrong, it wouldn't be right for anyone, or for any one person to do that to anyone. He wasn't being specific. And all he said was maybe you should talk to somebody or think seriously about maybe doing something about it, or even talking to someone about it. Okay, this is what he said to me. I responded by telling him more or less to mind his own business, do not say anything, and I even told him that if he was to say anything, I would deny it. And for the simple fact that I did not need it at that point in time in my career. I was new. I was part-time. I was there not even a full two months yet. And I just didn't need that right now. So I told him to mind his own business. And I went a step further and contacted his shift I/C or his supervisor for the shift and told him more or less to keep a leash on him, don't let him go and tell whoever, the powers that be. Right now, I'm not ready for it. And I was told then, by Corporal Buell, that if at any time I wanted to talk about it or if I wanted something done, to let him know. And then that's how, that's going back to way back when. But when I came home from Newfoundland, now I'm back up in August of '98 again.*
>
> *Q.* *Right.*
>
> *A.* *Right. So now I'm back from my trip from Newfoundland. I'm in the office and the Chief --*

41. Cst. A testified that the incident was not discussed between July of 1997 and August of 1998. She indicated there was no formal policy in place as to what she could do and, while she could have told her employer, she chose not to do so. Cst. A testified she decided not to lay a complaint as she was new to Summerside, was new to her job, was fresh out of the Academy, had part-time status and did not want anyone to know about it. [Neither Grimes nor Cpl. Buell were called to testify before me].

42. Griffin's Counsel provided statements, which were referred to as "will say" statements,

to Counsel for the City. These statements, entered as Exhibit "C-35", of which the relevant portion in relation to the Lobster Carnival incident stated as follows:

Witness Statements

David Griffin
Re: Lobster Carnival
On the evening of the lobster carnival, roughly in mid-July, 1997, he was on the carnival grounds with his wife, his mother and his mother-in-law. He saw Mayor Basil Stewart at the carnival and then he saw Cst. A [sic]. *He approached Cst. A* [sic] *with the intention of introducing her to the Mayor. He put his hand on her shoulder in order to guide her over to the Mayor. He did so in full view of his wife, his mother and his mother-in-law, as well as the Mayor himself. He was not intoxicated. Griffin did not hear any complaint about this alleged incident until at least a year later.*

...

Mrs. Sharron Griffin (David Griffin's wife)
Sharron and David Griffin have been married for 23 years. On the eveningin question, Sharron, David, Sharron's mother, and David's mother were all walking out of the talent contest at the arena. As they walked out of the arena, they saw two police officers. They saw the Mayor nearby. David Griffin went over to the Mayor to introduce him to the female police officer. He was not intoxicated.

Mrs. Griffin does not remember seeing anything inappropriate in David Griffin's interaction with the female officer. She does not remember seeing him touch her, but believes that this could have happened. She was paying close attention to the female officer because she was curious about her. She did not notice anything unusual about the female officer's demeanor; she did not appear uncomfortable.

...

43. The evidence of Griffin and his wife, Sharon Griffin, was challenged on cross-examination in relation to the "will say" statements. Sharon Griffin testified she had never seen the "will say" statement previously. Griffin confirmed during cross-examination that his "will say" statement in relation to the Lobster Carnival incident was different from what he testified to before

me in the following respects, namely:

(a) his testimony indicated the Constables approached, whereas his "will say" statement stated that he approached Cst. A; and

(b) his testimony before me indicated he put his hand on Cst. A's back, whereas his "will say" statement indicated he put his hand on her shoulder.

44. Griffin testified that if Cst. A was uncomfortable, he would have hoped that she would have come to him and they could have discussed it. If she had expressed her feelings to him, Griffin testified that he would have said he was sorry if he had caused her any discomfort. Griffin's sincerity was challenged by Counsel for the City on the grounds that Griffin had not apologized to Cst. A for the incident she did report, which incident involved Mr. X and will be discussed later in this Decision. Griffin testified that he had no knowledge there was a problem involving the Lobster Carnival until he received an envelope from Sgt. Poirier on October 20, 1998.

45. Griffin agreed with Counsel for the City that he did not believe it was appropriate to rub or stroke an officer's back when they were on duty. It would not be proper to do that to either a male or female, subordinate or insubordinate, and behaviour of that type would be Disorderly Conduct. He also agreed that if he was doing it to a subordinate officer, it would be prejudicial to discipline and if it was done in public, it would bring Discredit on the Force.

Hostile Work Environment - Background:

46. Historically, there were very few women ever employed with the Summerside Police Force. I was advised that there was a military police officer for a period of months, another Constable in the mid '80s, and various female Constables from the Atlantic Police Academy who completed their on-the-job training with the Summerside Police Force. There was also a female dispatcher for a period of time; the Executive Secretary, Geraldine Grant; and other women who assisted Geraldine Grant for a few weeks from time to time. Subsequent to April 1, 1997, several female Constables became employed with the City.

47. Two of the charges against Griffin involve a former employee of the City to whom I have chosen to refer as Mr. X. Both parties made numerous representations, that were less than flattering, in relation to this individual. Counsel for Griffin described Mr. X as being rude, ignorant and arrogant. Counsel for the City described him as making rude and crude comments. He too stated that Mr. X was ignorant. Various witnesses cast Mr. X in an unfavourable light. Given that this individual was not called as a witness and, therefore, did not have the opportunity to admit, deny or otherwise explain or address the comments that were made to me, and given the wide spread media attention that this case has received, I did not feel it was fair to identify the individual in question.

48. Mr. X had been a former low-level and long-term civilian employee of the City of Summerside. After he left his employment with the City, he was hired by the Police Department to wash and clean the police vehicles on weekends. While this would take place in the fire hall, which I was advised was located across the parking lot from the police station, it would be necessary for Mr. X to attend at the police station to obtain the cleaning supplies from the basement and return those supplies. This meant he would enter the foyer of the police station and would either get "buzzed in" through the door or enter the interior by punching in the access combination.

49. Arsenault confirmed that after Mr. X left his full-time employment with the City, he continued on a part-time basis with the Police Department. Both Arsenault and Mr. X grew up in Summerside and Arsenault had known him for a long time. Mr. X had been a fellow employee with Arsenault for a period of time and Arsenault was also Mr. X's boss. Arsenault considered Mr. X an acquaintance, although he conceded that some might say it was a friendship or a friendship through work. Arsenault felt that, as an employee, Mr. X was a hard worker who was dedicated to his work. Mr. X never missed any time and he used the least amount of sick days. According to Arsenault, Mr. X would do any job that was given to him, was easy to please, had a good relationship with his employer (the City or the Town) over the years and was devoted to his family.

50. In relation to Mr. X's duties with the Police Force, Mr. X's two main jobs were to clean the police cars and do "auto service" work, essentially checking the tires and oil. Arsenault

considered that he was the employer; Arsenault had agreed to pay Mr. X for the work he did. Mr. X would fill out a form and take it to City Hall to get paid. Arsenault conceded that, at the time Mr. X's relationship began with the Police, Griffin was not responsible for Mr. X, as Griffin was not the Deputy Chief.

51. On the last night of the annual Lobster Carnival, the Lieutenant-Governor and other dignitaries visit the City of Summerside and there is a procession that occurs prior to the running of the Governor's Plate horse race. On Arsenault's instructions, Mr. X would pick up a police car, clean it, and arrange to meet the Lieutenant-Governor. Mr. X would drive the police vehicle with a retired Chief of Police as a passenger; this vehicle would be the car that would escort the Lieutenant-Governor's vehicle. Arsenault confirmed that he generally assigned those tasks to Mr. X and that this practice went back a number of years. Generally, Arsenault would attend the ceremonies with the Mayor, although, on one occasion, Griffin did stand in for Arsenault.

52. Arsenault testified that Mr. X was a "curser". Arsenault had heard Mr. X cursing from time to time, although Mr. X often would shut up when Arsenault arrived on the scene. Arsenault never corrected Mr. X verbally or in writing regarding this issue. Arsenault did concede that some would have considered Mr. X as a foul-mouthed person; however, Arsenault did not look at him in that way. During cross-examination, Arsenault conceded that foul language was used for the most part by all the male members of the police department. Arsenault did not believe that Mr. X was a story teller or would tell dirty jokes. Rather, Arsenault looked upon Mr. X as a person who was quick-witted and who would say "witty things". Arsenault indicated that if someone testified that Mr. X mumbled a lot, it would not ring true to him.

53. Griffin agreed with the comments made by Arsenault about Mr. X. He confirmed Mr. X was an employee with the City in excess of thirty years, working as a maintenance man and doing various odd jobs. Mr. X retired in 1995, which may have been around the time he took a heart attack. Griffin had not hired Mr. X to clean the police vehicles but Griffin understood that Mr. X was hired to do so. Mr. X would complete a document with the number of hours he worked, take the

document to City Hall, and he would be paid. Mr. X had access to the Police Station in that he had the combination to the door to its internal area. Griffin did not know who gave Mr. X the combination, only that Griffin did not. Griffin testified that Mr. X would work on Saturdays and would sometimes drop by the station two or three times a week. Mr. X would often come into the Station and say "hello", would speak with the officers, would laugh with the officers, and would visit with various individuals, including Griffin. Griffin recalled that, on occassion, his door would be shut when Mr. X was visiting Griffin. In particular, Griffin recalled one incident when his door was shut as Mr. X was speaking about a family member who had cancer.

54. Griffin had heard Mr. X curse when talking to other members and the "f" word was used by members and by Mr. X. The members' language was "salty" on a number of occasions. While some of the members considered Mr. X annoying or irritating, Griffin did not consider him a pest, although he recognized that sometimes Mr. X would be teasing and speaking of foolish things. Griffin did not observe Mr. X making comments to female officers or rude comments, other than as noted herein. Griffin testified that Mr. X got along well with everyone up to 1997; there were no complaints about Mr. X prior to 1997 and Griffin was not aware of any complaints in 1997.

55. Geraldine Grant testified that Mr. X was not a well-educated individual. She felt his language around the office left a lot to be desired, although it was not unlike some of the other officers. The "f" word was used frequently by Mr. X and others. She did not have any difficulty with the language of Mr. X as she felt she was in a work environment where that language was common. She never complained about Mr. X's behaviour, although he would tease her on occasion and had made sexist comments to her. She did not find his comments demeaning. She considered that Mr. X was one of her co-workers; she did not socialize with him or his family outside of the office.

56. Cst. A testified that Mr. X would usually attend at the Police Station by 8:00 a.m. on the weekends and that Mr. X frequented the office on other occasions as he saw fit. Cst. A described Mr. X as an "ignorant little man" who was not polite and who would make derogatory and/or rude remarks and/or remarks of a sexist nature. She testified all the "guys" thought Mr. X was a "pig" and

she would try to avoid Mr. X. She testified that Mr. X worked for the City "forever" and, "unfortunately, everyone just put up" with his behaviour. She stated that Mr. X would call the Police Station frequently (about every three days), would ask for information, curse and swear at the officers, and the officers would hang up on him. When he visited the office, Cst. A testified, he would be muttering under his breath. It was her view that he always had something to say but did not want people to hear what he had to say. She testified that "if there was a time when he wasn't rude, I wasn't there". Cst. A stated everyone knew what Mr. X was like and she couldn't understand why one person (presumably a reference to Griffin) did not know. When she was relating her story to me, she testified that "Everyone had a Mr. X [sic] story" and "this was mine".

57. C/M B described Mr. X as using foul language and expressions and saying demeaning things to individuals. Mr. X would come in on Saturdays in the mornings and would say things to both the male and female members to get the members riled up. She felt that he went out of his way to irritate the officers, that he was always trying to annoy them by making little comments and that he was not happy unless someone was upset before he left. In her opinion, Mr. X did not know any better and he thought things were funny when they were not. He had no respect for women whatsoever. He treated women like "a piece of meat". He would say degrading things to females and he treated women as if they should be home baking and not in the work force. His statements made her feel very uncomfortable in the work place. She did not encourage or welcome his statements nor did she find the statements amusing. She stated his behaviour was the same in December of 1994 and the spring of 1995, when she did her on-the-job training, as it was in 1998.

58. Cst. Rioux testified that Mr. X could be funny sometimes and, at other times, irritating - as when he was cursing and swearing. The majority of the time, Mr. X was very irritating around the police station. There was not an officer with whom Mr. X did not have an argument and he would always be digging at individuals. Often the officers would enjoy making fun of Mr. X and/or laughing with Mr. X. Sometimes Mr. X would say things that were not appropriate, but people tolerated him saying those things as he had been employed by the City for so long. Mr. X acted the same in 1998 as he had 1993, when Cst. Rioux first joined the Summerside Police Force.

59. There was a considerable amount of evidence given by many witnesses as to whether or not Griffin was Mr. X's friend. Cst. A testified that a number of policemen felt that Mr. X was a personal friend of Griffin's, but she never saw Griffin and Mr. X socializing, although Mr. X did advise her that he had taken Griffin out to supper. C/M B indicated she felt Mr. X was Griffin's friend because she would see Mr. X in Griffin's office and Mr. X had indicated to her that he would have individuals hauled on the mat before Griffin if anyone attempted to take Mr. X to task. Cst. Rioux testified that Mr. X would indicate to the officers, or scream at them, words to the effect "Dave Griffin will get you when he gets back - He will get all of you". [Presumably, this referred to the time when Griffin had been suspended, between January and March of 1998.] Shortly after Griffin returned to work, Cst. Rioux testified that a memo was issued indicating Mr. X was an employee for 30 years and should be treated with respect. This memo was introduced as part of Exhibit "C-7" and is cited in its entirety at paragraph 80 herein.

60. Griffin testified that he regarded Mr. X as a co-worker, he did not consider himself Mr. X's friend, and did not socialize with Mr. X.

Mr. X and Cst. A Incident - June, 1997:

61. Cst. A testified about an incident involving Mr. X during June of 1997. Mr. X was in Griffin's office when she was called in to meet Mr. X during her first or second week on the job. She indicated that she went to put out her hand, Mr. X moved back and said words to the effect: "Jesus woman, what are you doing here? You should be home, barefoot and pregnant." Cst. A indicated that she was in uniform, although not wearing a hat. Cst. A testified that Mr. X started to laugh, as did Griffin, who then proceeded to ask Cst. A "What do you think about that?". Cst. A replied: "Not much" and stated that Griffin was still laughing as Cst. A finished saying those words. Cst. A did not laugh; she immediately left the room and noted that Griffin did nothing to rebuke Mr. X.

62. In relation to this incident, Griffin's version was that he recalled Cst. A in his office, sitting in a chair. He thought she was out of uniform and was inquiring of Griffin as to whether or

not her boyfriend (and now fiance), Cst. Craig Ryan, who had also graduated from the Academy, had any chance of obtaining employment. Cst. A had previously advised Griffin, during the Bridgefest weekend, that she knew someone else who would like to have a position and Griffin advised her at that time to have the person provide his resume to the Summerside Police. Cst. Craig Ryan was subsequently hired by the Summerside Police Services on June 23, 1997. Griffin recalled Mr. X walking into his office mumbling, although he did not recall having any reaction to what was said. He recalled Cst. A had a half smirk on her face, Mr. X was laughing, and neither Cst. A nor Griffin laughed. Griffin recalled that Mr. X left the room and he and Cst. A continued with their discussion.

63. Griffin testified that he had not heard the term "barefoot and pregnant" and the first time he heard this was when Cst. A reported it to him in a letter dated August 25, 1998 [part of Exhibit "C-7"] as part of an investigation being conducted into Mr. X at that time. That document included statements that dealt with the incident that had allegedly occurred in June of 1997 as well as other incidents, and is reproduced in part below:

> *I was present on this date of August 19th, 1998 when I first heard of Mr. X* [sic] *grabbing his genitals and shaking them behind Cst. EF* [sic]. *I was furious at this and couldn't believe what had happened. Then the topic turned on Mr. X* [sic] *when comments were made that he made sexual comments to C/M B* [sic] *in regards to her dress/clothes. At this time I turned my attention to Sgt. Walker and suggested that something be done. I am aware that he did indeed made* [sic] *it known to Director George Arsenault on Thursday August 20th, 1998. I myself approached Director Arsenault on August 21st, 1998 and advised him that I wanted the matters concerning Mr. X* [sic] *to be taken seriously and looked into. There are several incidents where Mr. X's* [sic] *conduct was not acceptable and has indeed fallen into the category of SEXUAL HARASSMENT.*
>
> *The incident that was supposed to have taken place behind Cst. EF's* [sic] *back I myself did not see, I just heard about it. However, I am aware of Mr. X's* [sic] *comments first hand. Upon my first week working with the Summerside Police Services I was called into Your office, Deputy, to meet Mr. X* [sic]. *I extended a greeting of hello and was greeted myself with the comment "Jesus women, what are you doing here, you should be home, bear* [sic] *foot and pregnant." At this time I was overwhelmed by such behaviour and only to find you yourself laughing with him. I would first like to say that I did not appreciate the fact that I was put on display and furthermore, on display to be humiliated and degraded because I was a woman working as a Police Officer. Other comments were made throughout my job by Mr. X* [sic]

but were usually mumbled and incoherent and therefore I cannot give appropriate details.

When I moved into the full-time dispatch position I had numerous encounters with Mr. X [sic]. *One day I was very busy and Mr. X* [sic] *came through the office shouting about something and I tried to ignore him but did catch the comment he made to me: "Fucken' women, they all should be dead, especially that one in there." and was pointing to me. Cst. DesRoches was in the office that day but he was on the phone and it is not likely that he heard it. Further, on another incident I was dispatching and Mr. X* [sic] *was made to come to the window in the Comm. Centre and Cst. Murphy was present when Mr. X* [sic] *became irate at me calling me lazy, etc. and I had enough at this point and asked Cst. Murphy to deal with him. I did submit a complaint on this to Cpl. Arsenault as my IC, who became fully aware of such a complaint and he also submitted a memo. The result Mr. X* [sic] *was not to enter the office only to get cleaning supplies. This order did not seem to last long because Mr. X [sic] ignored it and was still entering the office.*

Every Employee is entitled to employment that is free of sexual harassment and harassment of all natures. Sexual Harassment means any conduct, comment, gesture or contact of a sexual nature that is likely to cause offence or humiliation to any employee. I feel that Mr. X [sic] *had crossed the line and did indeed participate in SEXUAL HARASSMENT.*

As for asking the question "why weren't these matters dealt with at that time?" When the comment was made to me in your office by Mr. X [sic] *I was new and a part-timer, and did in fact fear that if I did say something I would lose hours and maybe my job. As a part-timer my job was not secure and was fearful if I did come forth my employment would be in Jeopardy. The other incidents, while I was dispatching, were noted and the order was sent down to ban Mr. X* [sic] *from the office this was supposed to take care of him in and around the office. This order was adhered too* [sic] *for a period of time however, Mr. X* [sic] *would always comment that when you, Deputy Griffin, returned to work, he would be back. He was!*

It is my belief that you are aware of Mr. X [sic] *and what he is capable of. This may have been proven to me in my first few days here when I was brought into you* [sic] *office while Mr. X* [sic] *made such a comment to me and you did indeed laugh. I have to wonder why you as an employer did not make every effort to ensure that no employee such as myself was not subject to SEXUAL HARASSMENT. You can probably imagine my impression of The Summerside Police Services upon my short experience so far. I was taught at the Atlantic Police Academy and on my O.J.T. that this behaviour will not be tolerated. I only hope that the appropriate measures be taken for these incidents. Let there be no mistake about it, I expect appropriate*

measures be taken and that the issue not be treated as frivolous.

64. Cst. A indicated that after she forwarded the letter of August 25, 1998, to Griffin, Griffin questioned Cst. A as to why she had not come to him with her concerns if she was upset. Cst. A testified that she had been concerned because she was a part-timer and she might get less hours. Certain of the four part-time constables had been getting more work than the other part-timers and Cst. A had approached Arsenault directly about the fluctuating hours of the part-time staff. After she spoke with Arsenault directly in relation to this situation, Cst. A did not believe that anyone was trying to push her out. Griffin subsequently testified that he and Sgt. Poirier did the scheduling of part-time hours and he confirmed that there had been a mix-up with the part-time hours being allocated to the four part-time individual constables, two of whom were Cst. A and her boyfriend, Cst. Craig Ryan. Griffin stated that he had not altered the hours of Cst. A. and the City did not allege that Griffin manipulated the part-time call-in hours.

65. C/M B testified that, while she had no direct knowledge, she was aware of the comment allegedly made by Mr. X to Cst. A in Griffin's office. It was the opinion of C/M B that Griffin, as Deputy Director, should have told Mr. X to stop.

66. The "will say" statement provided by Griffin's Counsel as Exhibit "C-35", stated the following in relation to this incident:

Witness Statements

David Griffin

...

Re: hostile work environment -- Cst. A [sic]
He remembers being in his office one day while Mr. X [sic] *was there visiting. Cst. A* [sic] *came into the office, probably to check her hours. Mr. X* [sic] *said something, and both Cst. A* [sic] *and Griffin laughed. Cst. A* [sic] *left the office. There was no indication that Cst. A* [sic] *was offended at the time; no complaint was brought subsequently, until Griffin's investigation of Mr. X* [sic] *in August, 1998.*

67. Griffin conceded on cross-examination that the "will say" statement was different from his testimony in the following aspects, namely:

(a) his testimony indicated that Cst. A was in his office when Mr. X entered the office, whereas his "will say" statement had indicated that Mr. X was in the office and Cst. A entered;

(b) his testimony indicated that Mr. X laughed, Cst. A smirked and Griffin did not laugh, whereas his "will say" statement had indicated that both Cst. A and Griffin laughed; and

(c) his testimony stated that Mr. X left the office, whereas his "will say" statement indicated that Cst. A left the office.

68. Cst. A testified that she did not condone the incident of June, 1997, in Griffin's office; however, she did not want any interference with her hours. She confirmed on cross-examination that she had said to herself at the time that if Mr. X went too far and he does it again, she would deal with the issue then. She felt that in Summerside you have to keep your mouth shut, keep your nose clean, etc. and maybe you'll get hired full time and that perception, together with the memo issued by Griffin [part of Exhibit "C-7"], was the reason why she had not reported the incident initially when Mr. X had made the comment to her in June of 1997. However, it is noteworthy that the memo to which Cst. A referred is dated May 9, 1998, approximately one year after the alleged incident in question. Cst. A also confirmed that she had read Griffin's report to Arsenault [Exhibit "C-32"] (which is reproduced later in this Decision) and that, although Griffin referred to the incident in his office, she was upset over Griffin's statement in the report that she did not keep a written record of events.

69. Griffin agreed that the remark - "Jesus woman, what are you doing here? You should be home, barefoot and pregnant" - is offensive, sexist and demeaning. He agreed the comment is not funny and would call for immediate discipline. Griffin stated if he had heard those words he would have taken immediate action.

Mr. X and C/M B Incident - Autumn, 1997:

70. One of the incidents that Griffin is charged with concerns C/M B. She related an incident where Mr. X was present in Griffin's office, and, as she was passing Griffin's door, Mr. X said words to the effect: "Why don't you send her home to put a short skirt on". She did not hear Griffin say anything to Mr. X, although she thought she heard a sound like "huh". She retorted to Mr. X that she did not dress for him. She did not laugh nor did she find it funny. In fact, it made her mad and she felt it was demeaning.

71. The incident in question was briefly referred to in a letter from C/M B to Griffin, which letter was dated August 26, 1998. It was entered into evidence as Exhibit "C-12" and stated as follows:

> *August 26, 1998*
>
> *Attn.: D/Director David Griffin*
>
> *Re: Interoffice Memo dated Aug.24, 1998*
> *Occ.#98-4807*
>
> *Further to your memo dated Aug. 24, 1998 it is with hesitation I offer this reply:*
>
> *Over the past 18 months there has been numerous, too many to count, instances that Mr. X* [sic] *has made inappropriate comments directed toward myself as well as other female members of this Police Service. It is in light of most recent events that I feel obligated to submit my view of where I stand on this issue.*
>
> *On Aug. 7, 1998 Cst. Mike Rioux and myself were outside on the steps at the east side of the building when Mr. X* [sic] *approached us and began a conversation. It was during this conversation he mentioned something to the effect of "You should undo a few more buttons on your dress" and motioned to the bottom of my dress which was almost ankle length. Cst. Rioux and myself then came into the building.*
>
> *I recall another occasion when I went to change the tape on the Dictaphone machine, Mr. X* [sic] *was sitting in your office talking with you and commented on the fact my skirt was too long and you should send me home to change into a shorter one. At that point I turned around and said "I do not dress for you Mr. X* [sic]*."*

There were many other "comments" made by Mr. X [sic] *that made me feel very uncomfortable to the point that when he enters the building I stay in the dispatch area only, so as not to have to listen to the degrading things he says. This is the reason I did not hear what he said nor did I see any gestures he may have made toward Cst. EF* [sic] *on Aug. 15, 1998.*

I feel the time has come to dismiss Mr. X [sic]. *I truly believe he doesn't realize, through ignorance, the extent he has been causing employees such as myself to feel uncomfortable, unnecessarily, within the Summerside Police Services.*

I have not come forward before this time as I am a single mother of two children and I have a good job which I did not want to jeopardize by complaining when I did not think he would be permitted to continue this length of time as most members, including some management were aware of his ways. I felt I had to wait at least until my probationary period was over before saying anything.

In closing I will say again that I feel it is due to ignorance on Mr. X's [sic] *part and he should have been made aware of proper conduct toward both female and male members of this Police Service long before it came to this point.*

Respectfully Submitted,

(Sgd.) C/M B [sic]
C/M B [sic]

c.c.: Chief G. Arsenault

72. Cst. A confirmed that C/M B had advised her of this incident, which had occurred when C/M B was changing a tape outside Griffin's office, as well as other incidents involving Mr. X.

73. In relation to the incident in question, Griffin testified that Mr. X was in his office, Griffin saw someone walk by his office door and heard Mr. X say words to the effect: "You'd look better if you had a shorter skirt on". Griffin testified that a moment later he saw C/M B, who came back and said words to the effect: "I don't dress for you Mr. X [sic]". C/M B left immediately and, Griffin testified, he stated to Mr. X "That's not right" or "Shut your mouth". Griffin could not say

whether or not C/M B heard his comments or was in the vicinity to hear them. Griffin did not keep any documentation in relation to the C/M B incident or the rebuke that he apparently gave Mr. X.

74. The "will say" statement, Exhibit "C-35", stated the following in relation to this incident:

Witness Statements

David Griffin

...

Re: hostile work environment -- C/M B [sic]
He remembers being in his office and hearing Mr. X [sic] *say something just outside, in the hallway. He then heard C/M B* [sic] *retort back to Mr. X* [sic] *and laugh. He immediately rebuked Mr. X* [sic] *for saying inappropriate things.*

No one came forward with complaints about Mr. X's [sic] *behaviour until Griffin conducted his investigation in August, 1998. Once the investigation was complete, Griffin produced a report to the Chief, which included a recommendation that Mr. X* [sic] *be dismissed for his behaviour. Shortly thereafter, Mr. X* [sic] *was dismissed.*

75. Griffin confirmed his "will say" statement was different than his testimony before me in the following aspects, namely:

(a) he testified that Mr. X was in Griffin's office, whereas his "will say" statement indicated Mr. X was in the hall; and

(b) he testified C/M B retorted but didn't laugh, whereas his "will say" statement stated she retorted and laughed.

76. Griffin confirmed that the comment regarding a shorter skirt was sexual harassment and that if he ignored such a comment it would be perpetuating or encouraging sexual harassment. However, Griffin would not agree that one comment would be creating and/or maintaining a hostile environment.

77. There will be a discussion later in this Decision in relation to an investigation that Griffin conducted into Mr. X at the request of Arsenault on August 21, 1998. Griffin's report, in response to Arsenault's request, was entered as Exhibit "C-32". In Griffin's report, there is a reference to Mr. X, denying he made sexual gestures or comments as alleged. Counsel for the City challenged Griffin in relation to that statement, especially considering the fact that Griffin was present and heard Mr. X make the comment in question to C/M B.

Mr. X - Other Incidents - Spring, 1998:

78. Griffin felt the series of events which resulted in his suspension between January and March 30, 1998, had an impact on his relationship with others, particularly on his relationship with Arsenault. He testified that, when he came back to work after his suspension, he wrote a memo to Arsenault to deal with the situation, but, to date, there had been no discussion between the two men in this regard.

79. Griffin testified that, after he was re-instated to his position the end of March 1998, Mr. X was cleaning cars on weekends. Griffin had been advised by Sgt. Poirier that an incident had occurred during Griffin's suspension which resulted in Arsenault issuing an order that Mr. X was not allowed in the building. Griffin never saw any order in relation to this matter. It was not made clear to me exactly what transpired in the early months of 1998 that would preclude Mr. X from doing his work.

80. A memo dated May 9, 1998, issued by Griffin to the Shift I/C's was introduced as part of Exhibit C-7. It stated as follows:

> *Re: Cleaning of Police Vehicles*
>
> *Mr. X* [sic] *is being paid to clean our Police Vehicles.Chief ARSENAULT advised Mr. X* [sic] *three weeks ago he can do this.Mr.X* [sic] *answers directly to D/Chief GRIFFIN and has been advised when he arrives at the Police Services he is to be buzzed in and he than* [sic] *goes to basement to get his supplies prior to cleaning the cars.He is further permitted to return any supplies.In terms of Mr. X* [sic] *being permitted in this building we do pay Mr. X* [sic] *to clean the cars and from time to time other duties. One area Mr. X* [sic] *or no other civilian permitted is in the Comm Center without*

authorization.

Mr. X [sic] *has been an employee with the Town of Summerside,now a City for thirty years and should be made welcome around here.Any concerns about Mr. X* [sic] *are to be passed on to D/Chief GRIFFIN.*

81. Several of the officers testified that between the spring of 1998 up to and including August of 1998, there were instances where memos had been issued regarding Mr. X. Cst. A testified that one memo indicated Mr. X was only to come through the office to get supplies; another memo permitted him to come to the wicket to obtain the keys for the vehicles and get his supplies; and one memo indicated that Mr. X was only permitted to enter the police station as a civilian to file a complaint. C/M B testified that on a couple of occasions, Mr. X was not cleaning cars, although the reasons for this were not provided to me. Cst. Rioux testified that there had been an incident involving Mr. X in the winter/spring of 1998 that had occurred, while Griffin had been suspended, where it had been decided between Sgt. Poirier and Arsenault that Mr. X was not permitted into the police station due to complaints about Mr. X. A memo was apparently issued to Mr. X that he was only permitted to enter the building, go down stairs to get his cleaning supplies and then leave; he was specifically instructed not to use the code on the door to enter the police station.

82. Cst. A related an incident where Mr. X had attended at the police station in May of 1998 and apparently asked Cst. Murphy to call Arsenault on the radio. As Cst. Murphy was about to do so, Mr. X said "Yes, you'll do it, because everyone else here is too lazy to pick up a phone". Apparently Cst. Murphy then indicated: "Mr. X [sic], there is no need to be rude ... that was rude" and Cst. A stated to Mr. X: "Look, you never asked me to do anything and I certainly do not remember you asking me to call the Chief. Maybe if you asked, or better yet, asked nicely, you might get somewhere". Cst. A reported the incident on May 25, 1998, to Cpl. B. Arsenault [Exhibit "C-8"]. Cpl. B. Arsenault then wrote a letter to Arsenault directly on May 25, 1998, [Exhibit "C-25"] which enclosed Cst. A's letter of May 25, 1998. The closing words of Cpl. B. Arsenault's letter to Arsenault were "... I trust you will deal with this matter appropriately". While the document indicates it was copied to Griffin, Griffin's initials are located at the top of the document indicating he received it on

98-08-27 and he testified he had not seen a copy of this complaint against Mr. X until August 27, 1998.

83. Cst. A testified that after her May 25, 1998, memo to Cpl. B. Arsenault, she approached Cpl. B. Arsenault four weeks later to find out what had happened about the complaint. Cst. A was obviously mistaken about the amount of time before follow-up as it was on June 10, 1998, that a memo was forwarded from Cpl. B. Arsenault to Arsenault [Exhibit C-26] in relation to this particular complaint by Cst. A. The memo to Arsenault, which was copied to Cst. A, indicated the following in part:

> *On May 29th, 1998 I forwarded a complaint to you concerning the above mentioned on behalf of Cst. A* [sic]. *As of yet I have not heard back from you on the outcome of the complaint. I have been asked on two occasions as to the status of this complaint. I find it embarrassing not having an answer to give the complainant.*

84. On June 11, 1998, Arsenault responded with a memorandum [Exhibit "C-27"] to Cpl. B. Arsenault indicating that he had met with Mr. X on June 8th. The memo is reproduced in its entirety below:

MEMORANDUM

> *June 11, 1998*
>
> *To: Cpl. B. Arsenault*
>
> *Re: Mr. X* [sic]
>
> *I am sorry for the late reply to your May 29th. memorandum.*
>
> *I met with Mr. X* [sic] *on Monday morning June, 8th.I advised him of the complaint received and my concern about some other matter not related to this complaint.*
>
> *In my discussion with Mr. X* [sic] *Monday I advised that a complaint had come in about his and Mr. X's son* [sic] *attitude, remarks, etc.I advised him that I did not want Mr. X's son* [sic] *around the office or the vehicles and I*

spoke to him about the attached problem etc.I hope this session I had with him will correct things.If they don't I'm afraid I will have to find another way or person to do the work on our vehicles.Time will tell the story.

(Sgd.) GA
George C. Arsenault,
Director of Police Services

85. Arsenault testified that this complaint in the spring of 1998, on which Arsenault dealt with Mr. X directly, was the first complaint involving Mr. X to come to Arsenault's attention. Arsenault explained that there had been complaints about Mr. X's son and the son's attitude towards police officers, in regard to offences that the son had committed, and to off-colour remarks allegedly made by the son of Mr. X. The son had apparently been in trouble from time to time and there was concern regarding Mr. X's son having access to the police station and vehicles. Some of the police officers were concerned that radio messages might be overheard. Arsenault met with Mr. X on June 8, 1998, to deal with the situation involving Cst. A and the situation involving Mr. X's son. Arsenault's direct evidence in this regard is as outlined below:

Q. *Now, you say: I spoke to him about the attached problem, etc. Do you recall what you said to Mr. X* [sic] *about this, where he said everybody here is too lazy?*

A. *No, not really. I don't recall exact, what I said to him. I just, I addressed the issue with him and about his rudeness towards the employees and reminded him that he was, you know, he was not an employee here nor was their boss. He was a part-time worker for us, cleaning vehicles and checking vehicles. And he should keep his mouth shut, basically, and go about his business.*

Q. *And you say: I hope this session I had with him will correct things. If they don't, I'm afraid I will have to find another way or person to do the work on our vehicles. Time will tell the story.*

A. *Yes.*

Q. *Did you tell Mr. X* [sic] *that?*

A. *I told Mr. X* [sic], *what I recall about that, you know, that you know, if he couldn't, you know, if he couldn't conduct themselves in a half decent manner or be polite about the whole thing that I can't use him anymore. And I made*

that, I'm sure I made that plain to him, that I would have to let him go, find someone else.

Events of August, 1998 - Investigation into Mr. X:

86. During August of 1998, there appeared to be several incidents involving Mr. X which were referred to in the evidence.

87. Cst. Rioux related an incident that occurred in August of 1998, where Mr. X made a comment to C/M B that perhaps she should undo some more buttons on the ankle-length dress that she was wearing. As C/M B was walking back into the station, she rolled her eyes and said to Cst. Rioux words to the effect: "Oh, that's Mr. X [sic], don't worry about it". C/M B also recalled having a discussion with Cst. Rioux that the behaviour of Mr. X was not appropriate; while Cst. Rioux wanted to do something about it, C/M B indicated words to the effect: "Never mind, he's been getting away with it for years". Cst. Rioux stated he respected the wishes of C/M B and did not report the incident.

88. C/M B testified she was made aware that Mr. X had apparently made a comment to Cst. A that: "You women should be dead", but she had no direct knowledge in relation to the actual comment. This comment was referred to by Cst. A in her letter of August 25, 1998, which was forwarded to Griffin and which was introduced as part of Exhibit "C-7" (previously reproduced in paragraph 63 herein).

89. Cst. A related that there was an incident in August, 1998, involving Cst. EF, a female officer. Apparently, Cst. A had heard that Mr. X had grabbed his genitals, shook them and made sexist comments behind her. When this incident was repeated to Cst. A by other officers, she turned to Sgt. Sinclair Walker and indicated words to the effect: "You are the most senior police officer here. Do something about it". Cst. A also referred to this alleged incident in her letter to Griffin dated August 25, 1998 [part of Exhibit "C-7]. Griffin was not present at this alleged incident.

90. Arsenault testified he came into the office on the weekend, prior to August 21, 1998,

and had received complaints about Mr. X's behaviour. As a result, he wrote a memo to Griffin [Exhibit "C-28"] requesting that a full investigation be carried out. The memo stated:

MEMORANDUM

August 21, 1998
To: D/Dir. D. Griffin
Re: Mr. X [sic]

I have received several complaints about the behaviour of Mr. X [sic] *while visiting the office last weekend.*

I am directing you to carry out a full investigation of the following allegations:

1. Rude remarks and lewd sexual gestures toward female employees while in the office Sunday 16th of August.

2. Alleged remarks made by Mr. X [sic] *to Cst. Biso that if he interfered with Mr. X* [sic] *being around the office that he would report the interference to Deputy Chief Griffin who is a friend of Mr. X* [sic].

3. Mr. X [sic] *was advised by myself some time ago to stay out of the office unless he was picking up cleaning equipment or kit for the vehicles.*

As you are aware, I recently posted a Sexual Harassment policy. I expect that policy to be enforced by all management staff. Failure to act on any complaint could lead to serious consequences on you, me or even the shift commanders. You have sent me a memorandum on August 10/98 advising me of your concern about a harassment policy. I have recently issued our Police Services Policy and I now expect it to be enforced to the letter.

On may [sic] *9/98 you issued a memorandum to Shift I/C's (copy attached). This memorandum seems to be ignored. Was Mr. X* [sic] *advised by you of your memorandum? If not I expect you will advise him of any such order in the future.*

Effective immediately Mr. X [sic] *is not permitted inside this office unless he is on official business, that is, he is here to lodge a complaint as a citizen. I will be issuing an order to all shift I/C's to this effect. You are to see that the order is carried out.*

I want your full report and recommendation of this incident by Sept 1/98.

(Sgd.) G. Arsenault
George Arsenault
Director of Police Services

cc: B. McKinnon, C.U.P.E.
HRD J. Jardine

91. Arsenault issued a memorandum dated August 21, 1998, [Exhibit "C-31"], which stated as follows:

MEMORANDUM

August 21, 1998

To: N.C.O's I/C

Re: Mr. X [sic]

Effectively immediately and until further notice the c/noted person is not permitted to be inside the Police Services Building unless he is entering the building to lodge a complaint as a citizen.

By Order

(Sgd.) G. C. Arsenault
George C. Arsenault,
Director of Police [sic] *Services*

92. Arsenault testified that, although he had never talked to Mr. X on or after August 21, 1998, he felt he had terminated Mr. X's employment by virtue of the memorandum he issued on that date indicating that Mr. X was not permitted to be inside the Police Services building unless he was entering the building to lodge a complaint as a citizen. He felt the situation had "mushroomed" and that Mr. X had to go. Griffin was not advised that Mr. X was terminated, but rather understood that Mr. X was not permitted to be around the police station until further notice. Arsenault's evidence during cross-examination in this regard is as follows:

Q. All right. And is it not the case that starting the 21st of August that what you were doing was you were starting the investigation. You weren't firing him

before the investigation was completed, were you?

A. *I believe I was. I was --*

Q. *What was the point of the investigation, then?*

A. *Pardon me?*

Q. *What was the point of the investigation?*

A. *I wanted the investigation done to satisfy the complainants, first of all. But my opinion of this and my feelings on this were, you know, this had mushroomed as far as it was going to go, as far as I was concerned, and Mr. X* [sic] *had to go.*

93. In response to a request from Griffin, Cst. A forwarded a letter dated August 25, 1998, to Griffin (with a copy to Arsenault and Sgt. Walker). This letter, previously reproduced in paragraph 63 herein, detailed some of the incidents that Cst. A felt were occurring around the police station. It was introduced as part of Exhibit "C-7". Cst. A advised me that, after Griffin received her letter concerning Mr. X, Griffin called Cst. A into his office and stated to her that he did not laugh in relation to the comment that was allegedly made by Mr. X to Cst. A in Griffin's presence in June of 1997.

94. On August 25, 1998, Cst. A also advised Arsenault, in writing, that she felt Griffin should not be the one conducting the investigation [Exhibit "C-9"]. That document stated as follows:

> *Due to the nature of this investigation, I feel that Deputy Chief Griffin should not be involved in this investigation.It is my opinion that he was party to some of these events.*

95. On or about August 26, 1998, C/M B wrote a letter to Griffin [Exhibit "C-12"] (with a copy to Arsenault) and advised Griffin of the comments that had been made to her. This letter has been quoted at paragraph 71 herein.

96. Arsenault testified that when he received copies of the letters from Cst. A and C/M

B, this was the first indication he had that Griffin had been present when Mr. X had made a comment to Cst. A. and when Mr. X had made a comment in relation to C/M B. Eventually, Arsenault turned these letters from Cst. A and C/M B over to Sgt. Poirier, following Arsenault's appointment of Sgt. Poirier as Acting Deputy Director of Police Services on September 15, 1998, to investigate the allegations contained therein as part of Sgt. Poirier's investigation of Griffin.

97. Meanwhile, Griffin proceeded to investigate the charges against Mr. X and issued a report dated August 31, 1998, [Exhibit "C-32"] which stated as follows:

TO: Chief G Arsenault

FROM: D/Chief David Griffin

RE: Occ#98-4807(Internal Investigation)

DATE: August 31st, 1998

On August 21st,1998 I received a memorandum dated 98-08-21 from yourself instructing me to investigate the following allegations against Mr. X [sic] *dealing with rude remarks and lewd sexual gestures (allegations as per this investigation listed as such):*

#1-Rude remarks and lewd sexual gestures toward female employees while in the office Sunday 16th of August.

#2-Alleged remarks made by Mr. X [sic] *to Cst Biso that if he interfered with Mr. X* [sic] *being around the office that he would report the interference to D/Chief Griffin who is a friend of Mr. X's* [sic].

#3-Mr. X [sic] *was advised by Chief Arsenault some time ago to stay out of the office unless picking up cleaning equipment or kit for the vehicles.*

No members reports or complaint reports were included with memorandum dated 98-08-21 to D/Chief D Griffin from Chief G Arsenault.

My investigation started August 21st,1998 and reports were submitted between August 21st-August 31st,1998 and included reports from the following: [And here Griffin lists a number of personnel including Cst. A, C/M B and Mr. X]

Upon review of Police Officers/dispatchers reports as well one on one interviews with Cst A [sic] *and Cpl Arsenault I submit the following:*

In relation to the allegation included in a report to you as Chief of Police from D/Sgt Walker 98-08-24 (reported to you on August 20th/98), whereby Mr. X [sic] *stood behind Cst. EF* [sic] *and grabbed his groin making a sexual gesture, no evidence has came [sic] to light to substantiate this allegation through officers reports as well I interviewed Cst A* [sic] *and Cpl Arsenault and absolutely no further evidence came to light in terms of this allegation.Information gathered to date shows Cst A* [sic] *was going on hearsay as well Cpl Arsenault verified he was the officer who made disclosure to members in the office August 19th/98 and further states in his reports that Mr. X* [sic] *only made a facial gesture and in no way grabbed his groin area making sexual gestures,this obviously was taken out of context at the time by members present.(SEE CPL ARSENAULT REPORT ON FILE)*

In regard to allegation included in S/Walkers report to you dated August 24th,1998 and what was reported to you on August 20th,1998 Quote:Mr. X [sic] *apparently said C/M B* [sic] *would look better if she had larger tits. No evidence came to light as a result of this investigation to substantiate this was said and I further direct you to C/M B's* [sic] *report, whereby no mention of such a thing ever happened.Again this appears to be hearsay and taken in wrong context by some members.*

From my investigation to date I did find evidence to support rude comments made by Mr. X [sic] *towards female employees and members over a period of time and will share this with you.*

-Cst A [sic] *reports app 18 months ago while in my office Mr. X* [sic] *came in and when introduced to her made a comment she should be home bear* [sic] *foot and pregnant.I questioned Cst A* [sic] *if this was offensive to her why did she not report the incident at the time and she gave me the excuse it was because she was on part-time and believed this could result in her receiving reduced hours of work As well Cst A* [sic] *did not witness any incident whereby Mr. X* [sic] *grabbed his groin area in present of Cst EF* [sic] *and she also appears to be going on hearsay.Cst A* [sic] *in her report states Mr. X* [sic] *came to the main office May 25th,1998 and made comments about her being lazy(this was proven to have been said in presence of Cst Murphy) further Cst A* [sic] *stated Mr. X* [sic] *said at the same time quote"all women should be dead"this has not been stated in Cst Murphy's report, only Cst A* [sic] *has stated this was said and I have no reason to believe otherwise.*

I have questioned Cst A [sic] *as to why she has no documentation on any of*

these incidents and she replied she did not record anything,I further reminded Cst A [sic] *when making accusations toward any other person(s) documentation and prove is very important.Cst A* [sic] *now understands the importance of documentation,something all cadets are made aware of in training.*

I further refer you to C/M B's [sic] *report whereby she reports an incident when Mr. X* [sic] *made rude comments to her once about the length of her dress as well another occassion* [sic] *when Mr. X* [sic] *made a comment about the number of buttons on her dress.C/M B* [sic] *states other members and NCO'S present but again she did not report these rude comments at the time.*

I have discussed these allegations with Mr. X [sic] *98-08-29 and he denies ever making sexual gestures or comments as alleged here.Mr X* [sic] *has always been permitted to carry on for years with his joking comments as well on occassion* [sic] *Mr. X* [sic] *has been told by myself and you not to be making comments out of character.As well Mr. X* [sic] *has been reminded by yourself and me what is exspected* [sic] *oif* [sic] *him around the office when cleaning. According to reports submitted you have spoken to Mr. X* [sic] *in May 1998 resulting from a complaint as well I issued instruction May 9th, 1998 that any incidents involving Mr. X* [sic] *are to be reported to me immediately, this did not occur and I find it very difficult to deal with issues not reported to us as management.this just another case of members not wanting to deal with the issues.*

In any event Chief Arsenault, from the officers/dispatchers reports submitted to date as well after I further interviewed some employees I am satified [sic] *evidence has came* [sic] *to light regarding Mr. X* [sic] *making rude remarks in presence of members and the public as well comments made to C/M B* [sic] *(comments on her dress code)as well comments made to Cst A* [sic] *(being lazy) can be identified as harassment in the workplace and I fully support your order restricting Mr. X* [sic] *from being around our Police Services. Further I want to make it perfectly clear the allegation of Mr. X* [sic] *grabbing his groin area and making a sexual gesture is absolutely unfounded, as well the allegation of Mr. X* [sic] *making the comments quote "larger tits is unfounded.*

Recommendations resulting from this investigation are as follows:

#1-Mr. X [sic] *be advised by yourself in person the results of this investigation.*

#2-Mr. X [sic] *be advised his services regarding vehicles/odd duties are no longer required.*

#3-Memorandum to all members concerning results of this investigation and to further advise members to review and understand our present Sexual Harassment Policy and the importance of reporting any incidents at the time to management, including the need for proper and accurate documentation.

#4-Results of this investigation be shared with Mr Jock Jardine, Human Resources and Bill McKinnon, C.U.P.E.

If you have any further questions feel free to contact me at any time.

(Sgd.) D. Griffin
D/Chief David Griffin
I/C Operations

98. On cross-examination, Griffin's report of August 31, 1998, [Exhibit "C-32"] was reviewed in extensive detail with him. It was suggested to Griffin during cross-examination that he should have referred to the fact that he had not heard the comment made by Mr. X to Cst. A in June of 1997, and that Griffin should have included the fact that he was present for, heard and rebuked Mr. X in relation to the comment Mr. X made to C/M B in the autumn of 1997.

99. Griffin testified that he had advised Mr. X he was going to recommend to Arsenault that Mr. X be terminated even though some of the allegations were unfounded. Griffin hoped Arsenault would explain the situation to Mr. X. As noted previously, Griffin did not understand that Mr. X's services had been terminated on August 21, 1998.

100. On September 1, 1998, Arsenault sent a memo to Griffin [Exhibit "G-3"] which stated the following:

Sept. 1, 1998

To: D/C. D. Griffin
Re: Mr. X [sic] *Complaint Investigation*

Thank you for your quick respond [sic] *to my request that you investigate the recent alligations* [sic] *reported by members of this police service to me concerning the behaviour of Mr. X* [sic] *while in the police services headquarters.*

I will be reviewing your investigation report with the members concerned so as to get their feed back and comments. It is of paramount importance that the members submitting the complaints are made fully aware of the content of your investigation and that their concerns and intrests [sic] *are fully adressed* [sic]. *As soon as this is completed I will be prepared to discuss the reportr* [sic] *furthur* [sic]. *During this stage my order prohibiting Mr. X* [sic] *from the premises is still in effect.*

G. Arsenault *Director, Police Servicesf1 [sic]*

101. While Exhibit "G-3", noted above, indicates that Griffin's investigation report would be reviewed with the members concerned, Arsenault confirmed that this never occurred. When Arsenault was asked why he would state Mr. X had already been fired on August 21, 1998, if, as indicated in Arsenault's memo of September 1, 1998, his order of August 21, 1998, was still in effect, Arsenault's response was that Mr. X "continued to be fired". Arsenault did concede during cross-examination it was not entirely clear as to who fired Mr. X, although Mr. X is apparently not employed with the City currently. Arsenault's evidence in this regard is outlined below:

Q. *All right, so you've had a chance to read that, Chief Arsenault?*

A. *I read it, yes.*

Q. *And after, so after you got Griffin's response, you say in the second paragraph: I will be reviewing your investigation report with members concerned so as to get their feedback and comments. Now, I take it from the answers you gave this morning, you've already told us about all the meetings that you had with people involved in this, is that right?*

A. *Yes. I had some meetings, yes.*

Q. *Well, I, when I listened to that sequence, there's no place in there where you, you reviewed with the members to get their feedback and comments on Griffin's report. You didn't do what you said you were going to do in that first sentence, did you?*

A. *No, I didn't.*

Q. *You'd already had another investigation launched, and so this part you didn't do. And then it says in the last sentence, last two sentences: As soon as this is completed, I will be prepared to discuss the report further. During this stage, my order prohibiting Mr. X* [sic] *from the premises is still in effect. Do you see that?*

A. *Yes.*

Q. *Now, to me that sounds like Mr. X* [sic] *is not yet fired. What's the point of prohibiting, continuing the order prohibiting him from premises if you say he was fired on the 21st of August?*

A. *He was continued to be fired. He was finished. That was my intent.*

Q. *I guess, Chief Arsenault, that this thing we're discussing really comes down to this, that it's both you and Griffin who think that you terminated Mr. X* [sic]. *And Griffin, as you can see, recommends to you in his report on the 31st of August that he recommends that his services are no longer required. And his evidence will be, he told Mr. X* [sic] *that's what his recommendation would be, and after that Mr. X* [sic] *didn't come back. You think that you told Mr. X* [sic] *on the 21st of August that he's not to be in the building; and you think after that, he didn't come back. Now, can --*

A. *My, I didn't see him back in the building again.*

Q. *Will you agree with me, at least to this extent -- that there was ambiguity about what Mr. X's* [sic] *status was and Griffin had a legitimate reason to think that he may be the one that fired him. I don't think either of you cared, you know -- he was fired, but it's not entirely clear who did it?*

A. *I agree.*

Investigation of Griffin:

102. The circumstances of the disclosure of the Lobster Carnival incident of July 19, 1997, provide background for the events leading up to how these charges arose. Arsenault testified that he had first heard of the allegations regarding the "unwanted touching" from Terry Murphy, the Chief Administrative Officer for the City. Arsenault understood that Grimes had met with Terry Murphy around July 29, 1998, and that Grimes had advised Terry Murphy that an incident had taken place

at the Carnival grounds which involved Griffin and Cst. A and which concerned allegations of sexual touching or something of that nature.

103. On August 3, 1998, Arsenault met with Terry Murphy, Grimes and Jock Jardine, the then Human Resources Director for the City of Summerside, in Terry Murphy's office and Grimes related what he had heard in the police station. As a result of that meeting and the disclosures that were made by Grimes, Arsenault had a brief meeting with Cst. A on August 7, 1998.

104. While he did not take notes at that first meeting with Cst. A on August 7, 1998, Arsenault testified that he related to Cst. A the allegations as he understood them to be and he did not get very much of Cst. A's version at that time. Arsenault got the impression in the first meeting that Cst. A wanted to talk to Grimes. The meeting lasted no more than 10 minutes. Arsenault testified that he and Cst. A agreed to meet again to discuss the issue.

105. Cst. A, who became a full-time member of the Police Force prior to this meeting in August of 1998, had just returned from vacation when she met Arsenault in the Police Station. She testified that Arsenault questioned her on what had happened at the Carnival grounds and related a version of events to Cst. A of what he understood had transpired. This version was not correct. No evidence was given as to exactly what this erroneous version had been. Cst. A testified that she related to Arsenault in this meeting her version of events that had transpired. Cst. A also testified that in this first meeting Arsenault asked her to think about a few things and requested that she put something in writing.

106. Arsenault testified that the second meeting was held August 17, 1998, and it lasted about 15 or 20 minutes. The notes of Arsenault, which were made soon after that meeting, clearly indicate that Cst. A had determined she did not want to become part of a sexual harassment complaint. She had made a decision she was not going to be the complainant, she was not going to file a personal complaint, but rather was going to chalk up the incident to the bad manners of Griffin. Arsenault testified the term "bad manners" were the words that he wrote down and he believes those

words were "close to what I heard". Arsenault asked Cst. A to write him a personal note indicating what her position on the matter was. He intended to obtain legal advice regarding the situation but did not advise Cst. A of that fact. Arsenault's notes, made after the meeting, were entered as Exhibit "C-15" and they stated as follows:

> *Aug. 17, 1998*
>
> *Met with Cst. A* [sic] *today and she advised me that after thinking about this incident for some time she arrived at the conclusion that it would do no good to get herself involved in a harrasment* [sic] *case over this incident and she would prefer to forget about it and chalk it up to the Deputy Chief bad manners She spoke to Cst. Grimes about the matter setting him straight as*

to what actually happened and advised him that she did not appreciate his handling of the situation and his action in reporting it to the Chief and Mr. Murphy. She did not mention it to anyone else except Cst. Rioux who was involved.

I advised Cst. A [sic] *if she would send me a personal note telling me of her decision and I may be forced to deal with it in another way that if I do I would advise her of any action I might take.*

107. Prior to this second meeting between Cst. A and Arsenault, Cst. A testified, she had sought legal counsel and was advised to tell Arsenault to conduct an investigation. She testified that she advised Arsenault of this, that he did not need her permission to investigate, but she was willing to co-operate with the Department. Cst A's evidence is that she did not say "chalk it up to Griffin's bad manners", as outlined in Arsenault's notes, although she states the word "manners" was spoken about at either the first or second meeting. Cst. A confirmed that she felt Griffin's actions were "inappropriate" and she had used that term. Cst. A testified that Arsenault then requested that she write him a personal note that would state either (1) that Arsenault could take care of the situation or (2) that nothing happened. Cst. A stated she did not want to write anything down and stated she knew she was not going to put in writing that nothing had happened.

108. On September 2, 1998, Cst. A asked Blair MacDonald, who was acting as Steward for the Union, to attend with her at a meeting with Arsenault. Cst. A trusted Mr. MacDonald. She obviously wanted a witness to confirm what was going to transpire at the meeting. Cst. A advised me that she had just come from her lawyer and wanted to explain to Arsenault that the responsibility to conduct an investigation was that of the employer, and not that of the employee. Arsenault confirmed that on September 2, 1998, he had been approached by Blair MacDonald who asked if there could be a meeting later that day. Arsenault made notes immediately after his meeting with Blair MacDonald [Exhibit "C-16"]. Those notes confirm that Blair MacDonald had been asked by Cst. A if he would attend a meeting between her and Arsenault and also confirms that Blair MacDonald was asking for Arsenault's indulgence in this regard.

109. A third meeting between Arsenault and Cst. A then occurred on September 2, 1998,

at approximately 11:00 a.m. (although the notes indicate 11:00 PM) with Blair MacDonald in attendance. At that time, Cst. A indicated she would not be the complainant and she was not going to put in a written complaint. Nor was one from her necessary. It was Cst. A's view that Grimes had got the story out; the City had their complaint and could initiate their investigation; and she would provide her statement. In this regard, her testimony during cross-examination before me is outlined below:

> *Q.* *So if I get it, again, you're saying, you know, I'm not going to be the complainant here. You, the employer, can investigate whatever you're going to investigate.*
>
> *A.* *And as far as I'm concerned, if two people are out on the street and they want to make the same complaint, one person gets to the police before the other, that person's name is the complainant. Andrew Grimes got the story out before I did. He's named the complainant. I didn't understand why they would want another written complaint, formal complaint from me when they had already had one. So my story was, you have your complaint, now start your investigation, and then you'll get my statement.*
>
> ...
>
> *Q.* *And we know that Grimes knows the story because somehow he got the story.*
>
> *A.* *Well, he got half the story, right, yes.*
>
> *Q.* *Alright, so those are the people, as I add it up, who, you know, who knew directly that you were, you were the, we'll call it the non-complainant, you didn't want to be the complainant. But you were the individual --*
>
> *Mr. Taylor: Blair MacDonald, too?*
>
> *A.* *And Blair MacDonald.*
>
> *Q.* *And Blair MacDonald. Alright, so he's another police officer, so he knows. Now, have I got the list of people who know that you're the non-complainant?*
>
> *A.* *These were people that are in my workplace that are there to support me, or*

friends are there to support me. You asked me did I go to the press. I said no. I don't know where you're going with me telling you who the people were I spoke to in the last two years regarding this matter. Okay, yes you have a list in your hands of who I spoke to about it. If you're going to ask me, do you think any one of them went to the press, it's highly unlikely. I did not go to the press. Somebody went to the press but it wasn't me.

110. Arsenault made notes of the third meeting with were entered as Exhibit "C-17". Those notes stated as follows:

Cst. A [sic] *and B. MacDonald met with me. MacDonald was accompanying Cst. A.* [sic] *at her request.*

Cst. A [sic] *advised me that she was not going to file a written complaint but was advised by persons to advise me that a written complaint was not necessary that she had advised me of her concern verbally and that should be sufficient to or for me to initiate an investigation.*

G. A

111. While Arsenault said during his cross-examination that he did not recall a meeting with Grimes to discuss the incident, he testified earlier that he had, in fact met with Grimes, and that there were "serious flaws" in what Grimes had stated.

112. Mayor Stewart, who was out of province in September of 1998, had been contacted by the Deputy Mayor and advised that there may be a problem with Griffin and a potential sexual harassment complaint. Mayor Stewart believed he indicated to the Deputy Mayor to pass it on and make sure the matter was investigated and checked out.

113. Subsequently, Arsenault, on September 14, 1998, attended before City Council and he read a confidential statement [Exhibit "G-2"] which statement stated as follows:

STATEMENT

CONFIDENTIAL

To: City Council

Several weeks ago around the first week of August of this year I was informed of allegations of sexual harassment practised against our female employees within the Police Service.

These verbal statements alleged that Deputy Director David Griffin sexually harassed female employees of the Police Service.

This Police Service will be conducting a full investigation into these allegations to determine whether charges should be laid.

Because of the extreme sensitive nature of the complaint, no further information can be released at this time and I would further advise members of Council and staff present this [sic] *keep this matter confidential and speak to no one about it*

114. Arsenault testified that the above-noted statement was drafted by him with no assistance from anyone else. Although Arsenault did not recall handing out the statement, he may have given a copy to Brent Gallant who chaired the Police Committee. The Police Committee was comprised of three individuals, namely: Councillor Brent Gallant as Chair, Councillor Norma DesRoches as Vice-Chair, and Mayor Basil Stewart. Arsenault confirmed that there were several individuals present on September 14, 1998, including the members of the Police Committee. Council was advised of the investigation because it involved management.

115. On September 15, 1998, Arsenault requested that Griffin attend a meeting. Griffin wanted his then lawyer to be present so the meeting was rescheduled and occurred at approximately 2:25 p.m.. At that time, Griffin was advised that he was being investigated for sexual harassment of female employees. The Minutes of this meeting indicated Arsenault; Griffin; his solicitor Pat Aylward; J. Jardine, Human Resources Director for the City; and D. Affleck, the Executive Assistant (Recording Secretary) were present. Griffin testified that he asked who the complainants were but was advised by Arsenault that Arsenault "did not know". Griffin indicated that no other information was given to him at that time. He testified that he asked what the sexual harassment charges related to but was not given a response. The Minutes of this meeting were entered as Exhibit "C-18" and

are reproduced in part below:

> ...
>
> *Chief Arsenault advised that City Solicitor Ben Taylor would not be present today. Mr. Aylward asked if Mr. Taylor was aware that he was attending the meeting. Chief Arsenault affirmed that he was aware of that fact.*
>
> *Chief Arsenault then advised that the reason for the meeting was there had been allegations of sexual harassment against David Griffin and that the matter would be investigated.*
>
> *Mr. Aylward asked who would be conducting the investigation. Chief Arsenault advised that an investigator had not been selected at this time.*
>
> *D/Chief Griffin then asked the Chief if he was going to investigate past incidents of sexual harassment of female members of the department such* [sic] *IJ* [sic] *or KL* [sic] *in the old Town of Summerside or the new City. The Chief asked him to repeat his question as he did not understand. D/Chief Griffin repeated his question.*
>
> *Chief Arsenault advised he was only investigating allegations which has* [sic] *come forth recently.*
>
> ...

116. Arsenault confirmed that when he met with Griffin on September 15th, he did not specify what allegations were being made against Griffin. Arsenault also testified that it would have been a logical answer to advise Griffin that Arsenault could not say who the complainants were as Cst. A had said she did not want to lay a complaint. Arsenault's evidence during cross-examination in this regard is as follows:

> *Q. Umhum. So let's do a list, then, of -- excuse me -- we, the third paragraph of this memo says, Chief Arsenault then advised the reason for the meeting was there have been allegations of sexual harassment against Dave Griffin and the matter would be investigated. Now, did you specify what those allegations were in that meeting?*
>
> *A. What's there is what I recall what happened.*
>
> *Q. Right, and my client says you didn't specify what they were in the meeting.*

A. *I don't believe.*

Q. *Right. And my client says that he asked you, either at that meeting or shortly thereafter, who the complainants were. And your answer was: I don't know. Do you think that's something that you were asked, and that was your answer?*

A. *He may have asked that.*

Q. *And he may have asked that. And was that your answer?*

A. *I wouldn't --*

Q. *Can I put it to you that you didn't know who your complainants were because Cst. A* [sic] *had told you she didn't want to be the complainant so for you to say, I don't know who the complainants are is a perfectly logical answer for you at that point?*

A. *If I did say that, it would be a logical answer, but I'm not too sure I did.*

Q. *All right, do you remember that you did -- is your evidence that you didn't say it or just that I don't remember?*

A. *I don't remember saying it.*

...

117. On September 15, 1998, Arsenault appointed Sgt. Poirier as Acting Deputy Director of Police Services effective that date and until further notice by a Routine Order. This was done because the Rules and Regulations require a person to be of equal or higher rank than the person they are investigating. Arsenault testified that Sgt. Poirier was brought in to "investigate allegations Grimes had made regarding the Fairground incident". The allegations of Cst. A and C/M B regarding Mr. X were also passed on to Sgt. Poirier, although Sgt. Poirier was not given any specific instructions from Arsenault in this regard.

118. Arsenault wrote to Griffin on September 18, 1998, requesting information regarding

a statement that Griffin had made during the September 15, 1998, meeting. Specifically, Arsenault wanted to follow up on the query raised about past incidents of alleged sexual harassment of female employees and Griffin's written response was requested as soon as possible. Griffin responded to Arsenault on October 1, 1998, but there was no reference to Arsenault's question about past incidents of alleged sexual harassment. Arsenault again wrote to Griffin on October 8, 1998, requesting answers to the questions posed in his previous memorandum. While I was not provided with any written response, Griffin testified that after one employee left the Town, he had heard that there may have been inappropriate comments made to that employee. Griffin had been requested not to take these matters forward and he had honoured that request.

119. On October 7, 1998, Griffin was advised in writing by Arsenault that the allegations against Griffin were serious enough to warrant further investigation. There was little evidence placed before me about the actual into Griffin.

120. On October 20, 1998, at approximately 11:15 a.m., Sgt. Poirier dropped off an envelope to Griffin which contained documents dated October 19, 1998. Griffin asked if he was a suspect for sexual harassment and was apparently advised "no". The document, entered as Exhibit "G-6", was addressed to Griffin and was entitled "Sexual Harassment Allegations". It outlined five different allegations that Sgt. Poirier was investigating, only three of which we are concerned with.

121. Exhibit "G-6" states in part as follows:

...

> *Further to the memorandum you received from Director G. Arsenault dated October 7, 1998, the following are the allegations that I am investigating as a result of written statements obtained:*
>
> - *It is alleged that during the first part of June 1997, Cst. A* [sic] *was called into your office, while Mr. X* [sic] *was present, for the purpose of introduction and after you introduced Cst. A* [sic] *to Mr. X* [sic], *he (Mr. X [sic]) allegedly made a comment to the effect,* ***"Jesus,***

women, what are you doing here? You should be home barefoot and pregnant." *Cst. A [sic] alleges that you `laughed' when this comment was made and did nothing to correct Mr. X [sic].*

- *It is alleged that during the Lobster Carnival in July 1997 that you rubbed Cst. A's* [sic] *back on the Fairgrounds while you were in an intoxicated condition and leaving Cst. A [sic], who was in uniform, embarrassed, humiliated & shocked.*

- *It is alleged that a few weeks after Cst. A* [sic] *started working with the Summerside Police Service in 1997, that she (Cst. A)* [sic] *was called into your office concerning a seat belt ticket and there was a lady present. Cst. A* [sic] *alleges she was leaving your office and you followed her and said something like,* ***"Cst. A* [sic], *to avoid any confusion or embarrassment, I'm just going to get rid of this,"*** *and then you proceeded to rip up the ticket that Cst. A* [sic] *had issued without asking her (Cst. A's) [sic] opinion.*

- *It is alleged that sometime in the Fall of 1997 that Mr. X [sic] was in your office and he (Mr. X [sic]) made the comment to you while looking at C/M B [sic] who was changing the tape on the Dictaphone,* ***"you should send her home to change into a shorter skirt,"*** *at which time you allegedly said nothing to Mr. X [sic] to correct him.*

- *It is alleged that Cst. A* [sic] *was called into your office shortly after she began full-time employment with the Summerside Police Service and you wanted to know Cst. A's* [sic] *point of view on how females should wear their hair at work. You allegedly told Cst. A* [sic] *that other Departments have policy on hair and he intended to start a policy for this Department. Cst. A* [sic] *feels she was singled out for this as Cst. EF* [sic] *had not been approached on this as her hair is usually half way down her back.*

In order to complete my investigation, I would like you to respond to these allegations in the form of a written report to the undersigned, or if you prefer, I will be happy to sit down with you and take your verbal statement which I will commit to writing. If you decide to do the latter, please contact me to set up a date suitable for you to provide a statement.

Acting Deputy Director D. Poirier

122. Griffin testified that he did not respond to Sgt. Poirier's questions on the advice of Counsel.

123. On November 9, 1998, Sgt. Poirier forwarded an Interoffice Memorandum to Arsenault, which attached two Informations alleging internal charges against Griffin contrary to the Rules and Regulations and asking that a copy be served on Griffin forthwith. Arsenault testified he had no input into what the charges against Griffin would ultimately be. Although those charges were not provided to me, the charges were later amended on consent due to duplicity. It is the amended charges with which I am concerned.

Breach of Confidence Charge:

124. The Breach of Confidence charge against Griffin arose out of a Press Release that was issued by him on or about October 20, 1998. To understand how the charge arose and the positions taken by the parties, it is necessary to review the incidents that pre-date the Press Release by about a month.

125. On September 16, 1998 or September 17, 1998, Griffin testified, he received a call from Bill Kendrick of CBC who asked if Griffin "was being investigated for unwanted touching of Cst. A [sic]". Griffin said absolutely not. He was shocked and suggested that Bill Kendrick call Arsenault.

126. Bill Kendrick testified that on September 17, 1998, he received a tip that there might be an investigation into Griffin regarding allegations of sexual harassment. He telephoned Arsenault who confirmed that he had met with Griffin and his lawyer but would not tell Mr. Kendrick whether an investigation had been launched. Mr. Kendrick understood that Arsenault was considering launching an investigation at this point. Thereafter, Mr. Kendrick confirmed that he spoke with Griffin. Mr. Kendrick could not recall whether or not he was aware of Cst. A's name but indicated he had no way to dispute that he did not have it. Subsequently, Bill Kendrick did a news story that was broadcast on the CBC news program, "Compass", which aired on October 19, 1998. Mr.

Kendrick, who appeared pursuant to a Subpoena, reviewed the broadcast he had done on that date. The broadcast confirmed that Mr. Kendrick had spoken to Arsenault, and that Arsenault confirmed Griffin was being investigated for allegations of sexual harassment. Mr. Kendrick testified that he knew the names of the complainants prior to the broadcast on October 19, 1998, and that his source was not Griffin.

127. There was much argument before me as to whether or not the story aired by CBC on October 19, 1998 was relevant. The City submitted it was not relevant while Griffin's Counsel suggested that this matter was not confidential in Summerside, in that the press knew, as well as the politicians. I indicated I would hear the evidence in the form of a tape and defer my ruling until later. As indicated later in my Decision, I have found this to be relevant. The tape, as well as an informal transcript, were tendered as Exhibits. Exhibit G-4 outlined the news report that aired October 19, 1998, on CBC's "Compass", as well as "Maritimes Tonight". The latter stated:

> *Maritimes Tonight - 11:30 Oct/1998*
>
> *David Griffin was already reviewed for insubordination and now as Bill Kendrick reports he has been accused of sexual harassment by women on the Town's Police Force.*
>
> *About a month ago, Deputy Chief Griffin was told by Chief George Arsenault some allegations of sexual harassment had come to his attention. At that time there were no formal complaints, but the Chief decided to appoint Sgt. Dave Poirier as an Acting Deputy Director to look into the matter.*
>
> *Poirier has since moved into an office at City Hall in order to conduct his investigation.*
>
> *A source within the Department says it all began when Griffin was asked to investigate complaints of sexual harassment against an employee of the Department.*
>
> *According to the source, reports filed by at least two officers indicated Griffin had ignored or laughed at inappropriate comments made by the employee to female officers.*

When Chief Arsenault was given copies of those reports, the source says he started an investigation into Griffin's conduct.

Chief Arsenault has confirmed a sexual harassment investigation is underway. He says the reason Poirier is working out of City Hall is because there were no private offices available at the police station.

Griffin is still working as Deputy Chief. He says he has been told nothing since his meeting with the Chief back in September. He has not been interviewed as part of the investigation and he denies ever having harassed any female officers. He claims it is just a further attempt by the City to discredit him.

128. Griffin indicated that he did not recall speaking to Bill Kendrick after September 17, 1998; however, the transcript of the "Compass" report clearly indicated that Griffin had spoken to Mr. Kendrick and had confirmed that he had not been interviewed as part of the investigation.

129. On October 19, 1998, Griffin indicated he had received a phone call at his home at about 10:00 p.m. from Mike Carson. Mr. Carson wanted a comment in relation to the allegations of sexual harassment. Griffin indicated that Mike Carson had never called him at home before, although Griffin had made various comments to Mike Carson which involved the Grimes/Kenny matter.

130. On the morning of October 20, 1998, Griffin read an article in The Guardian newspaper entitled "Cop Denies Complaint". Griffin went to work after reading the article in The Guardian, whereupon he received a phone call from Nancy MacPhee of the Journal Pioneer newspaper around 9:00 a.m. asking him for a comment regarding the allegations of sexual harassment. Later in the day, two articles were published in the Journal Pioneer newspaper, one entitled "Griffin Calls Allegations of Sexual Harassment Malicious" and another entitled "Allegations of Sexual Harassment in Summerside Police Services". Griffin confirmed that he made those direct quotes, outlined in Exhibit "G-7", which indicated that the investigation was an "attempt at intimidation" and "malicious persecution". After Griffin saw these articles on October 20, 1998, he testified that he started thinking about the various events that had transpired, including his meeting with Arsenault on September 15th, his call from Bill Kendrick on September 17th, the Bill Kendrick

story on "Compass" October 19, 1998, and The Guardian and Journal Pioneer newspaper reports of October 20, 1998.

131. As a result of the foregoing, Griffin prepared a Press Release late in the afternoon of October 20, 1998. Griffin believed it was faxed around 3:30 p.m. on October 20th and it was sent to CFCY, the Journal Pioneer, and The Guardian. Griffin could not recall whether it was also sent to CBC, CJRW or CHTN; however, Bill Kendrick of CBC received a copy of the Press Release. The Press Release that was issued by Griffin on October 20, 1998, was entered as Exhibit "C-10" and is reproduced below:

PRESS RELEASE

D/Chief David Griffin confirmed he will be releasing crutial [sic] documents regarding alleged allegations against him for Sexual Harassment.

D/Chief Griffin confirmed on Tuesday Acting Deputy Chief Poirier delivered a sealed envelope to him containing contents of the allegations. D/Chief Griffin was not interviewed but was advised by Poirier he could respond to the allegations if I wanted to. D/Chief Griffin advises contents were given to his lawyer. D/Chief Grifin [sic] further states the envelope did not include a complaint or statements from the females making the allegations. The contents contained information Poirier obtained over the course of his investigatio [sic] to date.

D/Chief Griffin stated the allegations contained in the package included information supplied to Porier [sic] from Cst. A [sic] *and C/M B* [sic].

What is very disappointing to D/Chief Griffin is the fact he has always believed Cst. A [sic] *and C/M B* [sic] *were valued employee's* [sic] *and still does. As well D/Chief Griffin wants to make it clear he holds nothing against Sgt Poirier as he is only doing his job. "Dave and I have had a good relationship over the years and during the past months Dave was Acting D/Chief of Police on many occasion* [sic] *when I was away.*

From the contents of the allegation D/Chief Griffin can state the substance of the allegation came from a previous investigation completed by D/Chief Griffin on a retired employee and the allegations date back twelve to eighteen months.

Acting Chief Poirier was contacted on Tuesday for a copy of the complaint and advised my lawyer to contact Ben Taylor. D/Chief Griffin questions Mr. Taylor's role in entire matter "Mr. Taylor has no business in Police business nor should he. Mr. Taylor is the City Solicitor hired to give City Council legal advice on matters.

This latest developement [sic] *has D/Chief Griffin convinced someelse* [sic] *other than the complaintants* [sic] *mentioned here have a motive to smear Griffin for whatever reason.*

D/Chief Griffin may as well release to the public a registered letter delivered to Mayor Stewart on Sept 28th, 1998 related to this investigation and information on past allegations of harassment. Mayor Stewart did give a copy to Mr Terry Murphy, C.A.O. and all members of Council.

What D/Chief Griffin will release will not taint the investigation being completed by Poirier as most of the information already has been shared and discussed.

(Sgd.) Dave
D/Chief David Griffin

[The registered letter, referred to in the above-cited Press Release, was not introduced in evidence.]

132. After Griffin issued the Press Release on October 20, 1998, he spoke with his lawyer the following morning. His lawyer advised Griffin to retract the Press Release. Griffin testified he was to call the newspapers and his lawyer was apparently to call the radio media. When Griffin spoke with Mike Carson at the Journal Pioneer on October 21, 1998, he was advised by Mr. Carson that the story was "on the wire". The Journal Pioneer and The Guardian newspapers did not print the names of Cst. A and C/M B. Mr. Kendrick did not receive a call from anyone indicating the Press Release was not to be broadcast; however, CBC does not name victims of sexual assault and, thus, a decision was made by CBC that it would not name Cst. A and C/M B in this situation.

133. David Holland, Senior Reporter for Island Radio, the station which is locally known as CFCY, identified the Press Release that had been faxed to the CFCY main office fax number. Prior to receiving the Press Release, Mr. Holland had not known the names of the women. The

following day, when he was attending a news conference in Summerside in relation to the expansion of the Waterfront Mall, Mr. Holland called Mayor Stewart aside and asked questions about the Press Release. Mayor Stewart was unaware of the Press Release and, in fact, asked another individual present at the conference to obtain a photocopy of it. While CFCY did ultimately run a news story, it did not disclose the names of the individuals in question. Mr. Holland confirmed that, prior to this date, he had heard rumours about allegations of sexual harassment being made in relation to Griffin.

134. Arsenault indicated he did not advise members of the public or the media of the names of the women, although he may have advised the Chair of the Police Committee, as well as Terry Murphy, the Chief Administrative Officer for the City, and perhaps he advised a member of the Police Services.

135. In relation to the story done by Bill Kendrick on October 19, 1998, Arsenault testified that it troubled him that a confidential investigation was now being broadcast by CBC. He was disappointed that the investigation got out but he had no control over Kendrick's sources. It was his view that if a reporter has a pipeline into the Police Department, they were certainly not going to tell him. He never asked for an investigation of this issue. Arsenault's evidence during cross-examination in this regard was as follows:

> *Q. Okay. And do you recall hearing a story in which Kendrick was on the CBC commenting on the fact there was an investigation going on of Griffin?*
>
> *A. Well, I'm not too sure I saw that particular one but there were several. It seemed to be on every evening, on this program that Kendrick reports for, Compass.*
>
> *Q. Right. And did it trouble you that an investigation that was supposed to be confidential was now being discussed on the CBC?*
>
> *A. Yes, it did.*
>
> *Q. And did you give any instructions to anybody to make some inquiries about that?*

A. *About, about -- just the general reporting of it?*

Q. *No, I'm, not just the content of it. The fact, it seems, that what was going to be a confidential investigation, or you say should be a confidential investigation is now the subject of CBC news stories.*

A. *Yes. I was disappointed that it got out, that it was in the, on the air and in the newspapers. However, I have no control over Kendrick's contacts or his sources of information. He's a reporter just like the Guardian has one and the Journal has one. And I'm sure they have contacts here and there and everywhere. And I accept that. I can't do very much about it.*

Q. *Do you accept the fact that the, if the contacts are in the police force and they're disclosing what should be confidential information in the police force, from the police force, that that's acceptable behaviour by some members of the police force?*

A. *If I have a pipeline into the Police Department, or some reporter has a pipeline into the Police Department, it would be possible that they have, I don't know.*

Q. *Well, --*

A. *They are certainly not going to tell me if they do.*

Q. *They may not tell you. But did you ask -- and I'm assuming it would be Poirier, but maybe not -- did you ask anybody to inquire into the fact that there seemed to be some major leaks with respect to this investigation?*

A. *I'm not too sure it was this investigation, but I asked the Deputy Chief of Police at one time, and I'm not too sure when it was, to -- it was after this, I believe -- to, some information was apparently leaking out. I was hearing things and it was obvious to me that we had somebody or somewhere, somebody had a pipeline into the office. And I have not got that report yet from him.*

Q. *Well, does that refer to this incident?*

A. *I don't think so.*

Q. *All right. Now, my question is whether or not you directed any inquiry into the fact that the stories about Griffin and the investigation of him were out*

in the media before Griffin had even been interviewed?

A. No.

136. Cst. A testified she had seen a copy of the Press Release and she believed she had received a copy from Bill MacKinnon, who was the President of the Union that represented the police. She was extremely angry and upset. She understood that there was a policy that the complainant's name was to be kept confidential. Cst. A testified that the Western Graphic and the Eastern Graphic newspapers published the names of herself and C/M B on December 2, 1998.

137. C/M B testified that she received a copy of the Press Release from her Union and she was upset about it being issued. When she went to work there was a copy waiting for her and she cried when she heard about it. She felt she had to tell her family about the situation as they did not know that she was one of the females who were alleged to have been sexually harassed. She had a relative who worked at The Guardian newspaper and who saw the Press Release. In December of 1998, her name was published in the Eastern Graphic and Western Graphic newspapers.

138. Griffin understood police officers have a duty to keep certain matters confidential and, if he divulged a matter he was required to keep confidential, it could involve a breach of discipline. Griffin was aware that sexual harassment involved extremely sensitive internal matters and he agreed that people who have been aggrieved by sexual harassment deserve to be protected and their names should not be released to the public. Griffin testified he was aware that under the Sexual Harassment Policy Statement, the employer was not to disclose the identity of the complainant. He understood the employer in this case was the City of Summerside Council. He did not believe he was the employer nor did he understand that Cst. A or C/M B were complainants.

Issues:

139. The issues before me concern whether or not Griffin committed any disciplinary offences. Specifically, I must determine:

(a) whether or not Griffin committed an "unwanted touching" of a female, while she was

on duty and he was in an apparent intoxicated condition, and thereby committed Discredited Conduct;

(b) whether or not Griffin created and maintained a hostile work environment by tolerating and encouraging sexually demeaning statements made by others and thereby by committed Oppressive Conduct; and

(c) whether or not Griffin released to the public media the names of the employees who had filed sexual harassment complaints against him and thereby committed a Breach of Confidence.

contrary to the Rules and Regulations.

Position of the City:

140. The City stated that Griffin is responsible for the operation of the rank and file in the Summerside Police Station, as well as discipline. The City alleges that the actions or inactions of Griffin violated the *Employment Standards Act*, R.S.P.E.I. 1998, Cap. E-6.2, the *Human Rights Act*, R.S.P.E.I. 1988, Cap. H-12, as well as the Rules and Regulations. The City took the position that:

(a) Griffin inappropriately touched Cst. A, who did not report the incident to anyone due to the fact that she was a part-time employee, had no job security, felt she would get no calls for part-time work at a time when her hours were fluctuating greatly. Thus, the City submits, Griffin should be found guilty of Discredited Conduct.

(b) A former Police Custodian of the City, Mr. X, "a rude and crude man with a penchant for sexist comments", according to Counsel for the City, made sexist comments to various female employees in the presence of Griffin. The City alleges that Griffin was amused, condoned and/or encouraged the comments and took no action to correct them. Counsel for the City stated that Mr. X received a green light from Griffin to "act like a jerk" and that Mr. X proceeded to act in that fashion and, thus, should be found guilty of Oppressive Conduct.

(c) Griffin prepared a Press Release in the course of a public relations campaign which related to these charges against him. In that Press Release, he named the complainants, Cst. A and C/M B, in direct violation of the City of Summerside Harassment Policy and the Rules and Regulations; thus, he committed a Breach of Confidence.

141. The City submitted that it became aware of these allegations through Grimes and that, while Grimes' disclosure may have been motivated by anger, frustration and/or other motives directed against Griffin, the City, as a responsible employer, had a duty to investigate. In relation to the obligation of the City to investigate, the City relied on paragraph 56 of my Decision on the Preliminary Motion that was rendered August 10, 1999, wherein I stated the following:

> *56. As sexual harassment is a work place offence, an employer has disciplinary responsibilities in relation thereto. Section 26 of the Employment Standards Act, supra, imposes an obligation on employers to make reasonable efforts to ensure no employee is subjected to sexual harassment. Once an allegation of sexual harassment is made, the employer is responsible to take appropriate action. Even if the complainant chooses to withdraw from the complaint at any stage, it does not necessarily relieve the employer from its obligation to investigate. Normally, those investigations would be of a private and internal nature and would consider the sensitivities of the situation. Additionally, employers may be subject to liability for acts of work-related sexual harassment committed by employees, and in fact, liability has been imposed on employers, even when the employer had no knowledge of the sexual harassment. See: Robichaud et al. v. The Queen, [1987] 2 S.C.R. 84 (S.C.C.).*

142. The City stated it fulfilled its duty by investigating the allegations against Griffin, which investigation led to the charges that are currently before me. In the event it did not investigate, the City submitted that it could face a law suit from the victim, a union grievance, a Human Rights Complaint or an outraged press and public.

Position of Griffin:

143. Griffin denied the charges and submitted he should be found not guilty of these allegations which concern sexual harassment and Breach of Confidence.

144. In relation to the unwanted touching and intoxication, Griffin denied he was intoxicated and stated he did not touch Cst. A in a sexual manner, but, rather, put his hand on her back to draw her into the conversation to introduce her to the Mayor. No mention was made of this incident for a period in excess of one year and the incident was very brief, lasting only a few seconds.

Counsel for Griffin submitted that to take something which lasted a period of seconds, which was not described as sexual by Cst. A, and suggest it is sexual harassment is stretching the meaning of that phrase. While it was not challenged that Cst. A may have felt embarrassed or uncomfortable, Counsel for Griffin submitted that a finding of sexual harassment on the facts of this case demean and belittles the importance of sexual harassment and the laws that have grown up to protect women from such action and cannot be considered Disorderly or Discredited Conduct.

145. Dealing with the two charges of creating and/or maintaining a hostile work environment, there were two incidents within the time frame made to two separate individuals. Griffin stated he did not hear one of the comments and testified that he chastised Mr. X in relation to the other comment. No complaints had been made to Griffin at the time. When complaints about Mr. X came to light in 1998, Griffin investigated the situation and recommended that Mr. X be terminated. It was submitted that the two comments, in and of themselves, did not create a hostile work environment and furthermore, there was a historical problem within the police force in relation to rude or inappropriate comments and it would be grossly unfair to lay the blame at the door of Griffin.

146. Dealing with the Breach of Confidence charge, Counsel for Griffin submitted that the press was aware of the names of the women before Griffin was and, thus, no one could say that the investigation was meant to be confidential. Arsenault had confirmed to the media that a sexual harassment investigation was under way in relation to Griffin, and at least one member of the media had telephoned Griffin and was already in possession of one of the complainants' names in September. A broadcast was subsequently aired by the media prior to the Press Release, which indicated that a source within the Police Department had revealed certain information and the media was in possession of both names at that time. Griffin argued that the sequence of events was relevant to the fact that this was not a confidential matter and that his employer was cavalier insofar as confidential information was concerned. It was submitted on behalf of Griffin that, even if Griffin had violated the rule relating to confidentiality, the City had deprived itself of any right to a penalty given that Arsenault was indifferent to the fact that there was a source within his department who had violated

the confidentiality provisions.

147. Additionally, Griffin took the position that he did not violate the Sexual Harassment Policy Statement or the *Employment Standards Act, supra*, in that he was not the employer nor were Cst. A and C/M B complainants.

148. Finally, Griffin argued he had a ***Charter*** right to freedom of expression and his ***Charter*** right would be violated if I found that he was restricted from speaking in his own defence. His Counsel argued that Griffin is an accused person, and as such, he has a fundamental right to be able to speak in his own defence and to question the credibility of his accusers. I was encouraged to make an order which would not infringe or violate Griffin's freedom of expression.

LAW:

Onus of Proof:

149. Before proceeding to determine the specific charges, I must first determine on whom the onus of proof rests.

150. The City has suggested that the onus is a civil onus, namely, proof on a balance of probabilities. Counsel on behalf of Griffin conceded that the standard of proof was the civil standard; however, he believed that, as disciplinary offences involving police officers could be penal in nature, as was the case before me, there should be strict construction of all statutes and regulations. In support of this latter proposition, reference was made to the case of *Metro Toronto v. Constable Kaye, [1988] 2 Ontario Police Reports 697*. In that case, while finding that the standard of proof was proof on a balance of probabilities on the civil standard, it was held that the Regulation in question was to be strictly interpreted in light of the fact that *Police Act* offences were penal in nature.

151. If this were a sexual harassment case, before a Human Rights Tribunal where a complainant had come forward and was alleging sexual harassment against an individual, the burden

of proof would lie on the complainant to prove on a balance of probabilities that there had been harassment. This position is supported by the statement made by A.P. Aggarwal in his text Sexual Harassment in the Workplace, 2nd ed. (Toronto: Butterworths, 1992) where it was stated at page 133 in relation to the burden of proof:

> *Thus, in sexual harassment cases, like other human rights cases, the burden of proof lies on the complainant to prove that on a "balance of probabilities" or "the preponderance of evidence" there was a contravention of the appropriate human rights statute. This involves:*
>
> *1. proof that the alleged conduct by the respondent occurred;*
>
> *2. proof that it constituted sexual harassment in the circumstances: for example that it took place without the complainant's willing consent.*

152. If it had been the complainants seeking to hold the employer liable, more than a balance of probabilities would be required to demonstrate that discrimination occurred. Aggarwal in Sexual Harassment in the Workplace, supra, made the following statement at pp. 136-137, namely:

> *An important matter which still remains unresolved involves the types of evidence necessary for determining the responsibility of an employer for the sexually harassing behaviour of its supervisory and other personnel. When supervisors are the source of the problem, two case law tests exist. The first requires that plaintiffs make a **prima facie** showing of sexual harassment by supervisory personnel for the employer to be liable. A second, more stringent, test places a greater burden on plaintiffs. This test requires plaintiffs to establish, in addition to a **prima facie** showing, that the employer either condoned the harassing acts by its actions, or at least acquiesced by lack of action. However, neither of these require the plaintiff to prove the defendant employer endorsed the discriminatory behaviour by*

> *its supervisory personnel, only that there had been a discriminatory effect. While the general burden of proof in a complaint under human rights statutes is on the balance of probabilities, the tribunals, however, insist that they must be persuaded on more than the balance of probabilities that one form of discrimination occurred, before they can conclude that on the balance of probabilities another rather different form of discrimination occurred.* [Emphasis added]

153. I have reviewed various authorities in relation to the standard of proof where a person is being disciplined for allegations of sexual harassment. The general rule in discipline cases is that the burden is on the employer, in this case the City, to prove its case on a balance of probabilities. See: Canadian Labour Arbitration, 3rd ed. (Aurora: Canada Law Book, 1999) by Brown & Beatty at paragraph 7:2500 at p. 7-26. However, some authorities take the position that the burden of proof may rise, depending on the gravity of the offence or the consequences that may flow from a finding in relation to that offence. It has been said that given the seriousness of the allegations, a determination of what actually occurred requires clear and cogent evidence. See: *Re Miracle Food Mart and U.F.C.W., Loc. 175 and 633 (1994), 44 L.A.C. (4th) 306 (Ont. - Haefling)*.

154. The case before me is somewhat different in that a complainant has not made an allegation of sexual harassment under a Human Rights statute. The complainant has not sought to have the employer declared liable in this instance. Rather, the City has alleged that Griffin, its supervisory employee, has committed disciplinary offences. Although those disciplinary offences are framed as allegations of sexual harassment and/or breach of confidence, the disciplinary offences Griffin is alleged to have committed include Discredited Conduct, Oppressive Conduct and Breach of Confidence.

155. In the case of *Johnstone (c.o.b. Wessex Inn) v. British Columbia (Directors of Human Rights Commission), [1985] B.C.J. No. 29 (B.C.S.C.)*, which dealt with the issue of whether or not there was sex discrimination that was prohibited by the relevant Human Rights Statute, the British Columbia Supreme Court upheld the finding of the Board of Inquiry that the burden of proof was on a balance of probabilities. There it had been argued that the burden should be a middle ground

between the civil burden and the criminal one; however, the Court held that the burden of proof remained on the balance of probabilities.

156. Additionally, in the case of *Re Newfoundland (Newfoundland Farm Products Corp.) and N.A.P.E. (1988), 35 L.A.C. (3d) 165 (Nfld. - Dicks)*, an arbitrator was called upon to decide a grievance which alleged that the employer refused to take action against a management employee who was sexually harassing an employee. In dealing with the burden of proof, the arbitrator held that the standard of proof in an arbitration matter was a civil burden, namely, proof on a balance of probabilities.

157. Considering the foregoing, the City bears the burden of demonstrating on a balance of probabilities that Griffin committed the alleged conduct and further bears the burden of demonstrating that the conduct in question constituted sexual harassment. That burden is on a balance of probabilities. It is only if the facts, as alleged by the City, are proven on this balance of probabilities, that I would proceed to determine whether there was a breach of the Rules and Regulations respecting discipline.

Character Evidence:

158. During the hearing, Griffin sought to introduce character evidence given by the witness, Geraldine Grant. The City objected on the grounds that character evidence in civil cases was prohibited from being introduced and could not be introduced to bolster a person's case. On the other hand, Griffin's counsel suggested that these proceedings were akin to provincial offences and, while sometimes character evidence is not helpful, this case is about sexual harassment, about whether Griffin acted properly on the complaints and, as such, the evidence is "possibly probative".

159. After briefly reviewing the law in relation to this issue, I permitted the evidence to be heard and indicated that the weight, if any, to be attached to the evidence would be addressed in this Decision. This is consistent with comments made in Canadian Labour Arbitration, supra, at paragraph 3:4200, where it was stated at pages 3-51 to 3-52:

> *As a general and overriding principle, where the evidence tendered is relevant to a matter in dispute it will be admitted and received into evidence by the arbitrator. At least one arbitrator has ruled that* ***res judicata*** *may act to establish the relevancy of a previous award. Although it is for the arbitrator to decide whether a particular piece of evidence is relevant, where the evidence is arguably relevant, and where it is not otherwise prejudicial or its admission will not be unduly time consuming, arbitrators are reluctant to exclude such evidence on the ground of irrelevancy alone. One arbitrator has refused to admit tape-recorded evidence of a disciplinary meeting on the ground not only that it was not relevant, but was also potentially destructive of good labour relations. Where the evidence is arguably relevant the usual approach is for the arbitrator to receive the evidence, reserve the ruling as to its relevance, and disregard it if he subsequently decides that it was not relevant. ... However, evidence of the findings of one arbitration board were admitted by another as being relevant on the ground that the findings tended to corroborate allegations of the grievor's propensity to violence. On the other hand, one arbitrator has exercised his discretion to refuse to accept similar fact evidence of discriminatory conduct for the same reason it is rejected in criminal cases, namely, on the grounds of fairness since it tends to waste time and embarrass the hearing with collateral issues.* ... [Emphasis added]

160. Brown & Beatty in Canadian Labour Arbitration, supra, have stated that generally in civil cases, character evidence is not admitted as it is not relevant. At paragraph 3:4500, page 3-73, it was noted:

> *In criminal cases, evidence of good character is often adduced to support an argument that a person of such character would not commit a crime. Generally, in civil cases the evidence is not admitted on the ground that such an assumption is simply not relevant although it may be introduced in cross-examination where it is relevant to credibility. Even in this context, however, there are a number of qualifications as to the use of such evidence, and in one case, where students testified as to the capacity of a discharged teacher, the arbitrator noted:*
>
> > *In this respect, I would add that I have not taken into consideration the evidence given by certain of the grievor's students who were called as witnesses. While on certain questions of fact it might be necessary to call students to testify with respect to the conduct of a teacher, their opinion evidence as to his capacity is, in my view, of questionable admissibility*

and even more dubious merit. In assessing the evidence as to the problems with the grievor's classes, I have not, therefore, considered the testimonials offered in his support by the student witnesses.

161. In Civil Evidence Handbook by Gordon D. Cudmore (Scarborough, Ontario; Carswell, 1994) there is a reference at page 2-26.1 to the case of *Garda v. Osborne, [1996] B.C.J. No. 442 Q.L. (B.C.C.A.)*. There, the trial judge had allowed evidence from five witnesses who testified as to the realtor's reputation for truthfulness and honesty. The trial judge failed to consider the realtor's character evidence that had been put forward and allowed the plaintiff's action. On appeal, the court held even if the trial judge erred in not considering the character evidence, the character witnesses were not present for any discussions between the realtor and the purchasers and therefore their evidence was peripheral.

162. Stanley Schiff in Evidence in the Litigation Process, 3rd ed., Vol. 2 (Toronto: Carswell, 1988) has stated at page 801 that the common law is clear that a civil litigant's character is not admissible to prove how he acted on a given occasion. Some of the courts have indicated that character evidence is usually irrelevant in civil trials and others have argued that, even if relevant, its probative value would be outweighed by confusion of issues and undue consumption of time.

163. In light of the foregoing, I have determined that, on the facts before me, evidence of Griffin's treatment of other female employees is not relevant as to whether or not a particular event took place, such as the touching of Cst. A. Evidence that an individual has conducted himself in a proper manner in relation to one person is no indicator that the individual will have a propensity to conduct himself in the same manner in relation to another person.

164. Where, however, the allegations involve poisoning the work environment for co-workers, there may be "character" evidence or "similar fact" evidence that could be relevant. However, since the allegations in the case before me consisted solely of the fact that Griffin is alleged to have condoned the conduct of Mr. X on two specific occasions, I cannot see how evidence of

"good character" would have any relevance as to what is at issue, as it would not demonstrate how Griffin acted on any given occasion.

165. I am not satisfied in the circumstances of this case that character evidence provided by Geraldine Grant was relevant in relation to any of the charges before me. Therefore, I have not considered her evidence in this regard in reaching my Decision.

***Employment Standards Act*:**

166. The *Employment Standards Act*, *supra*, contain various provisions dealing with sexual harassment. The relevant provisions of that legislation are outlined in Appendix "C" attached to this Decision.

167. The legislation entitles every employee to be free of sexual harassment. Employers are required to make reasonable efforts to ensure that their employees are not subject to sexual harassment. Employers are defined to include managers and persons being responsible for the employment of an employee. Additionally, the legislation requires employers to issue a policy statement regarding sexual harassment and to make each employee aware of this policy statement.

168. The City of Summerside and the Police Services Division of the City of Summerside are both subject to the *Employment Standards Act*, *supra*, and are required by law to comply with the provisions of that *Act*.

Sexual Harassment Policy:

169. As noted above, the *Employment Standards Act*, *supra*, require employers to issue a Sexual Harassment Policy Statement. On August 20, 1998, Arsenault, on behalf of the City of Summerside Police Services, issued Standing Order No. 82 [Exhibit "C-29"] to all members, and this Standing Order attached a document entitled "Sexual Harassment Policy Statement" for the City of Summerside Police Services. Shortly thereafter, on September 21, 1998, the City enacted a Sexual Harassment Policy Statement [Exhibit "C-30"], which is identical in all aspects to the provisions of

Standing Order No. 82 relating to the Police Services. The Sexual Harassment Policy Statement adopted by the City of Summerside is reproduced in Appendix "D" to this my Decision.

170. There was no definition of "employer" contained in either the Sexual Harassment Policy Statement that was issued by the Police Services or that issued by the City.

171. The *Employment Standards Act*, *supra*, required that the Policy Statement issued by the employer contain a provision stating that the employer will not disclose the identity of a complainant or the circumstances related to the complaint, except where necessary. Both the Sexual Harassment Policy Statement issued by the Police Services and that of the City omitted the phrase "or the circumstances related to the complaint" in relation to disclosure in Section 6 thereof; however, all parties agreed that those words must be read into the Sexual Harassment Policy Statements.

172. The instances of sexual harassment which form the basis of the charges before me arose on July 19, 1997, in the case of the Lobster Carnival incident, and arose between June and December, 1997, in relation to the hostile work environment allegations. At the time of these alleged incidents, neither the City nor the Summerside Police Services had a Sexual Harassment Policy Statement in place.

173. The City has acknowledged that the only charge that relies on the Sexual Harassment Policy Statement is the charge dealing with Breach of Confidence. While there is no question that the Policy Statement would be applicable to the charge concerning Breach of Confidence in that it was enacted prior to the alleged offence, I am not prepared to consider the Sexual Harassment Policy Statement in relation to the alleged offences which occurred between June of 1997 and December of 1997.

Sexual Harassment - General:

174. Sexual harassment appears to be a widespread problem individuals suffer in the course of their employment. Women primarily, but not exclusively, suffer from sexual harassment in the workplace, in part because sexual harassment involves one attempting to assert power over another. Sexual harassment in recent years has received considerable attention, often as a result of introducing

women employees into male-dominated work environments. Sexual harassment has been well-documented. In Canada, one study, in 1990, found that at least 30% of female employees would be sexually harassed in the work place at some time during their employment and almost one-fifth of the victims had to undergo medical treatment as a result of this behaviour. See: England, Christie & Christie in their text, Employment Law in Canada, 3rd ed. (Toronto: Butterworths, 1998 including 1998-1999 updates), at pp. 8-228 to 8-229.

175. In recent years, the legislatures and courts have sought to address the issue of sexual harassment. In this province, in addition to the provisions in the *Employment Standards Act*, *supra*, already mentioned, the *Human Rights Act*, *supra*, prohibits discrimination based on sex. The Supreme Court of Canada has concluded that discrimination on the basis of sex includes sexual harassment. See: *Janzen v. Platy Enterprises Ltd.*, *[1989] 1 S.C.R. 1252 (S.C.C.)*. Accordingly, freedom from sexual harassment in the work place in now both public policy and a human right.

Sexual Harassment - Definition:

176. Having stated that sexual harassment appears to be a widespread problem, how is sexual harassment defined? Aggarwal in his text, Sexual Harassment In the Workplace, supra, defines sexual harassment, at page 1, to mean:

> *Sexual harassment is any sexually oriented practice that endangers an individual's continued employment, negatively affects his/her work performance, or undermines his/her sense of personal dignity. Harassment behaviour may manifest itself blatantly in forms such as leering, grabbing, and even sexual assault. More subtle forms of sexual harassment may include sexual innuendos, and propositions for dates or sexual favours.*

177. This definition by Aggarwal was cited with approval by Chief Justice Dickson in the case of *Janzen v. Platy Enterprises Ltd.*, *supra*. In this regard, Dickson, C.J. also stated, at page 1284:

> *Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. It is, as Adjudicator Shime observed in Bell v. Ladas, supra, and as has been widely accepted by other adjudicators and academic*

commentators, an abuse of power. When sexual harassment occurs in the work place, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

178. In terms of what may constitute sexual harassment, while noting that human behaviour is complex and that it is often difficult to draw the line between what is acceptable and unacceptable behaviour, Aggarwal has stated the following in Sexual Harassment in the Workplace, supra, at pages 7-8:

There is a wide divergence of perceptions in our society as to what words or actions constitute sexual harassment. Because of the complexity of human behaviour, it is difficult to pinpoint what exact behaviour will be perceived as harassment by any particular individual. Because sexist attitudes and behaviours are highly persistent in our society, it is often difficult to draw the line between what is "acceptable" and what is "unacceptable" behaviour in the workplace. To one person, an arm around the shoulder may be perceived as a gesture of affection; to another person the same gesture may be offensive and harassing. [Emphasis added]

Sexual behaviour that a person finds personally offensive may be considered sexual harassment. Such behaviour may be subtle or obvious, verbal or non-verbal. Its scope may cover a wide range of behaviour that runs the gamut from patting women's bottoms when they walk down the hall; to pinching; to repeated, intrusive, insistent arms around the shoulder, couched in friendliness, but with a hidden agenda underneath; to an atmosphere contaminated with degrading comments, jokes, or innuendoes, and/or reference to women's bodies, to male prowess, and questions about women's sex lives; to public displays of derogatory images of women; to the requirement that women dress in costumes that leave them the target of sexual comments and propositions from the general public; all the way to the explicit propositions that require women to engage in sexual relations or be terminated or lose deserved promotions.

Sexual harassment in this context is employment discrimination by means of sexual blackmail, being a comprehensive pattern of hostile behaviour meant to underscore women's difference from and, by implication,

inferiority with respect to the dominant male group. It is closely analogous in form and in effect to race discrimination. It is a systemic, arbitrary abuse of male power and authority used to extract sexual favours, remind women of their inferior ascribed status, and deprive women of employment opportunities and equality.

Sexual harassment in this context is an infringement of an employee's right to work in an environment free from sexual pressure of any kind. While sexual harassment need not necessarily involve a male supervisor and a female subordinate, this has been the most common situation in which the problem arises. But pressure can come from a person of either sex against a person of the opposite or same sex, and from peers as well as supervisors.

179. The comments of Mr. O. B. Shime, Q.C. in *Cherie Bell and Anna Korczak v. Ernest Ladas and The Flaming Steer Steak House (1980), 1 C.H.R.R. D/155 (Ont. - Shime)*, one of the first cases to consider what could constitute sexual harassment, are enlightening. At paragraphs 1389 and 1390 on page D/156, he stated:

The forms of prohibited conduct that, in my view, are discriminatory run the gamut from overt gender based activity, such as ***coerced intercourse*** *to* ***unsolicited physical contact*** *to persistent propositions to more* ***subtle conduct such as gender based insults and taunting, which*** *may reasonably be perceived to* ***create a negative psychological and emotional work environment.*** *There is no reason why the law, which reaches into the work-place so as to protect the work environment from physical or chemical pollution or extremes of temperature, ought not to protect employees as well from negative, psychological and mental effects where adverse and gender directed conduct emanating from a management hierarchy may reasonably be construed to be a condition of employment.* [Emphasis original]

The prohibition of such conduct is not without its dangers. One must be cautious that the law not inhibit normal social contact between management and employees or normal discussion between management and employees. It is not abnormal, nor should it be prohibited, activity for a supervisor to become socially involved with an employee. An invitation to dinner is not an invitation to a complaint. The danger or the evil that is to be avoided is ***coerced*** *or* ***compelled social contact*** *where the employee's refusal to participate may result in a loss of employment benefits. Such*

coercion or compulsion may be overt or subtle but if any feature of employment becomes reasonably dependent on reciprocating a social relationship proffered by a member of management, then the overture becomes a condition of employment and may be considered to be discriminatory. [Emphasis original]

180. It is necessary to carefully review the facts of each case to determine what will constitute sexual harassment in the circumstances. As has been said by the Ontario Board in *Aragona v. Elegant Lamp Co. Ltd. et al, (1982), 3 C.H.R.R. D/1109 (Ont. - Ratushny)*, at page D/1110:

...

Thus, sexual references which are crude or in bad taste, are not necessarily sufficient to constitute a contravention of section 4 of the [Ontario] Code on the basis of sex. The line of sexual harassment is crossed only where the conduct may be reasonably construed to create, as a condition of employment, a work environment which demands an unwarranted intrusion upon the employee's sexual dignity as a man or woman. The line will seldom be easy to draw, particularly where, as in the present case, there is considerable dispute as to what exactly was said and done.

181. A final comment of Aggarwal in his text Sexual Harassment in the Workplace, supra, is pertinent. He stated at pages 121-122:

Normal discussion or contact between management and an employee, even if it be social in nature, is not intended to be prohibited by the human rights statutes. It goes without saying that relationships between human beings are complex, and subjective motivations may often be mixed. Each situation must be considered upon its facts to determine whether the conduct complained of is sanctionable. The complainant must have an honest and reasonable apprehension that a refusal to participate, acquiesce or endure such conduct may affect the employment relationship itself or any benefits or conditions arising from the relationship. It is to be noted that where the conduct is of a more subtle nature, the issue is how it "may reasonably be perceived". In other words, the conduct in question cannot be assessed only by an effect which it has upon a particular complainant (although this will be relevant to any remedy which is ordered), rather a reasonably objective standard should be applied. [Emphasis added]

...

Verbal conduct is far more difficult to classify as sexual harassment,

> *in particular discussions of sexual issues such as rape. The employees can discuss issues with a sexual connotation, whether it is rape laws or the problems of divorce and single parents, without risking a charge of sexual harassment because a male holds a view which a woman worker perceives as sexist. A standard of reasonableness is required in reviewing verbal exchanges, both as to its offensiveness and whether it creates a harassing and negative condition of work.* [Emphasis added]
>
> ...
>
> *Whether or not the alleged sexual conduct or behaviour constitutes sexual harassment must be determined by an objective test. For an objective test, the courts and tribunals have used the standard of a "reasonable person" rather than the perception of a harassee or a harasser. Moreover, the conduct in question should be examined and tested against the norm of "socially acceptable behaviour" and the "reasonable and usual limits of social interaction" in the community.* [Emphasis added]

182. Unnecessary physical contact such as touching, patting, pinching, can be described as sexual harassment. Unwelcome remarks, jokes or innuendos, verbal abuse, taunting, displaying of pictures, unwelcome requests, leering, gender based insults or sexist remarks, comments about a person's looks, dress, appearance or sexual habits could constitute sexual harassment.

183. It is extremely important for employers to define sexual harassment in their Policy Statement to avoid ambiguity as to acceptable and unacceptable behaviour. See: Sexual Harassment In the Workplace, supra

Sexual Harassment - Two Types:

184. England, Christie & Christie in their text, Employment Law in Canada, supra, indicate sexual harassment can occur in two forms. The first category arises where sexual favours are solicited in exchange for conferring an employment-related benefit or for withholding an employment-related penalty and the second category arises where the workplace atmosphere is "poisoned" by sexually-related remarks or conduct. Some of the authorities refer to these categories as, first, the *quid pro quo,* where tangible benefits or negative consequences are attached, and, second, the conditions of work category or, in other words, negative work environment. Aggarwal in his text,

Sexual Harassment in the Workplace, supra, at page 10, has divided sexual harassment behaviours into two groups, namely, sexual coercion and sexual annoyance. He defines sexual coercion to mean "*sexual harassment that results in some direct consequence to the worker's employment status or some gain or loss of tangible job benefits*", while he defines sexual annoyance to be "*sexually related conduct that is hostile, intimidating, or offensive to the employee, but nonetheless has no direct link to any tangible job benefit or harm.*" Sexual annoyance creates a negative work environment and makes it a term of employment that the worker endure the particular environment. Sexual annoyance has been further divided into two sub-groups: firstly, persistent requests for sexual favours which are consistently refused; and, secondly, all other conduct of a sexual nature that demeans or humiliates a person, such as sexual taunts, provocative comments and gestures, and sexually offensive physical contact.

185. The two forms of sexual harassment which have been referred to herein have also been approved by arbitration case authorities. See: *Re Canadian Union of Public Employees and Office and Professional Employees' International Union, Local 491 (1982), 4 L.A.C. (3d) 385 (Ontario - Swinton, Chair, Bardos, Vickers)* at page 399; *Re Canadian National Railway Co. and C.B.R.T. & G.W. (1988), 1 L.A.C. (4th) 183 (Canada - Picher)* at page 196.

186. In *Janzen v. Platy Enterprises Ltd.*, supra, the Supreme Court of Canada affirmed that sexual harassment can take a variety of forms, one of which creates an economic loss for the victim for failing to submit to the sexual demands, while others do not involve any rewards in relation to the behaviour. At pp. 1282, Dickson, C.J. wrote:

> *Emerging from these various legislative proscriptions is the notion that sexual harassment may take a variety of forms. Sexual harassment is not limited to demands for sexual favours made under threats of adverse job consequences should the employee refuse to comply with the demands. Victims of harassment need not demonstrate that they were not hired, were denied a promotion or were dismissed from their employment as a result of their refusal to participate in sexual activity. This form of harassment, in*

> *which the victim suffers concrete economic loss for failing to submit to sexual demands, is simply one manifestation of sexual harassment, albeit a particulary* [sic] *blatant and ugly one. Sexual harassment also encompasses situations in which sexual demands are foisted upon unwilling employees or in which employees must endure sexual groping, propositions and inappropriate comments, but where no tangible economic rewards are attached to involvement in the behaviour.*

187. Aggarwal, in his text Sexual Harassment in the Workplace, supra, continues to suggest that sexual harassment falls into either category, *i.e.* sexual coercion or sexual annoyance. However, as noted in *Janzen v. Platy Enterprises Ltd., supra*, rather than put labels to the harassment in question, it is agreed that there are situations that qualify as sexual harassment where no tangible economic rewards are involved.

Sexual Harassment - Elements

Intention:

188. There has been a basic difference in the approach taken by human rights tribunals in dealing with sexual harassment and the approach that is taken by some arbitrators in determining whether or not an employee should be disciplined as a result of sexual harassment. The human rights tribunals generally determine sexual harassment on the basis of the behaviour and its perception, rather than the motive and design of the harasser. On the other hand, some labour arbitration boards have taken intention into account in order to determine whether or not the conduct in question constitutes sexual harassment.

189. The case of *Re Government of the Province of Alberta (Department of Social Services and Community Health) and Alberta Union of Provincial Employees (1983), 10 L.A.C. (3d) 179 (Alta.)*, concerned allegations of sexual harassment which included touching one employee on the inside of her leg, touching another employee by putting his arm around her waist and, on occasion, her breast area, and putting his arm around a third employee and patting her derriere. In reinstating a grievor, who had been dismissed, one of the factors in the Board's determination appeared to be the fact that the acts of the grievor were not intentional, wilful or malicious and that the conduct was not

intended as such. While the Board held the conduct caused a great deal of distress for one employee, the Board characterized the behaviour as inappropriate, but held it was not sexual harassment. A contrary view in relation to intention was expressed in *Re Rocca Group Ltd. and Muise (1979), 102 D.L.R. (3d) 529 (P.E.I.S.C. In Banco)*; leave to appeal to the Supreme Court of Canada denied November 20, 1979. Chief Justice MacDonald held that discrimination as defined in the *Human Rights Act*, *supra*, did not depend on intent but rather depended on the result. The same conclusion was reached by the Supreme Court of Canada in *Ontario Human Rights Commission and O'Malley (Vincent) v. Simpson-Sears Limited et al., [1985] 2 S.C.R. 536,* where it was held that proof of intent to discriminate is not necessary and should not be a governing factor in construing human right legislation.

190. More recently, the issue of intention has clearly been addressed in the case of *Robichaud v. Canada (Treasury Board), [1987] 2 S.C.R. 84*. There, the Supreme Court of Canada held that motives or intention of those who discriminate are not central to the concern of the *Human Rights Act*. It was held that the *Act* is remedial without concern for motives or intention.

191. In light of the above-noted authorities, it would appear that intention should play little or no part in my determination of this issue. It is the conduct in question that I should be concerned with, and not whether or not Griffin had any intention to sexually harass the individuals in question.

Unwelcome:

192. Generally speaking, for an incident to be determined to be sexual harassment, the sexual encounter must be unsolicited and unwelcome. The text authorities clearly demonstrate that the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected sexual advances may well be difficult to discern. However, it is only when the conduct is unwelcome that it becomes unlawful.

193. It has been stated in *Henson v. City of Dundee, 682 F. 2d 897, (U.S. Court of Appeals 11th Cir. 1982)* that the general definition of "unwelcome" means that the individual did not solicit

or incite the conduct and that the conduct was regarded by the individual as undesirable. The authorities suggest that the complainant is generally expected, expressly or implicitly, to make it known to the individual that his/her sexual advances are unwelcome. However, verbal protest is not always necessary, and in some cases, a failure to respond may be sufficient or actions by themselves may demonstrate that the conduct is unwelcome. In this regard, Aggarwal in his text Sexual Harassment in the Workplace, supra, has stated the following at page 69:

> *... It is sufficient for the complainant to establish that she by her conduct or body movement or body language conveyed to the perpetrator her disapproval of his advances. Where a complainant attempted to evade the harasser as much as she could, it was found that the conduct was unwelcome although no verbal protest was made. Thus, it is sufficient for the complainant to establish that she, in a non-verbal way, let the harasser know by moving quickly or just trying to avoid him that she did not like what he was doing.*

194. Although certain authors have suggested that body movement or body language may be sufficient to let a person know that the conduct was unwelcome, a contrary view has been expressed in the *Re Ottawa Board of Education and Ottawa Board of Education Employees' Union (1989), 5 L.A.C. (4th) 171 (Ont. - Bendel)*, where the arbitrator stated at page 180-181:

> *While this objective standard may have its place in the Human Rights Code, 1981, I have serious doubts as to the appropriateness of such a test in the context of employee discipline. ... The employee who is disciplined for conduct which he did not realize was unwelcome but which the reasonable person would have realized was unwelcome is being blamed, in effect, for a lack of sensitivity to signals from the "victim" of the harassment. I do not believe that a grievor's failure to detect subtle indications that his advances are unwelcome and offensive provides a basis for discipline.*
>
> *Since I am not satisfied that the grievor had actual knowledge that his attentions to Ms. R were unwelcome, I must conclude that the charge of sexual harassment has not been proved.* [Emphasis added]

195. The case of *Shiels v. Saskatchewan Government Insurance, [1988] S.J. No. 184 (Sask. Q.B.)* is insightful in relation to this issue of unwanted or unwelcome. Although he had made a sexual advance, when she indicated it was unwelcome, he did not persist. In relation to the word

"unwanted", the court held that the "sexually-oriented practice must be unwanted by the person being harassed, and known to be unwanted by the person who is harassing".

196. The incident in the above-noted case concerned various acts of touching by Shiels that occurred when the two had attended a conference. They had returned to their hotel and he got off at her floor to set her alarm to awaken her the next morning. After setting her alarm, Shiels put his arms around Mrs. Jorde, gave her a hug, took her face in his hands and kissed her on the lips. She pushed him away firmly and told him he had been away from home too long and he returned to his own room. Apart from pushing him away and saying what she did, she said nothing either that evening or the next morning. She did not tell him that his advance deeply offended her or that she was embarrassed and annoyed. It was held that the sexual advance did not, in the absence of any indication from the complainant that it was unwanted, constitute sexual harassment. While Shiels did make a sexual advance to Mrs. Jorde, the complainant, when she made it clear it was unwelcome, he did not persist. In addition, there was evidence of touching other employees which consisted of resting his hands on his fellow employees shoulders, or the back of their necks or various other acts of touching, such as an arm around the shoulder. It was held that the other conduct was devoid of sexual connotation. MacLean, J. held the sexual advance did not constitute sexual harassment and he indicated at page 6 of the decision:

> *I have alluded to the fact that at no time prior to his termination, apart from the incident in the hotel room, did the complainant show, in any fashion, that she found the plaintiff's actions offensive. I think common sense dictates that if one person finds the actions of another annoying or vexing, that person should say so. I am convinced that if Mrs. Jorde had told Mr. Shiels, at any time, that she didn't want him touching her, he would have complied with her wishes and borne her no ill will.* [Emphasis added]

Standard to be Judged By:

197. What may be offensive to one person may not be offensive to another. As previously noted, to one person, an arm around the shoulder could be considered offensive and harassing, whereas to another it might be considered as a gesture of affection. See: Sexual Harassment in the Workplace, supra. However, the standard that a person must be judged by is the objective standard,

namely, that of a reasonable person. Aggarwal in his text, Sexual Harassment in the Workplace, supra, has stated at page 73:

> *Of course, the standard of "reasonable person" must be applied to the determination of whether the challenged conduct is of a sexual nature. Similarly, in determining whether harassment is sufficiently severe or pervasive to create a "hostile or poisonous" environment, the harasser's conduct should be evaluated from the objective standpoint of "reasonable person". However, the objective standard should not be applied in a vacuum. The adjudicators should give consideration to the context in which the alleged harassment took place. The trier of fact must "adopt the perspective of a reasonable person's reaction to a similar environment under similar or like circumstances".* [Emphasis added]
>
> *At the same time, the "reasonable person" standard should consider the victim's perspective and not stereotypical notions of acceptable behaviour. For example, the workplace where sexual slurs, displays of "girlie" pictures, and other offensive conduct abound can constitute a hostile work environment even if many people deem it to be harmless or insignificant.* [Emphasis added]

198. Similarly, in *Re Canadian Union of Public Employees and Office and Professional Employees' International Union, Local 491, supra*, there were suggestions of physical sexual advances (putting his face to her neck and telling her she smelled nice, a "tummy rubbing incident", a finger in cleavage, and an attempt to touch her breast), and verbal suggestions of sexual intercourse which incidents spanned a period of approximately seven years. The Board held that the evidence of physical contact and propositions were objectively offensive and that a reasonable woman would undoubtedly find the sexual propositions, the touchings and the chasing around the desk as unwelcome. While there was evidence of sexual harassment prior to 1979, it was difficult to find any evidence thereafter. It was held that although there was a difficult working relationship which caused the grievor anxiety, it did not amount to sexual harassment.

199. On the other hand, in *Zarankin v. Johnstone c.o.b. as Wessex Inn (1984), 5 C.H.R.R. D/2274 (B.C. - Smith)*, the harasser frequently hit a 17-year-old on the "bum", tapped her on her head, put his hand around her shoulder, and made suggestive comments to her although she did not respond to the harasser. The verbal comments and the physical contact occurred once or twice a

week, and a number of times during a shift. The Board of Inquiry held a reasonable person would have known the behaviour was unwelcome and the complainant did nothing to invite or encourage the action. The complainant attempted to avoid the physical and verbal advances without ever making a direct statement to the alleged harasser. Despite the absence of a direct statement, there was no reasonable basis upon which the harasser could have concluded that she enjoyed or invited his conduct or she tolerated it for any reason besides the fact that she was his employee. The Board accepted her evidence that she believed that saying anything would affect her continued employment and held that her belief was reasonable in the circumstances. The above noted case was affirmed by the British Columbia Supreme Court, reported as *Johnstone c.o.b. as Wessex Inn v. British Columbia (Directors of Human Rights Commission), supra*.

200. A comment about one's legs might be perceived as a compliment by one and an insult by another. While it depends on the circumstances, it is still the objective standard that must be utilized, although it may be the objective standard in relation to a specific individual. As was stated in *Aragona v. Elegant Lamp Co. Ltd. et al, supra*, at page D/1113:

> *However, in the present case, the proven conduct was freely accepted and enjoyed by the other employees. In the circumstances, it could not "reasonably be perceived to create a negative psychological and emotional work environment". Where there is general acceptance but where an individual employee does not care to participate, that feeling should be expressed directly and unambiguously. The objective standard could then be applied to that individual in light of the additional fact of expressed disapproval.* [Emphasis original]

201. Applying the law noted above to the facts of the case before me, I must ultimately determine whether or not the conduct in question is of a sexual nature, whether or not it was unwanted and unwelcome, and this must be in accord with a standard of reasonableness.

Physical Conduct:

202. Not all physical conduct would constitute sexual harassment as the conduct in question must be of a sexual nature. Physical contact (which would involve actual physical contact with the

victim) can range from what one might consider irritating, to what another considers sexual harassment, to what may constitute criminal behaviour. Some behaviour would be explicitly sexual, while other conduct might be accidental. There is some physical conduct which would clearly constitute sexual harassment where other conduct would be very borderline. The range of physical conduct that may constitute sexual harassment could include inappropriate touching, such as patting, pinching, stroking or brushing up against the body, hugging, mauling, kissing, fondling, as well as assaults, coerced sexual intercourse, attempted rape or rape.

203. In the case before me, the physical conduct in question is the allegation by Cst. A that Griffin touched her back, moved his hand up and down her back and rubbed his hand in a circular motion on her back. Griffin denies that he rubbed her back although he does admit touching her shoulder and/or her back to draw her into the conversation that was occurring. Cst. A stated this touching occurred during a meeting which lasted 5 to 10 minutes at the Lobster Carnival Grounds. Griffin and Cst. Rioux stated the meeting lasted less than a minute and the touching would have occurred for a few seconds.

204. The authorities vary in terms of what will constitute sexual harassment. In *Re Government of the Province of Alberta (Department of Social Services and Community Health) and Alberta Union of Provincial Employees*, *supra*, an employee who was dismissed for allegations of physical contact, grieved the dismissal. As previously noted, the employee touched three individuals. One was touched on the inside of her leg, another was touched around the waist and on occasion, her breast, a third was patted on the derriere. While the conduct was labelled as inappropriate, it was held not to cross the line to sexual harassment. In *Shiels v. Saskatchewan Government Insurance*, *supra*, it was not sexual harassment for an

individual to rest his hands on fellow employees' shoulders, on the back of their necks, or an arm around the shoulder as the touching was devoid of sexual connotation.

205. On the other hand, in *Re Canada Post Corporation and Canadian Union of Postal*

Workers (1983), 11 L.A.C. (3d) 13 (Canada - Norman), the grievor was a full-time postal worker at a Calgary mail processing plant. She alleged that at approximately 4:30 a.m. as she was working with airmail bags, getting them weighed and tied and was standing in front of a large floor scale which required her to bend over from the waist as she tied the top of the bag, she felt hands on her hips, coupled with bodily pressure on her buttocks. The incident was over in less time than it takes to tell about it. Her supervisor, who was responsible for the conduct in question, just continued on his way and the grievor said nothing. The grievor later spoke to her boyfriend who indicated she could file a grievance, which she did a few days later. The supervisor denied the allegation. In holding that the incident took place, the arbitrator noted that grievor did not display any hint of malice towards the supervisor, that she had disclosed the incident immediately and there was corroborating independent evidence from one of her co-workers. The Board held that it was a single act and that it was intimate physical contact on the part of an immediate supervisor. As such, it was held to constitute sexual harassment.

206. In *Re North York (City) and C.U.P.E., Loc. 94 (1990), 16 L.A.C. (4th) 287 (Ontario - Burkett)*, four female summer employees complained that a male employee made sexist jokes about women, stood very close to women when he talked to them, he put his hand on the knee of one employee on several occasions, touched another on the shoulder or arms when he talked to her, leered at the women and made various other comments to them. The employee was terminated for sexual harassment and he grieved the discharge. The Board held that the touching of the knee along, with the other numerous incidents related, fell into the category of sexual annoyance or poisoned work environment harassment. The contact in relation to the knee and shoulder and standing too close was described as "peripheral sexually offensive physical contact". The conduct was considered objectionable but not warranting of dismissal. As such, he was reinstated to his position but with no retroactive pay.

207. In *Re Miracle Food Mart and U.F.C.W., Loc. 175 and 633, supra*, a grievor placed his hands on the complainant's hands, massaged her neck and shoulders until she told him to stop, returned and brushed against or touched her breasts and touched her in the genital area. When

management became aware of the incident, the grievor was terminated after investigation. The Board upheld the discharge and held that the physical touching effectively constituted a sexual assault.

208. A case that has some relevance to the issue at hand is the case of *Re Canada (Treasury Board--Employment & Immigration) and Broomfield (1989), 6 L.A.C. (4th) 353 (Canada - Young)*. There, a female employee made allegations that her supervisor touched and fondled the base of her neck, her shoulders and the back of her hair, just above the shoulders a total of fifty times over the course of a year. The employee stated that she was favoured in job assignments. A sexual harassment policy was in place. The grievor admitted he touched the employee's hair on one occasion and he also admitted that he made a mock attempt to choke another employee, and in doing so, had touched that employee's neck, although no complaint was made. The grievor never explicitly, directly, or openly mentioned or suggested a sexual liaison; however, the employee felt that the touching of her hair and the alleged comments about her dress were indications that her supervisor had a sexual interest in her. She filed a grievance a year after the alleged conduct took place and after she had lost a chance for a promotion. In denying the grievance, the arbitrator noted that the employee had not voiced her concern until after she had lost an opportunity. The arbitrator held that the standard of judging the conduct was an objective one, the grievor had not met the onus, and the alleged conduct in question fell far short of that required. The arbitrator stated the following at pages 370-371:

> *... While it may well be that Ms. Broomfield has convinced herself that she has been the victim of sexual harassment, I am unable to find that such is the case on an objective basis.*
>
> ...
>
> *I would, however, add one comment. It was not denied by Mr. Gariepy that he had on occasion reached out to touch his employees. He touched Ms. Broomfield's hair. He made as if to choke Ms. Nemeth. He did joke occasionally with employees and did discuss personal as well as business matters. The work place is not yet so sterile and unnatural an environment that such common human responses and conversations can no longer take*

> *place. However, as with most things, there are benefits and dangers, advantages and disadvantages. Comments and deeds can be viewed and understood much differently by the sayer/doer than by the recipient of them. Those, like Mr. Gariepy, who indulge from time to time in "familiar" practices in the work place environment ought to be aware that they leave themselves open to questions about their conduct and comments. While the work place may become more dull as a result, a "strictly business" approach may well be the safest course for all employees to steer.*

209. Before turning to the "poison work environment", I must review the law to determine whether or not a single incident would constitute sexual harassment or whether repeated and persistent sexual encounters are required. From my review of the authorities, it would appear that it depends on the seriousness of the behaviour. There is no doubt that a physical assault or a sexual touching would only have to occur once to constitute sexual harassment. This was the situation in *Canada Post Corporation and Canadian Union of Postal Workers, supra*, where the Board held that a single act of intimate physical contact by a supervisor constituted sexual harassment. (There, it must be noted that the decision involved a contest between the employee/victim and the employer - an employer which had been before the same arbitrator on a prior complaint and had failed to take remedial action in the interim). The comments in *Kotyk and Allary v. Canadian Employment and Immigration Commission and Jack Chuba (1983), 4 C.H.R.R. D/1416 (Canada - Ashley)*, where it was stated at page D/1430 are noteworthy:

> ...
> *The test of whether the advances are unsolicited or unwelcome is objective in the sense that it depends upon the reasonable and usual limits of social interaction in the circumstances of the case. The complainant should not need to prove an active resistance or other explicit reaction to the activity complained of, other than a refusal or denial, unless such might reasonably be necessary to make the perpetrator aware that the activity was in fact unwelcome or exceeded the bounds of usual social interaction. It is likely that a single unrepeated act is not harassment unless it results in the*

> *denial or removal of a tangible benefit available or offered to other persons in similar circumstances, or unless it amounts to an assault, or is a proposition of such a gross or obscene nature that it could reasonably be considered to have created a negative or unpleasant emotional or psychological work environment. A "normal" proposition or suggestion would probably not have this result. To this extent, the last-quoted paragraph in Bell, quoted earlier, is adopted. However, repetition of the otherwise unactionable conduct may constitute harassment when it can be reasonably be considered to have created a poisoned work environment.* [Emphasis added]

210. Finally, in relation to whether or not a single incident is sufficient to warrant a finding of sexual harassment, the comments of Bruce in *Re Western Star Trucks Inc. and I.A.M., Lodge 2710 (Demers) (1997), 69 L.A.C. (4th) 250 (B.C. - Bruce)*, at page 268 are relevant:

> *Notwithstanding the broad definition of sexual harassment adopted by Chief Justice Dickson, it is apparent that not all offensive or inappropriate sexually related conduct amounts to sexual harassment under the Human Rights Act. In the case involving a hostile work environment, where the conduct alleged to be harassment does not deprive the complainant of an employment benefit, human rights tribunals have generally required proof that the impugned actions are persistent or sufficiently severe to effectively alter the employee's conditions of employment. A single incident of offensive conduct, even though sexual in nature, does not create a hostile work environment unless it is extremely serious. In this regard, the B.C. Human Rights Commission has consistently adopted the following discussion contained in Sexual Harassment Claims of Abusive Work Environment under Title VII (1984), 97 Harv. L. Rev. 1449:*
>
> > *In order to establish a prima facie case of abusive environment sexual harassment, a plaintiff should have to prove that more than one isolated incident of sexually offensive conduct has occurred. Unlike quid pro quo sexual harassment, which may involve only a single incident (for example, firing or demotion for refusal to engage in sexual activity), abusive environments are characterized by multiple, though perhaps individually non actionable, incidents of offensive conduct. The greater injury results not simply from a single offensive act or comment, but from the risk of repeated exposure to such behaviour. Thus, a finding that offensive conduct is a condition*

> *of the workplace should require a showing that such conduct occurs with some frequency. Nevertheless, because the effect of only one or a few physical advances or threats may be as devastating as that of repeated sexual propositions or innuendoes, the threshold for determining whether there has been repeated exposure should vary merely with the offensiveness of the incidents [pp. 1458-9]* [Emphasis added]

211. It is evident that, while a single incident could constitute *quid pro quo* harassment, generally speaking it will not constitute a hostile working environment unless it is serious. On the other hand, in relation to dirty jokes or remarks, frequency is usually necessary in order to create an offensive work environment. This makes eminent sense, as a single insult would not likely create an impression in the employee's mind that he/she would have to endure such treatment as a condition of employment. See: *Watt v. Regional Municipality of Niagara and Wales (1984), 5 C.H.R.R. D/2453 (Ontario - McCamus)*. Accordingly, the arbitrator held that the single gesture did not form part of any pattern of conduct towards the female in question. However, while not finding any sexual harassment, the arbitrator was not prepared to let the incident go unpunished and ordered the grievor re-instated, but no retroactive compensation. The authorities indicate that a pattern of offensive conduct is usually required before the conduct will constitute sexual harassment. It would be stretching the imagination to conclude that a single minor incident creates an offensive condition of employment. Thus, unless the incident is quite severe, a single incident could not be held to create an abusive or offensive environment.

Poisoned Work Environment or Hostile Work Environment:

212. The whole concept of the poisoned work environment was first enunciated in the American case of *Bundy v. Jackson, 641 F. 2d 934 (D.C. Cir. 1981)*, but the terms that have often been used in Canada have been the "offensive work environment" or the "hostile work environment". In considering what might constitute a poisoned work environment, the authorities suggest that the evidence must be examined in each case and the decision maker must consider the perspective of a reasonable person's reaction in a similar environment. The "reasonable person" has subsequently been

interpreted by the American authorities to be the reasonable woman or man, depending on who is making the allegation, as that is the person who is then a member of a protected class.

213. Just exactly what constitutes a poisoned work environment has been the subject of numerous authorities. It has been stated that it arises where a "negative" work environment has been created. In Employment Law in Canada, supra, by England, Christie & Christie, the issue of the poisoned work environment was discussed. The authors stated, at pages 8.234-8.237:

> *Most of the borderline cases arise under the "poisoned work environment" doctrine. It is plain that liability can be based solely on verbal harassment; actual or threatened physical touching is not a prerequisite. For example, a commonly reported scenario is for a supervisor or fellow employee to make constant personal comments about a woman's' [sic] body and appearance, accompanied by repeated requests for a date and supposedly "witty" sexual innuendos. ... Similarly, making comments about how pregnant workers should be zapped with ray guns in order to minimize the costs to employers of accommodating their needs may constitute "sexual" harassment. As well, repeated comments to a female car salesperson that housewives do not belong in car selling has been held to constitute sexual harassment.* [Emphasis added]

> *... Furthermore, the British Columbia Council on Human Rights has held that there was no unlawful "discrimination" on the basis of sex here a supervisor treated both males and females* ***equally*** *as outrageously in his sexual profanities, foul gestures, demeaning comments and overall bullying and the claimant could not prove that she suffered any special harm over and above that sustained by her male work mates. Strangely, the Council was unwilling to deduce special prejudice from the fact that she bothered to file a complaint whereas her work mates did not. Presumably, this ruling could not be made in jurisdictions where the human rights statute specifically prohibits "sexual harassment" for, after Jantzen, the latter is generally understood as encompassing conduct which creates a "poisoned work atmosphere" whether or not the element of "discrimination" is present. In British Columbia, however, "sexual harassment" complaints must be brought under the rubric of the general statutory ban on sex "discrimination".* [Emphasis original]

> *This difference in statutory language seems to explain the apparently contradictory ruling of an Ontario Board of Inquiry that the presence of a*

workplace culture in which sexual taunts and obscene language universally acceptable does not afford a defence against "sexual harassment" if the work environment of any ***particular*** *complainant is thereby "poisoned". It is not unlawful, however, to ask a perspective employee during an interview how she would react to a hypothetical occurrence of sexual harassment.* [Emphasis original]

...

To establish liability for either the ***quid pro quo*** *or the "poisoned work environment" form of sexual harassment, the complainant must generally make it known to the perpetrator that she or he objects to the behaviour in question. However, it has been held that if the perpetrator ought reasonably to have known, in the circumstances, that his or her conduct was unwelcome to the employee, constructive knowledge on his or her part will ground liability. Thus, in one case, constructive knowledge was held to suffice in the absence of a formal complaint by the employee where the perpetrator was the owner/manager of the company and, in another case, where the perpetrator was a close personal friend of the owner/manager. The tribunals in both cases reasoned that the employee could not be expected to file a formal complaint with the owner in these circumstances.* [Emphasis original]

If the employee has, in the past, participated willingly in sexual behaviour in respect to which a complaint is subsequently lodged, the employee will be estopped from objecting to the behaviour in question on a later occasion. However, once the employee lets it be known to the perpetrator that he or she objects to the continuation of the behaviour, then a complaint of sexual harassment will succeed in relation to behaviour that persists after the objection. If an employee in the past has willingly accepted sexual conduct on the part of one or more persons, other persons are not excused on that ground alone if they harass the employee - the employee does not have to accept sexual conduct from everyone just because he or she accepts it from some.

214. One of the first cases in Canada to deal with this issue of poisoned work environment was the case of Howard and Broda *v.* Lemoignan and Econo-Car Canada Ltd. *(1982), 3 C.H.R.R. D/1150 (Alta. - Welsh).* There, two women, working for a car rental agency, complained about the work place language. The harasser used sexual, demeaning and vulgar language, as well as suggesting that the employees wear tighter clothes and appear for work without bras. The Board of

Inquiry found that there was a general atmosphere in the workplace that was more suited to an all male tavern or lumber camp than to an office where there are staff of both sexes. The Board concluded that "the discomfort that these complainants experienced does not go far enough to constitute an affront to their dignity, nor does the treatment they received go far enough to constitute sexual harassment". However, the Board held that the behaviour was not acceptable and the finding was made that he behaved in a crude and rude manner which probably offended the complainants.

215. A good discussion on sexual harassment, especially in relation to the work environment can be found in the case of *Watt v. Regional Municipality of Niagra and Wales, supra*. The facts concerned an individual who was admittedly biased against women working in his area and who had made offensive remarks to one individual. Arbitrator McCamus held that the remarks and jokes did not occur with sufficient frequency to create an abusive atmosphere. In relation to this issue, he stated at page D/2467:

> *20399 ... [I]t is my view that if a breach of Section 4 is to be established, insults or taunting of this kind must, through a combination of offensiveness and frequency, reach a level at which the victimised employee reasonably believes that continued exposure to such conduct is a condition of the job and it must also be the case, of course, that other employees are not subject to the same condition. In my view, the evidence in the present case fails both branches of this test.* [Emphasis added]
>
> *20400 First, it is not at all clear that offensive remarks or jokes were reserved for the complainant. Considerable evidence was led with respect to the general roughness and profanity of the working environment. Indeed, Mr. Wales indicated that he felt it was easier to deal with some of the male troublemakers because he could speak more roughly to them but felt he could not use profane language in dealing with female employees. Counsel for the complainant and the Commission argued that the two episodes concerning the offensive odour and the "passion pills" were obviously discriminatory and they were dependent on gender for their humour, however questionable the "humour" may have been, and that it was therefore clearly the case that the same "jokes", as it were, could not be made about male employees. I am not at all satisfied, however, that male employees were not often the butt of rather similar humour. Although there was not much explicit evidence on this point, the general evidence concerning the workplace environment strongly suggests that this was so.* [Emphasis added]
>
> *20401 Assuming, however, for the sake of thoroughness, that there was no*

> *analogous taunting of male employees, it is not my view that the frequency and offensiveness of the remarks of Mr. Wales and Mr. Brady meet the threshold necessary for contravention of Section 4. Some of the remarks lose some of their offensiveness when placed in the context of Mr. Wales' concerns about the complainant's use of profane language. The two "jokes" in question are, of course, quite offensive but they do appear to be isolated incidents rather than part of a continuing pattern of verbal harassment through the use of profane humour. I have no doubt, however, that conduct of this kind could pass the threshold of the Section 4 test if it occurred with significantly greater frequency or if it were continued in the face of objections articulated by someone in the complainant's position. On the present facts, however, it is my view that the test has not been met and no contravention of Section 4 of the Code has occurred.* [Emphasis added]

216. It is evident that frequency is generally required before a hostile work environment would be found to exist. Commenting on the case noted above, Aggarwal stated in Sexual Harassment in the Workplace, supra, at page 115:

> *... Dean McCamus in Watt v. Regional Municipality of Niagara rejected this interpretation of Chairperson Shime's above comments he suggested that a single incident could not form sex discrimination and quoted Chairperson Shime's [in Cherie Bell v. The Flaming Steer Steak House Tavern Inc. (Ont. 1980) 1 C.H.R.R.D./1555 (Shime)] words that "it is only when the language or words may reasonably be construed to form a condition of employment that the Code provides a remedy." He explained that "it would be very unusual indeed to find a situation in which a single insult could be reasonably construed to create a condition of employment in the sense, presumably, that one must be prepared as an employee to endure such insults as a feature of the working environment." However, it may constitute sexual harassment if the remarks constitute sexual solicitation or advances or some other extremely offensive situation from which an employee would reasonably conclude that continuing exposure to verbal harassment would be a feature of the working environment. Thus, it is the combination of frequency and offensiveness (gravity of offence) which warrants the inference that exposure to such conduct was a discriminatory condition of employment.*

217. The poisoned work environment can, but need not, involve physical acts. It exists when an individual is required to work in an environment and suffer indignities therein. This could result from being subjected to crude or bad jokes, providing that such creates a condition of

employment and undermines the employee's dignity. The work environment becomes unpleasant or unbearable to the victim due to hostility or insults. No harm need be demonstrated, although harm is often shown and discomfort is often felt by the employee. See: Sexual Harassment in the Workplace, supra.

218. In dealing with this issue of a poisoned environment, Aggarwal in his text Sexual Harassment in the Workplace, supra, stated, in relation to sexual harassment the following at page 61:

> *Thus, briefly summarized, sexual harassment is a form of discrimination based on sex. It occurs when a person is disadvantaged in the workplace as a result of differential treatment in the workplace. It is an unwarranted intrusion upon the sexual dignity of a person. It consists of acts that are unwarranted, unsolicited, and unwelcome. It can be overt or subtle. Even if the nature of the harassment is not physical, it can still be considered to be sexual harassment if it creates a poisoned environment, even if there is no economic consequence such as loss of one's job, loss of seniority, or economic consequence of a similar nature. It is also clear that even if it might be considered that what has occurred is sexual banter, common to the workplace, if a person finds it objectionable and makes it known in clear and precise terms that such actions are not acceptable to such person, then that is the standard of behaviour that is established* ***vis-à-vis*** *that person.*
> [Emphasis added]

219. In relation to this issue of sexual banter, in some circumstances, it is difficult to draw the line between what is humour and conduct which creates an offensive environment. As noted in *Aragona v. Elegant Lamp Co. Ltd. et al*, supra, sexual references which are crude or in bad taste do not in and of themselves constitute sexual harassment. At page D/1112 of that case, it was stated:

> *There is no doubt that considerable "banter" and "teasing" occurred. There is also no doubt that there were many comments with sexual connotations. However, the evidence indicates that the employees were willing participants who enjoyed the atmosphere and who "gave" as much as they "took". ...*

220. A case which has some relevance is the case of *Re Famz Foods Ltd. (Swiss Chalet)*

and Canadian Union of Restaurant Employees, Loc. 88 (1988), 33 L.A.C. (3d) 435 (Ontario - Roberts). There, an employee was dismissed and he grieved his dismissal. He was a high school student who had been employed as a busboy/dishwasher on a part-time basis in a restaurant kitchen. He grabbed his genitals and thrust his hips forward in the presence of a 45-year-old female bartender/cashier. The arbitrator held that a single gesture did not form part of any pattern of conduct towards the female in question and, although not finding any sexual harassment, the arbitrator was not prepared to let the incident go unpunished. The arbitrator ordered the grievor reinstated but without retroactive compensation. At page 441, arbitrator Roberts stated:

> *Sexual insults and/or propositions become prohibited sexual harassment under this provision [Ontario Human Rights Code] when they form part of a pattern which creates a negative working environment, i.e., "a condition of employment" discriminating against an employee because of her sex: see Re C.U.P.E. and O.P.S.E.U., Loc. 491 (1982), 4 L.A.C. (3d) 385 (Swinton) at pp. 399-401, for an excellent discussion of this kind of "conditions of employment" sexual harassment.*
>
> *All of the sexual harassment cases to which I was referred by counsel dealt specifically with allegations of a pattern of behaviour: see Re C.U.P.E., supra; Re Bell and Korczak (1980), 27 L.A.C. (2d) 227 (Shime); and Re City of Nanticoke and C.U.P.E., Loc. 246 (1980), 29 L.A.C. (2d) 64 (Barton). None addressed the situation presented in this case, i.e. a single sexual gesture which insulted the pride of a female co-worker.*
>
> *This single gesture did not form part of any pattern of conduct toward Ms. Uz. According to her evidence, she never before had been the recipient of this kind of gesture from either the grievor or his co-workers in the kitchen. Nor was there any evidence that in the month which passed before the grievor was discharged, he repeated the gesture. From all of the evidence, it seems that the kitchen staff limited their horseplay to themselves and waitresses in their own age bracket who, as the grievor said, would take their comments and gestures as nothing more than jokes. And while this pattern of sexually oriented horseplay might carry with it the potential for a claim of sexual harassment by a waitress who was repeatedly subjected to it and reasonably viewed it as unwelcome, it is important to recognize that this pattern is not on trial in the present case. Only the single gesture that the grievor made toward Ms. Uz is at issue. And this single gesture falls far short of the forbidden categorization of sexual harassment.*

221. In determining whether or not crude language amounts to sexual harassment, certain

factors should be considered. Aggarwal has stated in Sexual Harassment in the Workplace, supra, at page 92 in relation this issue:

> *It follows then that in determining whether or not the use of crude and profane language in a particular case amounts to sexual harassment, the following factors should be considered:*
>
> *1. the working environment of that particular business or work*
> *2. reciprocity by the employees*
> *3. expressed disapproval by the complainant and*
> *4. whether or not the incidents were isolated.*

222. There are several cases where crude language has been held not to constitute sexual harassment. In *Rack v. The Playgirl Cabaret et al (1985), 5 C.H.R.R. D/2857 (B.C. - Verbrugge)*, the British Columbia Human Rights Council found that foul and crude language that had been used by the employer in front of the employees was not sexual harassment. The conclusion was based primarily on the fact that while the employer did use foul and profane language with his employees in the club after work, the majority of employees reciprocated in a like fashion. Additionally, the employer used equally foul language with his male employees and others, and as such it was found not to constitute sexual harassment. In *Re Canadian Union of Public Employees and Office and Professional Employees' International Union, Local 491, supra*, it was held that crude and insensitive comments are not sexual harassment. It was also stated that if a woman finds those comments distasteful, she should make it known. In that case, there was no policy on sexual harassment in place. In *Hopps v. Windsor Mold Inc. (1996), Carswell Ont. 3170 (Ont. H.C.)*, an employee was dismissed for sexual harassment for making comments about female employees being sexually aroused, commenting on the bikini a female wore and making comments to female employees. Male and female employees both made sexual jokes and used foul language in the workplace. In allowing an action for wrongful dismissal, the trial judge said the employees behaviour had to be considered in terms of the culture of the workplace; sexual jokes and foul language were held to be part of the workplace culture. The employee's conduct did not constitute sexual harassment, or if it did, it was a milder form not deserving of dismissal.

223. Finally, there is the case of *Robichaud v. Canada (Treasury Board), supra*. There, a lead hand on the cleaning staff had filed a complaint with the Human Rights Review Tribunal alleging sexual harassment by her supervisor and by her employer, the Department of National Defence. Her complaint was dismissed at the Tribunal level. A Review Tribunal held that the supervisor was guilty of sexual harassment and found both the supervisor and employer liable for creating a poisonous work environment. The Federal Court of Appeal upheld the finding insofar as the supervisor was concerned but overturned the finding holding the Department of National Defence liable. The nature of the acts in question included propositioning the worker, questioning her about intimate details of her relationship with her husband, and extremely intimate sexual acts. The Supreme Court of Canada allowed the appeal and held that the Department of National Defence was also liable. The Court also held that the legislation is concerned with the effects of discrimination, rather than its causes or motivation.

224. *Re Western Grocers and U.F.C.W. Loc. 1400 (1993), 32 L.A.C. (4th) 63 (Priel)* included a listing of factors to be considered. Some of those factors were: the nature and gravity of the misconduct; mitigating factors; whether it is an isolated incident versus repeated misconduct; whether or not other employees have been involved in similar misconduct were disciplined; the employer's tolerance, inaction, or condonation of the sexual harassment or horseplay in the workplace; the grievor's demeanor and attitude during the hearing; and the principles of progressive discipline.

225. The above noted authorities appear to demonstrate that the frequency and severity of the incidents are to be considered. In order to create an offensive work environment, it is felt that frequency is usually necessary. It is unlikely that a single insult would create an impression in the employee's mind that he or she would have to endure such treatment as a condition of employment. See: *Watt v. Regional Municipality of Niagara, supra*. Additionally, the working environment in question is to be considered, as well as whether or not the conduct is reciprocated and whether or not disapproval was expressed. In addition, the discomfort or loss of dignity must be evaluated in light of whether or not the conduct was such to constitute a condition of employment. Having

reviewed the foregoing, if something detrimentally affects the work environment, there is no question but that it might create a hostile work environment. In Sexual Harassment in the Workplace, supra, it was stated that if the sexual harassment is repetitive, it has the effect of creating an offensive or poisoned work environment and often drives the victim away from his or her job by attacking his or her dignity and self-respect, both as an employee and as a human being.

Analysis:

226. I wish to reiterate that I was appointed to deal only with the charges before me. I was not appointed to inquire into any other circumstances involving Griffin and/or the City. Although my attention was drawn to certain issues as for example, the background of Griffin's current situation, as well as the circumstances regarding the disclosure of the sexual harassment allegations, I have no authority or jurisdiction to deal with these matters. My jurisdiction is limited solely to determining whether or not Griffin is guilty of the allegations made against him and whether or not those allegations constitute a violation of the Rules and Regulations.

Employer's Obligation:

227. When an employer becomes aware of an allegation of sexual harassment against one of its employees, the employer is required to deal appropriately with the situation. This is one reason why a Sexual Harassment Policy in the workplace is required. In relation to the need for a Sexual Harassment Policy, it has been stated in *Re Western Star Trucks Inc. and I.A.M., Lodge 2710 (Demers), supra*, at page 273-274:

> ...
> *Nevertheless, a few comments may assist the parties in future cases of this nature. One of the fundamental purposes of a sexual harassment policy is to provide a more acceptable means of resolving these kinds of disputes. Sexual harassment complaints are taken outside the mainstream of grievance resolution because often these cases involve very private, sensitive issues that are ill-suited to the adversarial model of dispute resolution. For this reason, the first objective of the advisors is to resolve the complaint informally without resort to a formal investigation that will undoubtedly compromise the privacy of the complainant as well as the alleged offender. While the Grievor's case was anomalous, in that many people in the plant saw the poster, there was only one complaint filed. The advisors should have attempted to resolve the complaint between the Grievor and Mr. Oliver before commencing an investigation under the Policy.* [Emphasis added]

228. The employer has a legal obligation to investigate complaints immediately. Normally, the investigation would be private and confidential and consider the sensitivities of the situation. While a person who is guilty of harassment should receive appropriate disciplinary action in fulfilment of the employer's obligation to protect employees from sexual harassment and provide a healthy work environment, care must be taken to be fair to both the accuser and the accused at the investigative stage. Once a person has denied the complaint, there should be an investigation and analysis to see whether or not the complaint was motivated by malice or a collateral grudge. The employer must be mindful that a charge of sexual harassment is a serious allegation and carries a stigma in today's society.

229. The authorities have stated that employers who are faced with allegations of sexual harassment should do certain things which include: investigating the complaint; respecting the confidentiality of the complainant (subject to providing the alleged harasser with a detailed account of the alleged occurrences); investigating the complaint in a non-judgmental manner; keeping both parties updated on the progress of the investigation; utilizing mediation services, if that would be helpful; and, finally, disciplining the harasser, if that is required. See: Employment Law in Canada, Vol I, supra, at p. 8.240-8.242.

230. Other authorities have suggested that the employer should first start by meeting with the complainant to determine what remedy she requires. Often, the employees will be satisfied with an apology from the harasser and a commitment not to repeat the behaviour. It is also suggested that the employer should always speak to the harasser to obtain his version of events and report back to the victim in relation to the steps taken to deal with the harassment. See: Sexual Harassment in the Workplace, (Toronto: MPL Communications Inc., 1997)

231. The City has suggested that it fulfilled its obligation to protect its employees and investigated once it became aware of the allegations against Griffin. The City argued that once Grimes disclosed the Lobster Carnival incident, the City had an obligation to investigate and, with that statement, I have no difficulty. In fact, that principle is in accordance with the statements made

by me on August 10, 1999.

232. However, there are some issues surrounding the investigation that concern me. They include: the fact that there was no disclosure made about the Lobster Carnival incident for in excess of one year and it was disclosed during a time when Griffin was awaiting a disciplinary hearing in relation to charges of Insubordination; the fact that the story related by Grimes to Arsenault was found to have "serious flaws" in it; the fact that Cst. A confirmed the version given to the City by Grimes was not accurate; the fact that Cst. A did not want to be the complainant; did not believe she was the complainant and was not interested in becoming involved in a sexual harassment case; and the fact that Arsenault did not know who the complainants were on September 15, 1998. Given that Cst. A was not going to be the complainant, which is confirmed by the notes Arsenault took at a meeting with Cst. A on August 17, 1998, and is also confirmed by the evidence given by Cst. A during the hearing, given that the version related by Grimes was found to have "serious flaws", all of which was determined prior to September 2, 1998, leads me to wonder on what basis anyone was appointed on September 15, 1998 to investigate the allegations in relation to the Lobster Carnival incident.

233. Add to the foregoing, the statement read to the City Council on September 14, 1998 indicated that allegations "of sexual harassment practiced against our female employees" [Emphasis added] had been made against Griffin in early August. The statement also referred to the extreme sensitive nature of the complaint. In this regard, I was not advised of any other allegations against Griffin other than the disclosure involving Cst. A in early August and I was not provided with any "complaint". Both women were complainants in relation to Mr. X. This is confirmed by their letters to Griffin and Arsenault's testimony reproduced at paragraph 92 hereof. In fact, C/M B testified that when she was questioned, she felt it was Mr. X who was being investigated and not Griffin. It would appear that the letters of Cst. A and C/M B to Griffin regarding his investigation of Mr. X became a focal point of the investigation into Griffin. Arsenault testified that the first reason for the investigation into Mr. X was to satisfy the complainants. Arsenault, by his own admission, failed to discuss the results of Griffin's report dated August 31, 1998 with either Cst. A or C/M B. This may

have left the impression with either or both women that their concerns about Mr. X had not been addressed.

234. In relation to the manner in which an employer investigates an allegation of sexual harassment, Aggarwal has stated, at page 225, in Sexual Harassment in the Workplace, supra:

> *An employer must consider each charge of sexual harassment seriously and with caution. The charge of sexual harassment is a personal matter which has the power to jeopardize a person's professional reputation, job assignments and family relationships. A person who is wrongfully accused or punished for sexual harassment suffers the same righteous indignation felt by an innocent, yet indicted, corporate thief.*
>
> *It is the employer's responsibility, therefore, to protect both the sexually harassed and the falsely accused sexual harasser. Both have a right to a fair hearing. An employer who immediately takes the complainant's side and passes judgement [sic] prematurely upon the alleged harasser may find itself faced with a court action.*

235. While I cannot say with certainty that the City initially passed judgment on Griffin, Griffin was concerned about the manner in which this matter arose and was investigated. As noted by Aggarwal in his text Sexual Harassment in the Workplace, supra, charges of sexual harassment have the power to jeopardize a person's professional reputation and family relationships. Given the attention that this case has received in the local and regional media, evidence of which was adduced before me, the statement by Aggarwal in relation to jeopardizing reputations has even more significance.

236. The allegations surrounding the Lobster Carnival incident were disclosed to the City on or about July 28, 1998, but it was not until September 15, 1998 that Griffin was advised he was being investigated for charges of sexual harassment. At that time, he was not told who the complainants were, or what the charges in question were, or what they related to. It was not until October 20, 1998 that Griffin was officially provided with a copy of the allegations that were made against him (although he had been questioned by a representative of the media on September 17, 1998

about an unwanted touching of Cst. A). Griffin did not respond to the charges on the advice of Counsel and on November 8, 1998, the charges in question were laid against him. The document provided to Griffin on October 20, 1998 indicated that Griffin was being investigated for five allegations as a result of "written statements" that had been obtained. The only written statements I was provided with was the correspondence of Cst. A to Griffin dated August 25, 1998 and from C/M B to Griffin dated August 26, 1998, both in relation to the investigation by Griffin of Mr. X.

237. It troubles me that Griffin was not provided with a detailed account of the alleged instances of sexual harassment that were being investigated until October 20, 1998, some eleven weeks after the first disclosure regarding the Lobster Carnival incident. Additionally, I wonder whether both women and Griffin were updated on the progress of the investigation and find it difficult to conclude that this, in fact, happened. I base this conclusion on the fact that C/M B could not have been kept up-to-date on the progress of the investigation for, if she had been, she would have known it was Griffin who was being investigated, not Mr. X. Cst. A testified before me that she wanted an apology and a process put in place to educate the Police Services Department regarding sexual harassment. C/M B testified before me that she wanted employees to have more knowledge about sexual harassment in the workplace. When I consider the testimony of Cst. A and C/M B as to what they wished to see happen, it would appear to me that this matter could have been dealt with or resolved in another forum, as other employers have resolved similar situations. I am left with the nagging concern that both of these women may have been victimized in so far as they did not want, in the case of Cst. A, and were not aware, in the case of C/M B, that they were to be major players in the allegations of sexual harassment against Griffin.

238. There was some suggestion or innuendo made to me that perhaps Arsenault or others forced Cst. A and C/M B to complain. There was even suggestion made about a conspiracy theory. There was no evidence led to support the theory that Arsenault or any other person forced any particular individual to complain. However, I am not certain that either Cst. A and/or C/M B are the complainants in the circumstances of this case. This point will be explored later in my Decision.

Credibility:

239. In this case, there is a great deal of dispute over the evidence, and issues of credibility have arisen. Therefore, the demeanor of the witnesses, the over-all consistency of their recollection of the factual events, the care they take in giving their evidence and their candour are usually looked upon as a way to assess the credibility of witnesses. In addition, one may take into account whether or not Griffin is being singled out in relation to the events and whether or not there is any malice or hostility directed toward him by any person.

240. Cst. A testified she did not want to be before me giving her evidence, and she stated it was something she had to do. Counsel for the City suggested that there was no reason for Cst. A to lie or be untruthful, that Cst. A gave her evidence in an honest manner and that Cst. A was "outraged" about what happened to her.

241. The only two incidents I was advised of that involve Cst. A were the Lobster Carnival incident and the comment of Mr. X that was apparently made in front of Griffin. While I have no doubt that these two incidents, if they happened as she described them, may well have impacted on Cst. A to some degree, there was no explanation for the hostility she demonstrated towards Griffin. Cst. A was quite vocal in indicating that she was not a fan of Griffin's. However, no reason was given to me for her hostility other than the two incidents in question. She testified she left the Summerside Police Force for a number of reasons, including the fact that she wished to go into the forensic and fingerprint identification area which was not available in Summerside. Her direct evidence in this regard is as follows:

Q. Why did you leave Summerside?

A. I was learning to hate it here. I did not like it, being her anymore.

Q. And any other reasons?

A. That and also for employment purposes, for my career, the direction I wanted to go in is not offered here.

Q. Okay. And the direction you want to go in?

A. *Would be forensic or identification.*

Q. *Okay. When you say you were learning to hate it here, why?*

A. *Because I hated to come into work. And when you have heartburn for probably five months in a row, it's probably a good indication to get out.*

Q. *Okay. You're making me work for this. Why did you, why were you, why did you hate to come into work?*

A. *Well, I wasn't too fond of Deputy Griffin, or looking at him, so I particularly didn't really want to be seeing him. Didn't want to see him in the building. I particularly didn't want to have to go to work and know he was on the same floor that I was on. And everything you did do now is watched with close scrutiny because all of this had come out into light. And now you know, it's all my fault or C/M B's* [sic] *fault for it all coming out. So it wasn't the easiest for C/M B* [sic] *and I to be working there, like that.*

Q. *What do you mean, everything was watched by close scrutiny?*

A. *Well, just with certain files, if, and these are just examples -- they're not exhibits -- that if something was done that needed some constructive criticism on, which I have no problem with -- I'm still learning -- simply can come and tell me what happened as opposed to sending, say, memos to eight people to point out all the problems I have done. That, or God forbid, my hat is not stuck onto my head, 24, 7, that became a major issue. Just little things that never seemed to be bothered prior to this coming out. Not to that extent anyway.*

If Cst. A endured more than the two incidents in question, I should have been advised of such. This might have explained her hostility towards Griffin. However, the two incidents of which I was advised were brief, were separated by several weeks and took place more than two years previous to the hearing. Even if they occurred as she described, they do not reasonably warrant the reaction of Cst. A.

242. The recollection of Cst. A as to the three meetings she had with Arsenault is contradictory and conflicts with his version of events. Cst. A testified she disclosed the incident involving Griffin at the Lobster Carnival to Arsenault in the first of their three meetings in August of 1998. He says she did not. Cst A. then states that she sought legal counsel before the second

meeting and advised Arsenault of this fact. She testified that he wanted her to write a note that would state nothing happened or that Arsenault could take care of the situation. Arsenault's notes vary on this issue and, in fact, indicate that Cst. A felt she would chalk up the incident to Griffin's bad manners and would not become part of a sexual harassment complaint. Although she denies that she used the phrase "bad manners" as an explanation for Griffin's behaviour, Arsenault's notes made at the time and his *viva voce* evidence make eminently more sense than her version. Cst. A testified that the third meeting occurred after she came from her lawyer and it is likely that this is, in fact, correct. This corresponds with the notes of Arsenault.

243. I specifically reject the evidence of Cst. A where she indicated that Arsenault wanted her to send him a letter stating the event never happened. Rather, Arsenault's version that he wanted a note from her regarding her decision to put in his file makes eminently more sense and is supported by his notes. I can understand why Arsenault would ask Cst. A to send him a note telling him of her decision to proceed or not to proceed. Clearly, he wished something to place in his file so that it would be there in the future in the event questions ever arose regarding the particular incident.

244. I must say I am somewhat concerned over the fact that there was no complaint made by Cst. A in July of 1997 in relation to the Lobster Carnival incident. Cst. A advised Grimes not to state anything about the incident and that if he did repeat it, she would deny it. She even went so far as to speak to Grimes' supervisor, who could be considered "management", and she told Grimes' supervisor to "keep a leash" on Grimes. Cst. A indicated she wanted to forget about the incident and Arsenault's notes indicated that she wanted to chalk it up to Griffin's bad manners. I accept the evidence of Arsenault that Cst. A did not want to be part of a sexual harassment charge and I accept that his notes are an accurate reflection of what transpired at the meeting between he and Cst. A.

245. The City suggested that the evidence of Cst. A was not discredited or challenged. With this, I cannot agree. The concerns I had with the evidence of Cst. A, commenced with the length of the meeting on July 19, 1997. Cst. A testified the meeting lasted for 5 to 10 minutes. Yet, the evidence of Cst. Rioux and Griffin is that the meeting lasted less than a minute. The perception

of Cst. A of the meeting, and especially the length of the meeting, at the Lobster Carnival was clearly in error. I find as a fact that the meeting lasted less than one minute. If Cst. A was as outraged as she appeared to be, surely she would have had a better recall of the meeting.

246. Cst. A indicated that she did not report the verbal incident involving Mr. X due to the fact that she was new on the job and was concerned for her part-time hours, as well as the fact that she had just received a memo from Griffin which indicated that Mr. X was to be made welcome. The fact that Cst. A relied on this memo as a reason for not reporting the incident involving the verbal comment made by Mr. X brings the credibility of Cst. A into question. The memo relied upon by Cst. A to indicate a reason for non-reporting is dated May 9, 1998, almost one year after the unreported comment was apparently made.

247. I was also influenced by her reaction to questions about Griffin and her demonstrated hostility to him for reasons unbeknownst to me. I am not suggesting that she does not believe what she says; however, to use the words of the arbitrator in *Shiels v. Saskatchewan Government Insurance, supra*, my perception of her evidence is that while "no doubt she believes what she says, she has worked herself up to such an emotional state that she appears to have lost all objectivity".

248. The City challenged the credibility of Griffin and submitted that his version of events was not reasonable and his behaviour was not consistent with the version of events he told. The City noted the "will say" statements were different from the testimony given before me and suggested this brought Griffin's credibility into issue.

249. There was much made over the fact that Griffin's "will say" statement differed from the *viva voce* evidence that the parties have testified to before me. I attempted to find some authority which would deal with this issue and indicate the weight to be placed on such a statement, but was unable to locate any such authorities. The *Canada Evidence Act, R.S.C. 1988, Cap. C-5* deals with previous statements made by witnesses. However, the "will say" statements before me were not made by Griffin or any of the witnesses, but rather were from Counsel for Griffin. In *R. v. Cherpak (1978)*,

42 C.C.C. (2d) 166 (Alta.C.A.), a report prepared by a police officer from notes of a conversation with a witness, the contents of which were never verified, was not a statement within the meaning of the *Canada Evidence Act*. Additionally, a sworn statement which is not adopted by a witness, although marked as an exhibit, is not evidence of the truth of the contents, but is only admissible in relation to the credibility of the witness. See: *R v. Campbell (1977), 17 O.R. (2d) 673 (C.A.)*. On the facts before me, the "will say" statement was not sworn to by Griffin and is clearly not evidence as to the truth of its contents. However, Griffin did adopt his "will say" statement even though his testimony departed from it in some points. Thus, I may utilize the "will say" statement to determine whether or not Griffin has the capacity to err, incorrectly recall, or is clearly lying.

250 . In the evidence given by Griffin, there were some inconsistencies. This is not entirely unexpected, given that the incidents were brief and had occurred more than a year prior to the date he was notified of their potential significance. While I had no general problem with the demeanor of Griffin, there were times when he appeared to have a chip on his shoulder, and perhaps he has reason for this. However, he gave his evidence in a clear manner with no hostility demonstrated to anyone.

251. Much was made over the fact that Griffin's report dated August 31, 1998 to Arsenault [Exhibit "C-32"], left much to be desired. It was suggested that Griffin should have addressed issues that are currently before me. Specifically, it was suggested that he should have noted that he was present and heard the comment made by Mr. X to C/M B and that he rebuked Mr. X. It was also suggested that Griffin should have included in his report that he did not hear the comment made to Cst. A by Mr. X. When I review the report of Griffin, there is a clear reference to two incidents involving C/M B, one regarding the length of the dress of C/M B and another regarding the number of buttons on her dress. As such, since these are the only two incidents referred to by C/M B in her letter of August 26, 1998 [Exhibit "C-12"], Griffin is clearly referring in his report to the incident involving C/M B which involved the shorter skirt. Griffin's report does refer to the comment made by Mr. X to Cst. A and although the report references the comment made to C/M B by Mr. X, it is not elaborated on. Griffin reported that Mr. X denied the allegations and it was suggested that Griffin should not have let this happen especially when Griffin was present for some of the comments. Griffin testified that the denial by Mr. X to him was in relation to those matters Arsenault requested

Griffin's report does note that Mr. X has carried on for years with his joking
s reference that Mr. X was reminded by Arsenault and Griffin about making
aracter. Certainly, Griffin's report is not totally complete, but I am cognizant of
n was only given a period of approximately ten days to investigate. When I review
obviously spoke to and or received reports from 13 people and interviewed three
Although the report perhaps could have been more complete, I am unwilling to make
e inferences relating to the specific details that were omitted from his report.

Mrs. Griffin's credibility was challenged due to the fact that her "will say" statement
different from what she testified to before me. Sharon Griffin never saw the document before
therefore it is not evidence of anything insofar as she is concerned. I had no difficulty with Mrs.
Griffin's evidence; however, she did concede that she was not paying a great deal of attention to the
meeting involving her husband at the Lobster Carnival.

253. In relation to the evidence given by Arsenault, I found him to be credible and, for the most part, his version of events was accepted by me.

254. I found C/M B to be an extremely credible witness and she gave her evidence in a forthright fashion. She clearly did not wish to be taking a side or to be seen to be taking sides. Her evidence was given without any hint of malice or hostility to any individual, including Mr. X.

255. Cst. Rioux did give his evidence in a straight forward and professional fashion. His estimate of the length of the meeting was very different from that given by Cst. A and I accept his evidence as to the length of the meeting. His evidence coincides with that of Griffin and Mayor Stewart in this regard.

256. While Mayor Basil Stewart's evidence was unclear in certain aspects, that is to be expected considering this event occurred at least two years ago and no reference was made to it until August of 1998, a period of approximately 13 months post incident. Mayor Stewart was very forthright when he indicated he had gone through it in his mind, he had attempted to review his

calendar to see where he was and who might have been with him, as he tried to replay the events in his mind.

257. However, those comments being stated, I must now proceed to determine whether or not the actions of Griffin constituted sexual harassment, such that he breached the Rules and Regulations.

Sexual Harassment:

258. In relation to whether or not the conduct in question, namely the unwanted touching of Cst. A or the verbal remarks by Mr. X, fall into the category of sexual harassment, the comments outlined in *Re North York (City) and C.U.P.E., Loc. 94, supra*, at pages 295-296 are relevant. There it was stated:

> ...
>
> *The first heading captures harassment that is coercive in nature because one's employment status or terms and conditions of employment is threatened. A supervisor who uses his authority to affect salary, promotion, scheduled hours, work assignment, etc., to coerce a subordinate to grant sexual favours engages in quid pro quo harassment. The second heading captures non-coercive sexually orientated conversation and conduct that poisons the work environment for the victim. Clearly the first type of sexual harassment, involving as it does the element of coercion, is the more serious. Indeed, the use of employment coercion to obtain sexual favours can properly be described as a "capital offence" that warrants immediate termination of employment. Persistent and/or unwelcome sexually related demands or overtures, albeit absent the element of coercion, fall under the second heading as does "all other conduct of a sexual nature that demeans or humiliates the person addressed and in that way also creates an offensive work environment. This includes sexual taunts, lewd or provocative comments and gestures and sexually offensive physical conduct."*

259. The cases show there may not be a logical correlation between the behaviour at issue and the results. In *Re Corp. of the City of Calgary and Amalgamated Transit Union, Loc. 583 (1989), 9 L.A.C. (4th) 1 (Alberta)*, a bus driver was dismissed for sexually harassing a female passenger due to the fact he had stopped the bus in a relatively isolated area when she was the only

passenger on the bus. He was neither obscene nor had he touched her. On the other hand, in *Libitka v. Treasury Board (1980), P.S.S.R.B. File No. 166-2-8128 (Ramsay)*, an employee who grabbed a female co-worker and pulled her into his office was given a five day suspension. In *Re Dartmouth District School Board and Nova Scotia Union of Public Employees, Unit No. 2 (1983), 12 L.A.C. (3d) 425 (N.S.)*, a school caretaker who hugged and kissed a twelve year old girl and went into the ladies washroom, had not committed sexual harassment because he had no sexual design or intent, but was held to have committed a serious error in judgment and ordered suspended for six and a half months. Clearly, all of the circumstances of a particular situation must be considered.

260. There was no suggestion by the City that Griffin actually engaged in any form of "sexual coercion" in relation to confirming or withholding employment benefits to either Cst. A and/or C/M B. Although there was some suggestion that Cst. A did not report either the comment made by Mr. X to her or the Lobster Carnival incident as she was concerned that Griffin might manipulate her part-time hours, the City did not allege that Griffin manipulated the part-time, call-in hours. As such, I would be inclined to evaluate the conduct in question, namely the Lobster Carnival incident, as well as the verbal comments, in the category of sexual harassment that has been defined by the authors to be "sexual annoyance", rather than *quid pro quo* conduct. When I review the category of "sexual annoyance", the category of conduct that seems most appropriate is the one that relates to "all other conduct of a sexual nature that demeans or humiliates a person, such as sexual taunts, provocative comments and gestures and sexually offensive physical contact".

261. Although Griffin indicated he did not intend to sexually harass Cst. A at the Lobster Carnival on July 19, 1997, it is not his intention that must be examined. Instead, I must consider whether or not the conduct in question crossed the line of acceptable behaviour and was unwelcome. In determining whether or not the conduct was unwelcome, I must determine whether or not either Cst. A and/or C/M B solicited the conduct and whether or not they found it desirable. In this regard, there was no suggestion that the conduct in question, either in the form of the physical touching or the verbal comments, were invited, encouraged or welcomed by either Cst. A or C/M B. In fact, the evidence was that the physical touching was found to be undesirable by Cst. A and the remarks were

not appreciated by either of the women.

262. However, it remains to be determined whether or not either Cst. A or C/M B, either implicitly or explicitly made it known to Griffin and/or Mr. X that the conduct was unwelcome. In relation to the Lobster Carnival incident, Cst. A did not indicate to Griffin at the time that the touching was unwelcome. The authors vary in terms of whether or not comments should be made to the alleged harasser that the conduct is unwelcome. In some instances, the woman has the responsibility for stating directly the comments or conduct is unwelcome, while in other cases, a failure to respond and/or body language may be sufficient to communicate that the conduct is unwelcome. It remains to be considered whether or not the body language of Cst. A was sufficient so that Griffin should have known his conduct was unwelcome. If Cst. A had found the conduct offensive and had advised Griffin of same on July 19, 1997, she would have established the standard of behaviour that was acceptable to her. Any deviance therefrom would have been considered harassment. However, given that she did not verbally state that the conduct was offensive, I must consider if it was reasonable for Griffin to have known that the conduct was not welcome both in the case of the unwanted touching of Cst. A and the verbal comments involving Cst. A, C/M B and Mr. X.

263. Additionally, I must consider whether or not a reasonable person would consider the conduct in question to be sexual harassment.

Lobster Carnival Incident:

264. The evidence I have before me in relation to the Lobster Carnival incident is essentially different versions of the events from the main participants. The witnesses could not agree as to who was standing where, the length of time each was standing there, or the period of time the meeting lasted. While there was some similarity between the evidence of Cst. Rioux and Cst. A in terms of the location of individuals, their evidence varied considerably in other aspects, especially in terms of the length of the meeting and how it ended.

265. The Lobster Carnival incident was not disclosed until more than one year had passed and there is a difference of opinion as to the intoxication of Griffin. It was alleged that Griffin was intoxicated on the night in question. The evidence is conflicting. On the one hand, Cst. A states that she thought Griffin had too much to drink, although she did not smell alcohol; Cst. Rioux indicated that Griffin was considerably intoxicated. On the other hand, Mayor Stewart did not notice anything unusual, did not believe Griffin was intoxicated, nor did he smell alcohol. Given that Mayor Stewart was a former police officer, one would have expected that if Griffin was intoxicated, it would not escape his trained police officer's eye in the event that such had occurred. Griffin denies he was intoxicated but does not deny consuming alcohol earlier in the evening and, in fact, Griffin and his wife both confirm he had a couple of drinks prior to attending at the Lobster Carnival. There was some reference made in the evidence to Sgt. Poirier apparently stating to both Cst. Rioux and Cst. A that Griffin was drunk. Given that Sgt. Poirier was not called to testify, I have not considered this evidence. In light of the fact that the evidence in conflicting, I am not satisfied that the City has met the burden of demonstrating that Griffin was intoxicated.

266. When I review the evidence given in relation to the Lobster Carnival incident, I note the following:

(a) Cst. A testified that

- Griffin was rubbing her back in a circular motion
- the meeting lasted approximately ten minutes
- she was embarrassed and uncomfortable and she started to move away from Griffin to the point where she was standing on Cst. Rioux's foot
- after she moved to her left Griffin followed her and continued to rub her back

(b) Cst. Rioux testified that

- Griffin placed his hand on Cst. A's back
- he noticed Griffin's arm moving behind Cst. A and for a second he thought Griffin's hand was on her shoulder
- the meeting lasted no more than one minute
- Griffin's hand might have been on Cst. A's back for 6 to 8 seconds
- Cst. A was looking at the ground and took a sidestep and started to walk

away

(c) Griffin testified that

- he placed his hand on Cst. A's back to introduce her to the Mayor
- he specifically denied that he rubbed Cst. A's back
- the meeting was very brief, one minute at most
- his hand would have been on her back for less that 5 seconds

(d) Mayor Stewart testified that

- he did not see anything unusual or inappropriate

267. All parties, with the exception of Cst. A, indicated the meeting lasted less than one minute and, as noted previously, I find as a fact that the duration of the entire meeting between Cst. Rioux, Cst. A, the Mayor and Griffin at the Lobster Carnival was approximately one minute. I have attempted to discern exactly what transpired during that 60 second period on July 19, 1997. Cst. Rioux noticed a movement on Cst. A's back but indicated the entire incident only comprised a few seconds. Griffin denied that he rubbed her back and Mayor Stewart did not see anything inappropriate. I find that Griffin did touch Cst. A's shoulder and/or back when he went to introduce her to the Mayor and his hand was located on her back and/or shoulder for a period of a few seconds.

268. For the conduct at the Lobster Carnival to constitute sexual harassment, the conduct must be of a sexual nature. The City suggests that the conduct in question was of a sexual nature, while Griffin's Counsel says it was not. If the conduct is devoid of sexual connotation, it will not constitute sexual harassment. See: *Shiels v. Saskatchewan Government Insurance, supra*. In the circumstances of this case, I cannot see that the conduct in question is of a sexual nature. The gesture that Griffin made to introduce Cst. A to another individual is one encountered frequently in today's society. It hardly seems likely that Griffin would proceed to act in an inappropriate manner considering that his wife, mother and mother-in-law were nearby, a fact of which he was aware.

269. Even if it could be said that the conduct at the Lobster Carnival was of a sexual nature, which I do not believe, it would only be sexual harassment if I determined that such conduct was unwelcome by using the standard of the reasonable person. In other words, would a reasonable person find that the incident in question was unwelcome and should Griffin have been aware of such during the introduction?

270. As noted earlier, a hand on the back or shoulder may be offensive to some and not to others. In such circumstances, there is an obligation on the person to advise the perpetrator that the conduct is unwelcome. Touching a female employee's neck, shoulders and the back of her hair approximately 50 times did not constitute sexual harassment in *Re Treasury Board (Employment and Immigration Canada) and Broomfield*, *supra*. That case has some similarities to the one before me in that no complaint was made until a year after the alleged conduct occurred. Relating that case to the one before me, objectively speaking, I am unable to find that Griffin should have known that his hand on her back or shoulder for a brief period of time was uncomfortable to her and, thus, unwelcome. As a result, I would not be prepared to find that Cst. A had been the victim of sexual harassment on the basis of the unwanted touching.

271. Even if I accepted the version of Cst. A as accurate, this case would be, at best, one of the less serious incidents of sexual harassment. To accept her evidence in its entirety, I would have to accept that the meeting lasted 5 to 10 minutes, during which time Griffin rubbed her back, she moved away and he followed. I cannot accept that version of events, given the evidence of Cst. Rioux and Mayor Stewart.

272. The onus was on the City to establish on a balance of probabilities that the sexual harassment occurred. Given that the allegations can carry such severe penalties for Griffin, ranging from a caution to a recommendation for his dismissal, the proof must be based on clear and cogent evidence. I have been asked to accept the evidence provided as clear and convincing and thus, to find that Griffin's conduct "crossed the line of acceptable behaviour" such that it caused offence and humiliation to the female in question, and in essence, impacted on the City's ability to provide a

harassment free workplace. After hearing the evidence, I am not satisfied the onus has been met in the circumstances of this case.

Hostile Work Environment:

Background:

273. Turning to the hostile work environment, before commencing to analyze this issue, I wish to note that no authority was submitted to me to suggest that a supervisor, in this case, Griffin, should be disciplined for his inaction. As no authorities were submitted before me to suggest that a supervisor, who did not make any demeaning comments, should be held responsible for creating a hostile work environment as a result of another employee's conduct or comments, I have conducted lengthy research in this regard to locate any authorities that have dealt with a similar situation. I was unable to find any such case. All of the cases that I was able to locate that dealt with a hostile work environment involved the perpetrator, *i.e.* Mr. X, or his employer, *i.e.* the City, being subject to either discipline or sexual harassment charges.

274. I am aware that Mr. X, the person who made the remarks in issue, no longer performs any services for the Police Services Division. However, I am unsure as to exactly how Mr. X was terminated, if in fact he was terminated. If I accept the evidence of Griffin, an investigation was undertaken by Griffin on August 21, 1998 into Mr. X's actions. This resulted in Griffin recommending to Arsenault that Mr. X be terminated. If I accept the evidence of Arsenault, Arsenault ordered an investigation to be undertaken on August 21, 1998; issued a memorandum that Mr. X was not permitted to be inside the building unless he was entering the building to lodge a complaint as a citizen; ordered Griffin to see that Arsenault's order was carried out and discharged Mr. X on August 21, 1998, but did not tell him so. In essence, this would mean that Arsenault discharged Mr. X before any investigation was undertaken. There is no conflict in the evidence of both witnesses per se but the evidence does leave unanswered the question of whether or not Mr. X was ever terminated.

275. There was considerable evidence given in terms of whether or not Mr. X was a friend

of Griffin's. No evidence was led that would indicate Mr. X and Griffin were friends outside of working hours or, in fact, that they did any socializing together. Evidence was led that would indicate Mr. X would state he was a friend of Griffin's; however, it was Mr. X who fostered and perpetuated this perceived friendship. On the other hand, Arsenault considered Mr. X a loyal employee and it was he who, in fact, had hired Mr. X. Arsenault indicated that some might have considered his relationship with Mr. X as an acquaintance, while others might say it was a friendship through work. I have also noted that when Cst. A made a complaint about Mr. X in May of 1998, it was Arsenault who, in fact, met with Mr. X in this regard and not Griffin, the person allegedly responsible for discipline for members and other personnel.

Mr. X's behaviour - Generally:

276. It is clear that Mr. X was a rude individual and that the incidents involving him occurred over a lengthy period of time. C/M B testified they dated back to 1994; Cst. Rioux testified they dated back to 1993; and Geraldine Grant indicated they pre-dated that time. The conduct of Mr. X pre-dated the time when Griffin became Deputy Director and the person responsible for discipline. However, while the conduct of Mr. X may be relevant in determining what conduct was permissable and what actually occurred, I am only concerned with two separate incidents, namely, whether or not Griffin created and/or maintained a hostile work environment when Mr. X made these two comments in Griffin's presence. The behaviour of Mr. X is not on trial.

277. Behaviour will differ from work place to work place. A certain type of behaviour that is acceptable in one work environment may be totally unacceptable in another. If a certain type of behaviour has been tolerated, employers may have difficulty convincing their employees to act otherwise. From what I have heard, it appears to have been, for the most part, a traditionally all-male environment previous to 1997. Given the work place culture that existed within the City Police Services Division, when one looks at the evidence objectively, Mr. X used crude and foul language around the police station. The evidence given by Arsenault, as well as other members, including some of the female employees, demonstrated that the language used around the Police Services Division was "salty", to say the least. Reciprocity by the employees can clearly be inferred from the comments

made by Arsenault, Griffin and Rioux. Many felt that Mr. X did not know any better, while others felt that his comments were "witty", that he attempted to be funny, albeit that it might be ill-conceived humour, and that Mr. X had acted in this way for quite some time. It was admitted and conceded that he made rude, demeaning and sometimes sexist comments. Mr. X appears to be an individual who was not familiar with the conduct required of the 1990s and he was unaware of what conduct was considered prohibited or undesirable. It was also admitted, and I accept the evidence, that Mr. X had been acting in a similar fashion dating back a considerable period of time.

278. While I have not been asked to assess Mr. X's general behaviour and determine whether same constituted sexual harassment, I believe it is important to point out how such behaviour was viewed by the City and Police Services. When C/M B wrote her letter to Griffin on August 26, 1998, she clearly indicated that the conduct of Mr. X was inappropriate towards both male and female members. He did not just single out the females, but he attempted to get at or under the skin of all members of the Summerside Police Force. C/M B also indicated that Mr. X would say inappropriate things to both male and female officers to get them riled up and that he went out of his way to irritate the members. This was confirmed by Cst. A and Cst. Rioux. It appears that people got to a point where they would try and avoid Mr. X by going off into various rooms. It was admitted that Mr. X was a curser, a cusser, used foul language, used the "f" word frequently; however, Mr. X was described as being witty, saying witty things, teasing, funny or sometimes being irritating.

279. The reaction of employees to the actions of Mr. X can best be summarized by using the words of C/M B when she indicated words to the effect that she did not want anything done in relation to Mr. X as "that's just Mr. X [sic] and he doesn't know any better" in relation to an incident where Griffin was not present. Cst. A stated words to the effect: "everyone has a Mr. X [sic] story and this one's mine". There appears to have been a pattern of conduct that was tolerated by members of the Summerside Police Force. While I do not necessarily mean to be taken as saying that various members condoned the actions of Mr. X, it would appear that no one took any positive action to change or otherwise alter his behaviour. No one did anything to stop the behaviour until it came to a head in the summer of 1998. Cst. A in her memo to Cpl. Arsenault on May 25, 1998 indicated that

it was the fact that matters were not being dealt with properly that can irritate a person. She suggested it was an ongoing problem.

280. Both Cst. A and C/M B felt that Griffin did nothing to stop the behaviour of Mr. X. While the behaviour of Mr. X was obviously inappropriate, no one made any complaints until May of 1998. C/M B stated that she did not believe Griffin created a hostile work environment; however, she felt he contributed to it by not doing anything about the actions of Mr. X. However, the same could be said of every individual who was aware of the conduct of Mr. X and failed to act in a timely fashion. I cannot accept that Arsenault did not know what Mr. X was like, anymore than I can accept the fact that Griffin did not know what Mr. X was like. I do not accept that Mr. X did not speak inappropriately in front of Arsenault or Griffin. In fact, Griffin's report [Exhibit "C-32"] confirmed that both he and Arsenault had both heard Mr. X speak inappropriately and both had rebuked him. This was not challenged by Arsenault in his testimony.

281. While the behaviour of Mr. X was certainly not acceptable, it would appear that he carried on in what was described as a joking or witty fashion for years. It is understandable that he might be confused about what kind of comments were acceptable given that he had been acting in the same fashion for a lengthy period of time. There was clear evidence before me that the actions of Mr. X were no different in 1998 than they had been in 1993 or earlier, which was prior to the time when Griffin was Deputy Chief. Individuals, who were subordinate to Griffin and Arsenault, felt that the conduct of Mr. X was no different than it had been previously and that Mr. X had acted in the same manner for as long as they could remember. However, I will never know Mr. X's position in relation to his actions over the years as he was not called to testify.

282. I am satisfied that something transpired in the spring of 1998 involving Arsenault and Mr. X during the time Griffin had been suspended. The evidence of Cst. Rioux was that there was an incident whereby it had been decided Mr. X was not to be in the police station due to complaints. In fact, the memo issued by Griffin on May 9, 1998 would confirm that something occurred in Griffin's absence involving Mr. X., in that the memo indicated what locations Mr. X could be present

at and those locations he was prohibited from, i.e. the Communications Centre. Additionally, Arsenault did not look upon the May 9, 1998 memorandum from Griffin as a friendly memorandum. In fact, in Arsenault's memo to Griffin dated August 21, 1998, he wanted Griffin to advise Mr. X of the May memo if Griffin had not already done so, and he felt the memo of May 9, 1998 was being ignored. Finally, in Arsenault's memo to Griffin dated August 21st, Arsenault confirmed that he advised Mr. X some time ago to stay out of the office unless he was picking up cleaning equipment or kits for the vehicles. I was not advised as to when this might have been.

283. What may or may not constitute sexual harassment will depend on the individual in question. Various individuals could be described as being crude and they might tell offensive jokes. That, in and of itself, is not unlawful. It is only unlawful when it crosses the line to sexual harassment. Quite often, was is acceptable interaction may differ depending on the environment in which it occurs. For example, an office environment may involve different standards of acceptability than a construction site or a bush camp.

284. Clearly, the evaluation of whether something constitutes sexual harassment is done from the standpoint of the "reasonable person". What is socially acceptable to one individual may be totally unacceptable to another. Thus, consideration must be given to the context in which the alleged comment was made and the victim's perspective must also be considered. However, it is an objective standard unless there is expressed disapproval. In one case, it was held that crude and vulgar remarks made by a female person to other members of the bargaining unit did not create a hostile environment and did not constitute sexual harassment where other witnesses made similar remarks. See: *Re University of Manitoba and C.A.I.M.A.W., Loc. 9 (1989), 6 L.A.C. (4th) 182 (Manitoba - Chapman)*.

285. I accept that the City has to provide a safe working environment for its employees. I also accept that the work environment appears to have been the same for both men and women in terms of the rude comments that were being made by Mr. X. Given the cumulative effect of all the comments I have heard that Mr. X made over a period of time, it may well be that an unhealthy work

environment was created. However, it has not been established that Griffin is responsible for that environment. In Griffin's report of August 31, 1998, Griffin confirmed that Mr. X had been making joking comments for years and that he had been told by both Arsenault and Griffin not to be making "comments out of character". Griffin was not aware of any complaints in 1997 or prior thereto and Griffin requested in the memo of May 9, 1998 that any concerns about Mr. X were to be passed on to Griffin. While Mr. X is not on trial, neither is Griffin called upon to respond to any of the actions of Mr. X, except for the two alleged comments at issue.

Mr. X - Two Alleged Comments:

286. In relation to the incident involving C/M B, she described the incident and Griffin admitted the incident occurred. The only discrepancy essentially concerned whether or not Griffin rebuked Mr. X. Griffin stated he did rebuke Mr. X. C/M B stated she did not hear any alleged rebuke, but could not say it did not occur. I am left with the uncontradicted evidence of Griffin on this point as Mr. X was not called to testify to indicate whether or not he was rebuked.

287. Turning to the incident involving Cst. A, there is a clear conflict between the evidence of Cst. A and that of Griffin. There was no evidence that Cst. A complained to anyone about this incident. There was a conflict in the evidence between Arsenault and Cst. A where Cst. A indicated that on a number of occasions Mr. X's comments were mumbled and incoherent; however, Arsenault said that he did not believe that Mr. X mumbled his statements or made incoherent remarks. Griffin did not deny that the comment was said to Cst. A, but rather stated that he did not hear it. Given that Cst. A stated a number of times that Mr. X mumbled, it is reasonable to accept Griffin's version that he did not hear the comment.

288. The authorities clearly indicate that conduct which involves jokes or remarks must occur on a frequent basis before a tribunal will find the comments amount to sexual harassment. In the charges before me, Mr. X made a single remark to each of the complainants, a remark which, in each instance, was made in the presence of Griffin. There were no complaints made by Cst. A or C/M B at the time of the incidents. Neither comment was lewd, although each of the comments could be taken as a hostile insult, ill-conceived humour or perhaps even a poor attempt at a backhand

compliment. Both comments stated by Mr. X to Cst. A and C/M B are inappropriate and should not be tolerated. While the remarks in and of themselves were not appropriate, it cannot be said that Cst. A would conclude in June of 1997 or C/M B would conclude in the fall of 1997 that, as a result of the single allegation made to each, it was a condition of their working environment that they be subjected to similar comments. More than a single comment to each individual would be required before anyone would be able to say that a hostile or poisoned work environment had been created. As a result, I cannot say that the single insults to each of Cst. A and C/M B created an offensive work environment.

289. The case of *Howard v. Lemoignan, supra*, is relevant. There, the person who had actually used the vulgar and demeaning language, the person who behaved in a crude and rude manner, was held not to be guilty of sexual harassment in that the discomfort experienced did not go far enough to constitute an affront to the dignity of the person who complained. If the perpetrator in the *Howard v. Lemoignan, supra*, case could not be found guilty of sexual harassment, can I then hold Griffin responsible for comments made by Mr. X on two occasions, one of which he chastised Mr. X for and the other where he did not, but where he states he did not hear it? The simple answer is I cannot.

Breach of Confidence:

290. The final charge against Griffin is that of Breach of Confidence. That charge alleged that there were females who had filed sexual harassment complaints with the City against Griffin, however, I was not provided with any such complaints, other than as noted above.

291. One of the reasons that an employer is required to keep the names of complainants confidential is to achieve the goal of the *Employment Standards Act, supra*, namely, to have sexual harassment complainants come forward. This goal would be circumvented if individuals were reluctant to come forward due to the fact that their names might be disclosed to the public. I am cognizant of the fact that the privacy of complainants is required and necessary. This, in fact, was a reason for closing this hearing.

292. A second reason becomes apparent from reading the decision in *Re Canadian National Railway Co. and C.B.R.T & G.W., supra*. There, the grievor had been discharged for alleged acts of sexual harassment. In that case, it was found that he attempted to touch the breasts of one employee, massaged the neck and shoulders of another, attempted to grab another's breasts and rubbed his penis against her while making a lewd comment to the effect that he knew what she wanted. He also patted the behinds of women and engaged in verbal sexual innuendos, including propositions of marriage and suggestions of gifts. His discharge was upheld, but not before the victims had been vilified by the media. In that case, it was noted that accusations of sexual harassment can be devastating for the employee accused, for the accuser and for the remainder of the workplace who can be drawn into an intense and divisive process. In this regard, Picher stated the following at pages 194-195:

> *...[A]ccusations of sexual harassment are among the most devastating in their consequences for the employee accused, for the accusers and for employees and management alike who can be drawn into an intense and divisive process of acrimony and side-taking. A case of alleged sexual harassment is fraught with difficulty for company and union alike. Management, on the one hand, must take the greatest care to avoid false accusations that may wrong an employee of previous good service, cost that employee his or her job security and tarnish an individual's reputation not only within, but also outside the workplace....*

Later, in the same case, he stated the following, at page 197:

> *As this case amply demonstrates, great emotional stress and human hardship can result from an allegation of sexual harassment. The grievor has experienced extreme personal anxiety and has suffered both in the loss of his employment and damage to his reputation and his family life. The two complainants, one of whom has had to seek professional counselling, have been ostracized by their co-workers, have been the victims of adverse media attention and has been effectively driven from their jobs, one having resigned and the other forced to take a medical leave of absence. The employer and the union are both faced with a bitter and divisive controversy that has tainted the work place and undermined moral. The company, which to this point has lost the services of three valued employees, stands accused of supporting false accusations that have destroyed the life of an innocent man. The union, on the other hand, bound as it is to fully protect the rights of a discharged employee, is bitterly accused by the female complainants of having forsaken their right to be free of sexual harassment by turning its*

defence of the grievor into an attack on themselves. The costs, both emotional and economic, has been high to all concerned.

These observations are not, however, to suggest that well founded complaints of sexual harassment should not be made by the victims of such misconduct and that they should not be vigorously pursued by company and union alike. It now appears beyond serious discussion that the victimization of female employees by sexual harassment, described by the authorities as the historic legacy of a male-dominated working world, has been as hidden as it has been widespread. One American authority estimates that some 40% of women working in the United States have experienced some form of work-related sexual harassment and have, for the most part, "suffered alone and in silence".

...

293. As indicated previously, the City has alleged that Griffin committed a disciplinary offence in that he committed a Breach of Confidence by releasing certain information to the media. Specifically, he issued a Press Release on October 20, 1998, which has previously been reproduced at paragraph 131 of this Decision. The City is relying on the Sexual Harassment Policy Statement enacted just weeks prior to the Press Release and on the *Employment Standards Act*, *supra*, both of which state that an employer shall keep the name of the complainant in confidence. The term "employer" was not defined in the Sexual Harassment Policy Statement, although it is defined in the *Employment Standards Act*, *supra*, to include "a manager" or a person who was "responsible, directly or indirectly, for the employment of an employee".

294. In order to find that Griffin violated the Sexual Harassment Policy Statement or the *Employment Standards Act*, *supra*, by releasing the names of the complainants, I must find first that the individuals whose names were released were complainants. The evidence presented at the July 28, 1999, hearing referred to Cst. A and C/M B as the "complainants". Based on the evidence which was presented in this hearing that occurred during August of 1999, I must now determine whether or not Cst. A and C/M B were, in fact "complainants".

295. In relation to the Lobster Carnival incident, Cst. A did not want to come forward, would not come forward, would not put anything in writing and went so far in her evidence as to

state that Grimes was the complainant as he had got the story out first. She was described by Counsel for Griffin as the "non-complainant". While I am not sure how she could consider Grimes as the "complainant", that was her evidence.

296. In relation to the events involving Mr. X, Cst. A and C/M B were responding to a request from Griffin in relation to Mr. X. Their responses were dated August 25, 1998 and August 26, 1998. I am not sure either response could be considered to be a complaint against Griffin. In fact, when C/M B was answering questions that were being addressed to her, she testified that she believed she was answering questions in relation to an investigation into Mr. X, not one into Griffin. The charge alleges that the women filed complaints against Griffin with the City. The City stated that C/M B is a "complainant" and relies on her letter to Griffin of August 26, 1998 as support therefor. While I do accept the fact that C/M B was disclosing certain incidents, I cannot agree that she is coming forward with a complaint against Griffin, as she was apparently offering "a reply" in response to Griffin's investigation of Mr. X. Accordingly, I cannot say with certainty that she is in actual fact a "complainant", albeit that there is no question she is one of the individuals affected.

297. Griffin testified that on September 15, 1998, Arsenault advised him that he did not know who the "complainants" were and Arsenault, in fact, confirmed that this would have been a logical answer. On September 15, 1998, Arsenault was in possession of the letters of both Cst. A and C/M B. If they were, in fact, "complainants", would it not be reasonable for Arsenault to have stated so? The simple answer is yes.

298. When Griffin issued the Press Release on October 20, 1998, he referred to Cst. A and C/M B as the "complainants". While there is no doubt that the allegations in question affected both Cst. A and C/M B, given the evidence that was adduced before me, I am not convinced that either is a "complainant" as that word is intended to be interpreted.

299. Even if I could state that Cst. A and C/M B were the "complainants", which I am not prepared to do in the circumstances of this case, I am faced with a situation where the City is

attempting to discipline Griffin for violating the *Employment Standards Act, supra* and/or its Sexual Harassment Policy Statement. When I review that section of the *Employment Standards Act, supra*, namely, Section 27(2)(f), it states in part that:

> *(f)... the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation thereto;* [Emphasis added]
>
> ...

300. At the time Griffin issued the Press Release, namely October 20, 1998, the City and the Police Services Division had both enacted the Sexual Harassment Policy Statement. By virtue of Section 6 thereof, the employer was not to disclose the identity of the "complainant", except where disclosure was necessary for the purpose of investigating a complaint or taking disciplinary measures. Counsel for Griffin has stated that Section 6 of the Sexual Harassment Policy Statement does not prohibit "the person complained of" from commenting publicly about a complaint that has been levelled against him or her, and with this position I tend to agree.

301. In charging Griffin with a Breach of Confidence for releasing the names of the complainants, the City is attempting to discipline its employee for said breach. However, in alleging that Griffin violated the provisions of the *Employment Standards Act, supra* when he disclosed the names of the complainants, the City is suggesting that Griffin was the employer. Essentially, I am being asked to state that for the purposes of the *Employment Standards Act, supra*, Griffin is considered to be the employer, yet for the purposes of this disciplinary hearing, Griffin is considered to be the employee who is being disciplined by his employer, the City. Simply stated, it cannot be both ways. Griffin cannot wear both hats in the course of the same hearing.

302. In the event that Cst. A and C/M B are, in fact, complainants and Griffin is, in fact, an employer, - both of which I have specifically discounted - I must then determine whether the information was, in fact, confidential at the time Griffin issued his Press Release. If this information

was not confidential, would any release of same amount to a breach of the Sexual Harassment Policy Statement, the *Employment Standards Act*, *supra*, or the Rules and Regulations?

303. After reviewing that evidence that was given to me, the authorities that were submitted to me and conducting additional research, I am not satisfied that Griffin committed a Breach of Confidence when he described Cst. A and C/M B as complainants in his Press Release of October 20, 1998. I find that the story aired by CBC on October 19, 1998 is relevant to my determination. Bill Kendrick was aware of the names of Cst. A and C/M B on that date, which was prior to Griffin releasing his Press Release. The information could not be said to be confidential at that time, given that the media appeared to know about it and various other individuals were aware of the names of the women. In relation to the Lobster Carnival incident, by the Autumn of 1998, the individuals who knew Cst. A was involved in the Lobster Carnival incident included: Cst. Rioux, Arsenault, Blair MacDonald, Grimes, Cst. Craig Ryan, Cpl. Buell, Terry Murphy, Jock Jardine, and Cst. GH. The names of Cst. A and C/M B were clearly in the public domain on October 19, 1998.

304. Counsel for Griffin suggests that Arsenault was in violation of the confidential provisions in the worst possible way because Arsenault disclosed the allegations of sexual harassment and thereafter there were numerous press stories quoting various politicians. It was suggested that Arsenault was indifferent to the fact that there was a violation of confidentiality in this investigation which originated within the Police Department. It was suggested that Arsenault abandoned the confidential requirement and was indifferent to enforcing it, therefore, preventing the City from saying there is a confidential interest to be protected.

305. There is no doubt that Arsenault, as the senior person in charge of the Police Services Division, was aware that the Police Department had a problem with confidential information being leaked. On October 19, 1998, Bill Kendrick, of the CBC, knew the names of Cst. A and C/M B and that Griffin was being investigated. He did a news report which clearly indicated that "a source within the police department" had disclosed certain information. The City argues that this fact, in and of itself, does not mean that Griffin should not be held responsible. The City submits that the Breach

of Confidence charge is based on the Sexual Harassment Policy Statement and the fact that the investigation was confidential Police business. While the investigation may have been confidential Police business to those doing the investigation of it, I cannot comprehend that a Police Department could not do anything about locating the source of this problem. I do concede that they may not have been able to find out who the source was; however, an investigation was not even initiated.

306. The issue becomes whether or not, Griffin, being the person alleged to have committed the sexual harassment, has a duty to keep that information secret, or whether it is his duty under the Rules and Regulations not to disclose any matter related thereto. The Rules and Regulations define Breach of Confidence to mean divulging any matter that it is his duty to keep secret or communicating to the public, press, or to any unauthorized person any matter connected with the Force. As a police officer, there is no question that Griffin, along with other police officers, would be obliged to keep certain information confidential. We as the public expect and demand such. In fact, Griffin did not dispute that he had a duty to keep certain information confidential. However, I cannot hold that Griffin was acting in relation to Police business when he himself was the accused. If I were to find this, it would mean that any police officer who was accused of an offence that was being investigated, would be obliged to keep all matters confidential and not disclose any matters pertaining to that offence to anyone. Surely, I cannot be expected to make a finding of that nature that would have such far reaching consequences.

307. In relation to whether or not there has been a violation of Griffin's ***Charter*** rights, I have reviewed the materials submitted by the parties and have conducted additional research in this regard. After reviewing the various text and case authorities, I am not prepared to rule on whether or not in the context of these proceedings, Griffin has such a right. I find it is not necessary for me to make that determination. Even if it could be said that Griffin had such a right, and I am not certain he does, that right may not be absolute and unqualified, but, may, in fact, be modified by a competing interest as outlined in the case of *Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455 (S.C.C.)*. However, as noted, I do not have to make that determination.

308. Despite the foregoing, I cannot excuse the actions of Griffin in this regard. To his credit, he attempted to cancel the Press Release after he obtained legal advice. The advice that he received was obviously excellent and it is unfortunate that he did not seek this advice before he wrote or released the Press Release. I cannot see how the disclosure of the names of Cst. A and/or C/M B was necessary in the circumstances of this case. Had Griffin chose not to name the women, as he had obviously attempted to do when he tried to have the Press Release cancelled, his right to defend himself would not have been impaired by the non-disclosure. The releasing of the names did not give Griffin any additional rights that he did not otherwise have. He had the right to defend himself, he had the right to be presented with information, he had the right to confront his accusers, he had the right to cross-examine the witnesses, he had the right to call witnesses in his defence and he had the right to present argument. All of these rights he would have had with or without naming the women in the Press Release.

309. There have likely been many situations over the past couple of years where Griffin has been upset with the intense media attention that his situation has received. However, he, as a member of the legal system, must rise above any anger he may experience and believe in the system of which he is a part. He heard the evidence that C/M B was extremely upset over the Press Release and the fact that her name was disclosed. It is Griffin himself who must atone for his actions in that regard. While I do not condone what he did, in the circumstances of this case, I cannot hold that he committed a Breach of Confidence, and accordingly, I find him not guilty of the charge.

310. Even if it could be said that my finding that Griffin did not commit a Breach of Confidence was in error, in the circumstances of this case, I would have held it was a technical breach, warranting only a very minor penalty.

Conclusions:

311. Having stated the foregoing, I find, in relation to the sexual harassment allegations, that Griffin did not commit an unwanted touching of a female such as to constitute sexual harassment and that Griffin did not create and/or maintain a hostile work environment by tolerating and

encouraging sexually demeaning statements by others. Accordingly, I find that Griffin is not guilty of Discredited Conduct or Oppressive Conduct as alleged and those charges are dismissed.

312. Additionally, I have concluded that Griffin did not commit the offence of Breach of Confidence, and that charge is also dismissed.

313. The parties requested that if I found Griffin had breached all, or some, or one of the charges in question, they wished the opportunity to speak to any sanction I might impose. Since all were dismissed, no further hearing is required.

314. Section 27(o) of the Rules and Regulations requires that the Decision be rendered in writing and served upon the accused, in this case Griffin. The parties have agreed that the Decision, instead of being served upon Griffin, may be served upon his Counsel.

315. In accordance with my previous Decision dated August 10, 1999, I indicated that this Decision would be released to the parties and twenty-four hours later, I would be releasing the Decision to the media so that it will be made available to the public. That Decision on a preliminary motion resulted in the exclusion of the public from this hearing. My decision to close the hearing to the public was based on the evidence before me at that time, evidence that included affidavits that stated the matters to be heard would be sensitive in nature and that the personal and family lives of complainants would be irreparably harmed if their evidence became public. The principles on which the hearing was closed were sound, however, since the public was not a part of this hearing, I have tried to disclose all of the evidence by way of a comprehensive Decision, although I have made an attempt to maintain the privacy of some witnesses and others.

316. Finally, I wish to thank Counsel for the parties for their co-operation and assistance during the hearing of this case. Sexual harassment is a difficult issue to deal with and both Counsel conducted themselves in a professional manner and advocated their clients' respective positions admirably.

DATED at Charlottetown, Queens County, Prince Edward Island, this 30th day of November, A.D. 1999.

M. LYNN MURRAY

APPENDIX "A"

EXHIBIT LIST

Exhibits Introduced by the City of Summerside:

Exhibit #:	Particulars:
C - 1	Charge against Griffin - Section 29(a) of the Rules & Regulations
C - 2	Charge against Griffin - Section 29(b)(ii) of the Rules & Regulations
C - 3	Charge against Griffin - Section 29(b)(ii) of the Rules & Regulations
C - 4	Charge against Griffin - Section 29(e)(i) of the Rules & Regulations
C - 5	Rules and Regulations
C - 6	Diagram drawn by Cst. A [sic]
C - 7	- Letter dated August 25, 1998 from Cst. A [sic] to Griffin - Memorandum dated May 9, 1998 from Griffin to I/C's
C - 8	Letter dated May 25, 1998 from Cst. A [sic] to Cpl Arsenault
C - 9	Letter (Addendum) dated August 25, 1998 from Cst. A [sic] to Arsenault
C - 10	Press Release (with writing on bottom)
C - 11	Press Release
C - 12	Letter dated August 26, 1998 from C/M B [sic] to Griffin
C - 13	Letter dated October 28, 1998 from Griffin to C/M B [sic]
C - 14	Employees Perception of Supervisor dated November 18, 1997 and completed by C/M B [sic]
C - 15	Notes of Arsenault dated August 17, 1998
C - 16	Notes of Arsenault dated September 2, 1998 9:40 a.m.
C - 17	Notes of Arsenault dated September 2, 1998 11:00 a.m.
C - 18	Minutes of Meeting in Arsenault's office on September 15, 1998
C - 19	Routine Order - September 15, 1998 - Appointment of Sgt. Poirier
C - 20	Memorandum dated September 18, 1998 from Arsenault to Griffin
C - 21	Memorandum dated October 8, 1998 from Arsenault to Griffin
C - 22	Memorandum dated October 1, 1998 from Griffin to Arsenault

C - 23	Memorandum dated October 7, 1998 from Arsenault to Griffin
C - 24	Memorandum dated November 9, 1998 from Poirier to Arsenault (re two Informations)
C - 25	Letter dated May 25, 1998 from B. Arsenault to Arsenault
C - 26	Letter dated June 10, 1998 from B. Arsenault to Arsenault
C - 27	Memorandum dated June 11, 1998 from Arsenault to B. Arsenault
C - 28	Memorandum dated August 21, 1998 from Arsenault to Griffin
C - 29	Standing Order No. 82 - Sexual Harassment Policy Statement for Summerside Police Services dated August 20, 1998
C - 30	City of Summerside Sexual Harassment Policy Statement - September 21, 1998
C - 31	Memorandum dated August 21, 1998 from Arsenault to NCO's I/C
C - 32	Report dated August 31, 1998 from Griffin to Arsenault
C - 33	Memorandum dated October 30, 1998 from Sgt. Poirier to Griffin
C - 34	Diagram drawn by Griffin
C - 35	Will Say Statement
C - 36	Diagram drawn by Sharon Griffin

Exhibits Introduced by David Griffin:

Exhibit #:	**Particulars:**
G - 1	Journal Pioneer article entitled "Allegations of sexual harassment in S'side Police Services" by Patricia Ballem - October 20, 1998
G - 2	Statement to City Council
G - 3	Memorandum dated September 1, 1998 from Arsenault to Griffin Re Mr. X [sic] investigation
G - 4	Transcript of CBC report aired October 19, 1998
G - 5	Videotape for CBC stories prepared by Bill Kendrick
G - 6	Memorandum dated October 19, 1998 from D. Poirier to Griffin
G - 7	Journal Pioneer article entitled "Griffin calls allegations of sexual harassment malicious" by Nancy MacPhee - October 20, 1998
G - 8	The Guardian article entitled "Cop denies complaint" by Mike Carson - October 20, 1998

APPENDIX "B"

Rules and Regulations:

27. Discipline Procedure

...

(i) Where the accused denies the charge and does not offer a satisfactory explanation, the Chief of Police shall order the accused to appear before him or such other Officer designated by the Chief of Police for a hearing of the charge at a fixed time and place.

(j) All evidence taken at the hearing shall be under oath and for this purpose the Chief of Police, Deputy Chief or Inspector are hereby empowered to administer the oath for the purpose of swearing the witness.

(k) At the hearing the accused shall have an opportunity of hearing the evidence against him and of cross-examining the witness, calling witnesses in his defence and presenting his argument.

(l) The accused will be responsible for the notifying and having present witnesses who are to give evidence on his behalf. He shall also be responsible for the paying of any remuneration due to these witnesses.

(m) If the accused absconds or neglects, without good and sufficient cause, to attend the hearing at the time and place fixed, the case may be decided in his absence.

(n) The accused may have any other member of the Force and/or counsel assist him in presenting his case at the hearing.

(o) The decision shall be rendered in writing and served upon the accused by the Chief of Police or such other Officers as the Chief may designate.

(p) The Chief of Police shall either (a) dismiss the charge, or (b) find the accused guilty and award punishment according to Section (q).

(q) An offence against discipline may be settled as follows:

(i) Recommend dismissal.
(ii) Reduction in rank with the respective loss of seniority.
(iii) Suspension without pay, not to exceed thirty (30) days.
(iv) Reprimand.
(v) Caution.

...

(s) An accused may appeal from the decision or the sentence received as a result of the hearing, to the Council through the Town Manager, and the Chief shall be advised of such appeal to be entered into within a period of thirty (30) days from the date of serving of the decision.

(t) Instead of the Chief of Police or his designate, the hearing referred to in s. 27(i) above will take place before an independent person selected by Council or its designate if:

(i) The accused and prosecuting counsel so agree; or
(ii) The Police Committee so determines; or
(iii) It is found by the Supreme Court of Prince Edward Island that the Chief of Police or Council or both are biased with respect to the charge against the accused, or that a reasonable apprehension of bias exists.

(u) If the hearing of the charge takes place before an independent person pursuant to s. 27(t) above,

(i) The hearing will be conducted in the same fashion as set out in s. 27(i) to s. 27(q) inclusive above;
(ii) The independent person shall have the powers and duties of the Chief of Police as set out in s. 27(i), (j), (m), (o), (p) and (q) above;
(iii) There shall be no appeal from the decision of the independent person.

(v) All discipline hearings will be closed to the public.

(w) Subsections 27(t), (u) and (v) above apply to any charges laid but not heard as of May 1, 1998 and to any charges laid on or after May 1, 1998.

...

29. *Discipline Code*

Any member of the Police Force commits an offence against discipline if he is guilty of:

(a) ***Discredited Conduct**, that is to say, if he acts in a disorderly manner or any manner prejudicial to discipline or likely to bring discredit on the reputation of the Force or on the Police Service.*

(b) ***Insubordinate or Oppressive Conduct**, that is to say, if he:*

(i) *Is insubordinate by word, act or demeanor;*

(ii) *Is guilty of oppressive or tyrannical conduct towards an inferior in rank, or*

(iii) *Uses obscene, abusive or insulting language to any other member of the Force, or*

(iv) *Willfully or negligently makes any false complaint or statement against any member of the Force or*

(v) *Assaults any other member of the Force, or*

(vi) *Withholds any complaint or report against any member of the Force,*

(vii) *Disobeys orders without good and sufficient cause, omits or neglects to carry out any lawful order written or otherwise.*

...

(e) ***Breach of Confidence**, that is to say, if he,*

(i) *Divulges any matter which it is his duty to keep secret,*

(ii) *Gives notice directly or indirectly to any person against whom a warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of summons, or*

(iii) *Without proper authority communicates to the public press or to any unauthorized person any matter connected with the Force, or*

(iv) *Without proper authority shows to any person outside the Force any book or written or printed document which is the property of the Police Department, or*

(v) *Makes any anonymous communication to the Council or the Chief of Police or any superior office, or*

(vi) *Canvasses any member of the Council with regard to any matter concerning the Force, or*

(vii) *Signs or circulates any petition or statement with regard to any proper channel or correspondence to the Chief of Police, or*

(viii) *Calls or attends any unauthorized meeting to discuss any matter concerning the Force.*

APPENDIX "C"

Employment Standards Act, R.S.P.E.I. 1988, Cap. E-6.2

1. ...

(b) *"employee" means a person who performs any work for or supplies any services to an employer for compensation, and includes a person who was an employee at a time relevant for the purpose of this Act;*

(c) *"employer" means a person, firm or corporation, agent, manager, representative, contractor or sub-contractor having control or direction of or being responsible, directly or indirectly, for the employment of an employee and includes a person who was an employer at a time relevant for the purposes of this Act;*

...

24. *In sections 25 to 28, "sexual harassment" means any conduct, comment, gesture or contact of a sexual nature*

(a) *that is likely to cause offence or humiliation to any employee; or*

(b) *that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.*

25. *Every employee is entitled to employment free of sexual harassment.*

26. *Every employer shall make every reasonable effort to ensure that no employee is subjected to sexual harassment.*

27.(1) Every employer shall, after consultation with employees or their representatives, if any, issue a policy statement concerning sexual harassment.

(2) The policy statement required by subsection (1) may contain any term consistent with the intent of sections 24 to 28 the employer considers appropriate, but must contain the following:

(a) *a definition of sexual harassment that is substantially the same as the*

definition in section 24;

(b) a statement to the effect that every employee is entitled to employment free of sexual harassment;

(c) a statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment;

(d) a statement to the effect that the employer will take such disciplinary measures as the employer considers appropriate against any person under the employer's direction who subjects any employee to sexual harassment;

(e) a statement explaining how complaints of sexual harassment may be brought to the attention of the employer;

(f) a statement to the effect that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation thereto; and

(g) a statement informing employees of the discriminatory practices provisions of the ***Human Rights Act*** *R.S.P.E.I. 1988, Cap. H-12, that pertain to rights of persons to seek redress under that Act.*

(3) Every employer shall make each person under the employer's direction aware of the policy statement required by subsection (1).

28. *Where an employee alleges to an inspector that sexual harassment or discrimination is taking place, the inspector shall advise the employee of the right of redress through the* ***Human Rights Act.***

APPENDIX "D"

"Sexual Harassment Policy Statement"
CITY SUMMERSIDE

1.	*"Sexual Harassment" means any conduct, comment, gesture or contact of a sexual nature* *(a) that is likely to cause offense or humiliation to any employee; or* *(b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.*	Definition
2.	*Every employee is entitled to employment free of sexual harassment.*	Employee Rights
3.	*This employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment.*	Employer Obligation
4.	*This employer will take appropriate disciplinary measures against any person under its direction who subject an employee to sexual harassment.*	Disciplinary Measures
5.	*Complaints of sexual harassment may be made to this employer or your supervisor. The supervisor to whom a complaint is made will ensure that it is brought to the attention of this employer.*	Reporting Harassment
6.	*This employer will not disclose the identity of a complainant except where disclosure is necessary for the purposes of investigating a complaint or taking disciplinary measures in relation to a complaint.*	Protection of identity of Complainant
7.	*Employees are advised that the Human Rights Act (RSPEI) 1988, Cap. H-12) prohibits discrimination on the basis of sex which has been interpreted as including sexual harassment. Any person alleging discrimination has a right to file a complaint with the P.E.I. Human Rights Commission under the Act.*	Complaints to Human Right Commission

(Sgd.) Basil Stewart Mayor
Mayor Basil L. Stewart
City of Summerside
September 21, 1998