

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

DAVID PANKHURST

Grievor

and

TREASURY BOARD
(Canadian International Development Agency)

Employer

Before: [Rosemary Vondette Simpson, Board Member](#)

For the Grievor: [Dougald Brown, Counsel, and](#)
[Deborah Demirdache, Student-at-Law](#)

For the Employer: [Harvey Newman, Q.C., and Wendy Reid](#)

Heard at Ottawa, Ontario,
October 14 to 16, 1998; January 14 and 15; 18 to 22; and March 9 to 12, 1999.

DECISION

David Pankhurst, Senior Policy Advisor, Canadian Partnership Branch of the Canadian International Development Agency ("CIDA") was discharged by Nicole Charette, Vice-President, Human Resources and Corporate Services Branch, CIDA, on November 27, 1997. The termination letter reads as follows:

...

We have thoroughly reviewed the investigator's reports as well as all correspondence and representations you provided to CIDA with respect to complaints made against you for misconduct which constitutes a violation of CIDA's policy on Harassment in the Workplace.

Based on all the evidence, we are satisfied that many incidents of harassment of a very serious nature took place including numerous incidents of sexual harassment and unwarranted physical contact. The conduct you have exhibited is extremely detrimental to the working environment. It is inappropriate and unacceptable, especially from a person in a position of authority.

In view of the foregoing and having taken into consideration the mitigating factors, we believe that the imposition of a severe disciplinary action is warranted in the circumstances. Accordingly, your employment with the Public Service shall be terminated as of Thursday, November 27, 1997 end of business day.

...

On December 11, 1997, Mr. Pankhurst grieved against the termination of his employment in the following terms:

I grieve that, on or about 27 November 1997, I received a letter of discharge signed by Ms. Nicole Charette, Vice-President Human Resources and Corporate Services Branch, effective that day. I also grieve that the findings of the investigation report upon which the letter of discharge was based were not determined in a manner that took into account basic principles of legal and administrative fairness.

As corrective action, he requested the following:

I request that 1) my letter of discharge be rescinded and any and all copies be destroyed in my presence; 2) I be reinstated with no loss of pay or benefits; 3) my legal and other costs in this matter be reimbursed in full; 3) the investigation report and all other documentation relating to the complaints filed against me be withdrawn and any and all originals and

copies be destroyed in my presence; 4) CIDA cease to use the services of Mr. André Chartrand as an investigator; 5) I receive a letter of apology from CIDA; 6) CIDA contact Health Canada to advise them that the investigation report has been withdrawn and the letter of discharge has been rescinded; 7) I receive a positive and detailed letter of reference from CIDA; and 8) I receive appropriate compensation for pain and suffering and damage to dignity and reputation.

I request that this grievance go directly to the final level by mutual consent. Please consult with my union representative, Ms. Lisa Taylor, with respect to the grievance.

Mr. Pankhurst's grievance was referred to adjudication on April 9, 1998.

This matter originated with a formal harassment complaint dated February 19, 1997 against David Pankhurst by Linda Brassard, Lynda Doyon, Louise Larose and Patricia Hurd, all employees of CIDA (Exhibit E-2) who had worked at one time or another under Mr. Pankhurst's supervision. All were support staff except for Ms. Hurd who was an entry level consultant on contract. The events in question took place over a period of one and one-half years, in 1996 and in early 1997.

Linda Brassard was an agency temporary secretary whose assignment was to have ended at the end of March 1997. Additionally, Patricia Hurd, who was a consultant working on a contract basis, and Louise Larose were to have their assignments terminated in February or March 1997. Ms. Hurd was a university graduate whose father was a friend of Mr. Pankhurst. This was one of her first contracts as a consultant.

The four complainants individually approached Denise Marchand, Assignment and Programme Officer in the Human Resources Division of CIDA. They told her their stories. They went to her because she was approachable, "a nice lady". Lynda Doyon first approached her for advice on a dress she was wearing in the summer of 1996. Towards the end of January 1997, Ms. Larose approached her with concerns about David Pankhurst. Ms. Marchand took these concerns to the Branch Director, Mr. Custeau. The complainants later met with Monique McDonald of Staff Relations. An investigator, André Chartrand, was appointed and the investigation properly commenced.

On February 24, 1997, Mr. Pankhurst received the following memorandum from Janet Zukowsky, Vice-President, Canadian Partnership Branch, CIDA (Exhibit E-8):

...

This is to advise you that I have received allegations of sexual harassment and abuse of authority against you by Louise Larose, Linda Brassard, Lynda Doyon and Patti Hurd on February 20, 1997.

The complaints have been forwarded to Nicole Charette, Vice-President of Personnel and Administration, in accordance with the departmental policy, and an official investigation of these complaints will be initiated. An investigator will be appointed and will communicate with you as soon as possible. In addition, a copy of the said complaints will be provided to you by Personnel as soon as possible.

Please be advised that, effective immediately, and for the duration of this investigation, you will be on special assignment with the Performance Review Division located on the 7th floor, and you will be reporting directly to Robert Johnston.

Furthermore, I must instruct you to avoid any direct contact whether personal, oral or written with the complainants either in the workplace or outside.

...

An investigator, André Chartrand, was appointed. He completed a report which the employer had in its possession by August 14, 1997 when it invited David Pankhurst to respond to it (Exhibit E-10). Mr. Pankhurst's counsel, Denise Workun of the law firm Nelligan Power, responded by letter dated September 29, 1997 (Exhibit E-11). Further documents in response to the complaints (Exhibits E-1; E-13) were submitted by Mr. Pankhurst. On October 24, 1997, a memorandum recommending the termination of Mr. Pankhurst's employment with CIDA was sent from Nicole Charette, Vice-President, Personnel Administration and Corporate Management, and Janet Zukowsky, Vice-President, Canadian Partnership Branch, to Huguette Labelle, President of CIDA (Exhibit E-12).

All four complainants testified and incorporated into their evidence their previously written statements which had been attached to their harassment complaint dated February 19, 1997 (Exhibit E-2). I set these statements out in full as follows:

Statement of Linda Brassard (referred to as Annex A of Exhibit E-2)

The following events occurred between Dec 30th 1996 to February 19th 1997 for which period I was reporting directly to David Pankhurst.

Dec 30th 1996 At the interview I had with David he wanted to be sure I was qualified for the job. He ask me to tell him things about myself so he could get to know me better. These things included what I did during my spare time & weekends. He told me that no decision was reached as to my working for him & that he would have the last say. I feeled I needed to say something that would make me weak & vulnerable to get his approval to be hired.

- At this same meeting he told me that he might (if hired) call me "Love or Dear" & other pet names, once in a while, that it might slip but for me not to take it the wrong that it's only that being from England he never lost the ways, that over there everyone called everyone these pet names. I shouldn't think bad of this like Linda Doyon did when she sent him an e-mail requesting him to stop. He made fun of that incident. My reaction was that I would remind him that my name is "Linda" & not Love or dear etc. He got annoyed & insisted that no matter what he cannot get rid of his old ways & that it might just happen - it happened on 3 occasions.

- I was told that I could leave early whenever not busy & he would authorize my time sheet, as long as whenever he ask for me to stay, I agreed. I feeled this was a bribery.

Jan 1997 David called me from his office but I was on the phone, he called again, I replied "I'm coming". When I entered his office he commented by saying "Oh, I like your choice of words, so you're coming?!?" with a grin. I feeled ashamed about having used those words.

Mid Jan. 1997 David wanted me to seat next to him at the Blitz Committee Mtg, because I was taking the minutes & it would be more appropriate. At this meeting, it was decided that a consultant would be hired for the data entry. After the mtg I meet Marcel Custeau & discussed my interest in doing this work because I did not have enough work. I received his approval as long as David agreed.

- David got really mad at me when I mentioned that I had spoken to Marcel about this, accused me of going behind his back, saying I didn't have any experience or knowledge & that the decision was done to hire Louise Larose because she know & that I should be concentrating on learning my job before going to the DG with these ideas. I feeled like I was a child being punish; for trying to help & save the government some money & by working for my pay. He reminded me that he was the boss & never go above him without discussing it with him first.

Jan/Feb 1997 David insists whenever the invitation for coffee comes up. He makes me feel as if I owe him, says he's not good enough for me, makes fun at the fact that I don't want to go, says he the boss, he decides it's ok to go.

Jan 1997 Had coffee break with Patty, David & all that was discussed was a Feb or early March retreat at his home or even at his condo in Calabogie (1 day) to swim in the heated pool. I feeled afraid that he would actually go through with it.

Feb 1997 Calls a meeting Louise, Patty, myself and makes us seat there while he does unimportant things. Makes me feel like I'm at his mercy.

Feb 1997 Had a wool sweater on, he commented if it was hand made but virtually undress me with his eyes, staring at my breasts & saying "I thought it was because it's really a nice sweater" licking his lips. I feeled humiliated, wanted to home & change.

Feb 1997 In David's office his cleaning his filling, he gets to this Sexual Harassment Memo - comments "I don't believe this shit is happening in offices. I wouldn't take it & wouldn't do it to anyone" "Am I harassing you?" He asked twice. Then disgarded the memo by saying he didn't need any training on the subject, to get rid of it. I feeled treathen.

Feb 1997 Suggested we all go for drinks on Friday's at around 3:00 p.m.

Comments about my boyfriends picture & asked if we have fun together, and assumes that my boyfriend must.

Always questions my competence by asking if I know how to send a fax, or to make a call to verify questions with Catherine Drouin (consultant) demands to know if I can handle that responsibility. Puts me down whenever he feels I am showing too much initiatives wants total control or he gets very angry towards me.

Always needs to know my whereabouts.

Is always staring at my breasts whenever he talks to me. Makes me feel embarrass for being a woman.

(Sic throughout)

Statement of Lynda Doyon (referred to as Annex B of Exhibit E-2)

The following are incidences that occurred between 1994 and 1996 while working under the supervision of David Pankhurst.

Fall 1995

My first day working for him, he told me that he often takes his secretary to lunch. I answered that on lunch hours I go to aerobics and I have homeworks to do. (I was really surprised of his comment)

May 1994

My first week to Partnership (I was not working for him at that time and did not know him), he came to chat with me at my desk and asked me what I was doing in my personal life. (I felt that it wasn't of his business).

Fall of 1995

I asked him to give me a picture he took of my boyfriend at a work party. He wanted me to ask my boyfriend in front of him to find out if it was o.k. to get the picture. My boyfriend said yes, you can give it to her. David replied: "Yes, I can give it to her." He replied with a dirty smile. (I was very angry, so was my boyfriend).

Fall 1996

I had cramps in my head for many days. I was sitting in his office and he saw me grimace. I told him I had cramps in my head. He got up and came standing behind me and started rubbing my temples. (I was very intimidated by his action, his door was open and I was scared of people seeing him, I blushed, froze and didn't know what to do)

Fall 1996

He is a photographer and brought his album at work to show it to me. At the beginning of the album, it was family pictures, but near the end, there was pictures of nude women. In some of the pictures there was one woman and other pictures had two women together (nude). (I felt that it was a hint he was giving me and also felt very embarrassed)

Summer 1996

He said to Patty and me that one day, we should go over to his place at the pool for an afternoon. (I felt intimidated, embarrassed and uncomfortable).

Summer 1996

My boyfriend bought me a skirt for my birthday. When David saw me with it he said: Wow, you look gorgeous today! and he was looking at me from head to toe. (I felt really embarrassed having a comment like that coming from my boss).

Summer 1996

I was wearing a white dress and he made me go in his office, closed the door and said to me he could see through my dress. He said it was only to warn me not that it bothered him. Afterwards, I asked 4 girls if they could see anything through my dress and they all said no. (I felt really embarrassed and uncomfortable).

Fall 1996

He was explaining to Patty and I about what kind of a good father he was. That he had showed and explained to his daughter how to put a tampax in her vagina.

Fall 1995

When I first started to work for him, Patty was leaning over my desk and he came behind her and watch her "buns" and he said: "Wow, this is a nice position".

He called me love and gorgeous many times.

Fall 1996

I got fed up of all those comments, so I sent him a CCmail at 4:00 pm before leaving work. I wrote him that I did not like him saying comments about how I dress or how I look. That it made me feel uncomfortable and that those comments should come from my boyfriend and not my boss. The day

after, he called me in his office. He apologized to me saying that he did not realize that by giving compliments that it would make me feel uncomfortable.

After all those events, I was always wondering what to wear at work, and I was asking my boyfriend before leaving the house if I would provoke my boss by the way I was dressed.

I often noticed that he was trying to look in the front of my blouse or Patty's blouse.

He would call me in his office, make me sit there for 10 minutes while he was going through his CCmails. (I felt that it was a waste of my time).

He always wanted to know where I was.

He was often hollering at me.

There was a picture of a bare breasted woman hanging on his wall in his office. (It made me feel uncomfortable)

He was always talking behind everyone's back. He was also a very sarcastic man and always saying to me, "You work for me, if anybody wants you to help them, they have to come through me first".

(Sic throughout)

Statement of Louise Larose (referred to as Annex C of Exhibit E-2)

February 19, 1997

The following are incidences that occurred between 1996 and 1997 while working under the supervision of Mr. David Pankhurst.

Mr. Pankhurst new I was very vulnerable for a job, which I explained to him that I had to let my son leave to live with his father because of a financial situation. and that I had to move in with my parents, therefore I felt after all these incidences Mr. Pankhurst took advantage of me. He always made me feel that I had to do what he wanted to so I could keep my contract.

I also, want to let you know of all feelings regarding the following incidences, which are as follows; intimidated, embarrassed, ashamed, empty, and dirty. I have seen my Doctor last summer regarding what was happening at the office. When I came back on January 20, 1997 to work at CIDA I could not cope with the situation no longer so, I went back to see my Doctor, which I am now seeing him on a regular basis and, has sent me to a Psychiatrist.

1. *January 14, 1997 he called at home which my mother answered the telephone. Mr. Pankhurst asked for me and my mother told him I was out. I called her from my boyfriend's place and she gave me the message. Immediately I phoned Mr. Pankhurst, I left him a message to call me at John which I gave him the telephone number. But, he called back at my parents home which again my mother answered and asked for me my mother told him I was out so, he replied which according to my mother not to politely "Is she at John's". Then he telephoned me at John asked me if I wanted to work I replied yes because I do need the money. After our conversation explaining what I was going to do he said to me that he miss me I never responded.*
2. *January 20, 1997 he called Patricia Hurd, Linda Brassard and myself in is office. I do not know what I was doing their because he was asking questions to Patty and Linda what has happened while he was away on vacation. But as usual he made us wait for awhile and kept on saying "hang on hang on" before asking the questions.*
3. *January 24, 1997 I went to see Denise Marchand to tell her how nervous I was because he was due back from his holidays January 27th. I new he would be asking me for coffee and lunches and it made me very nervous.*
4. *January 30, 1997 he came to my office to ask me for coffee, I had to say no three times until he would leave.*
5. *February 3, 1997 he came to my office to ask me for coffee and I said no and he left.*
6. *February 7, 1997 I felt that Mr. Pankhurst was upset with me because I kept on refusing him so, all of a sudden he told me that he was my supervisor, and then he wanted to know where I went, where I was, and when I leave. After all that he told me to come and get him on Monday morning to show him where I would be sitting so instead I sent him a CCmail. After he finished what he had to say he asked me if I wanted to go to lunch with him I said no then he left. Before this, when I was working for him from May 1996 to August 1996 he would never question me about my whereabouts.*

7. *May 1996, he asked me for coffee and we went down. Mr. Pankhurst asked me if I was an opened minded person. I responded yes without knowing what he had in mind. At first I thought it was just a statement to make conversation.*
8. *June 1996, we were alone in the elevator and kissed me on the mouth so I pushed away. Everytime that we would take the elevator and we were alone he always had to get close to me.*
9. *July 1996, we went to a restaurant and all of a sudden he grabbed my hand to hold it and I told him to stop.*
10. *May, June, July, 1996 asked me several times to go to Montreal with him. At first I thought it was for business but, then when he told me he had a friend in Montreal he said we would have a great time. I never went.*
11. *August 1996, he told me to come with him to this apartment to do some work because we were always disturbed at the office. At first I thought it was nothing since he had brought some papers with him. When we arrived I told him I had a bad migraine. So he said I can get rid of that for you he hypnotized me which it worked because my migraine was gone. He asked me if I liked this me thinking that he was referring to my migraine because it was gone I answered yes. But I do not recall anything if something happened for example if he touched me. As soon that I woke up I told him I wanted to leave so, we left. We never did any work. When we arrived at his indoor parking he grabbed me and kiss me I could not let go because he was holding on to tight. Finally I managed to push away and left.*
12. *August 1996, Patti and I worked overtime till about 11:00 p.m. that night which he asked us because there was an emergency on the Minister's briefing book (Allocation) that had to be done for the following morning. Patti and myself were so nervous being alone with him. Then at one point he asked Patti to go downstairs to make a bunch of photocopies I said that I was going with her to help because I did not want to stay alone with him but he refused he wanted me to put some information in the computer which he could have done himself. So, when Patti left I went to the computer he came right beside me and started to rub my thigh I pushed away and then Patti arrived I asked her not to leave me anymore.*

13. *August 1996, I had bought this white long dress to my ankles he told me it really look good on me but, I should not wear any panties under. I just walked away.*
 14. *Another time I had that dress on again and he asked me if I had any panties under. Walked away again.*
 15. *Called me Love I told him my name was Louise.*
 16. *He always looks at the way your dress. At one point I would asked my boyfriend if I was dressed appropriately for the office. That's how uncomfortable I was.*
 17. *When he talks to you he always looks at your breasts or he has to get very close to you.*
 18. *One day I had black jeans on and he told me "you have a beautiful Ass".*
 19. *Another time he said that he needed a friend to talk to so he started to tell me that he was not having sex at home. I told him that was between him and his wife.*
 20. *One other thing that was very uncomfortable for us when we had to go to his office, is that he had this picture on the wall of this African lady with no top on. You could see from her breast to her face. I thought it was a postcard but I was told that he had taken the picture.*
- ...
21. *As asked me to go to his place and go for a swim. He told me I didn't need any bathing suit. I said no!*

(Sic throughout)

Statement of Patricia Hurd (referred to as Annex D of Exhibit E-2)

Following are incidences which occurred during my working period of June 1995 to February 1997.

July 1995. From previous discussions, I had learned that he was a photographer and had taken some professional shots in the past. He suggested that we go out for picnics on sunny days and take some photos of me for my parents and perhaps my boyfriend. We did go out once during lunch hour to Pink's Lake in the Gatineau Hills to take some pictures. I wanted a good picture for my parents' birthdays, which were at the end of July and beginning of August. We were not alone on the trails and he took several photos of me

by the water, on the trail sitting, standing leaning. He kept on repeating "You're beautiful" in what I thought was an effort to make me feel more relaxed but I thought it sounded corny and told him so. Later on, he suggested that I take my top straps away from my shoulders to get in a good neck/off the shoulder picture, told me that I had a very nice long neck and said "Oh, c'mon! You can take it right off. I've seen breasts before." I felt intimidated and uncomfortable with these words and the look he was giving me. He kept on taking pictures until I said that I wanted to go back to the office. He said that he was the boss and that we could take off the whole afternoon and take pictures. I said that I has work to do and wanted to go back to the office and I walked towards his car (he drove). I was afraid that if I didn't play along that he would leave me there to get back on my own. But he then followed me back to the car. Inside the car, he asked me how I liked that and I replied that I still felt uncomfortable in front of the camera, that I didn't like it that much. He said that with more practice I would get used to it and suggested that we come out again soon. I was afraid of upsetting him and was intimidated so said reluctantly "I'll think about it" after saying repeatedly that I did not feel comfortable. I pushed myself into the door and stared out the window until we got back, barely talking. He dropped off the pictures at the development store. I wasn't sure what to think. When the pictures were ready, we looked them over in his office and I asked him if I could take them to show my boyfriend to chose some for my parents and for my boyfriend. He refused. I was confused at why he would not let me take the pictures. So I told him of course I would pay for the development and the pictures an how much so could I take them. That was the whole reason why I went out to get the pictures taken. He refused again. He then said that I could chose two or three pictures to show. So I did. But I never left his office with these pictures. I found it very strange that he was not willing to hand over the pictures, even a few. I was confused at why he was acting like this. The particular picture of myself with my shirt straps slightly off my shoulder was not what he had described it would look like. It was supposed to be a picture of my neck and face, but the picture turned out to be full body. The centre of the camera was pointed at my breasts, so it was obvious where he was focusing the camera. I have not seen the pictures since, and I have asked since then if I could take some. He continually refuses. I do not know where they are, but he has not asked my permission to include them in his portfolio or anywhere else as he is supposed to do. I was mislead as to getting the pictures taken and he made me feel very uncomfortable with his attitude and the words he had said. He has asked me to pose nude for him, which at first, I laughed off not thinking him serious. He asked again to my reply "If anyone is going to take pictures of me naked, it will

be my boyfriend". He asked again on other occasions and repeated the above and sometimes sarcastically responded "Yeah, right! Sure! As if!" where I was sure he would get the message that I didn't want to. He asked to take pictures at his home at his private studio, and that I would have to come alone because he didn't like it when other people were around. He also said that some wine to drink would relax me. His persistence was worrying me because I had said enough and responded enough that I wasn't interested and would not go out to picnics or to his home to take photographs, especially after the first set was taken. He would not take no for an answer. I did not find this professional at all. He made me feel uncomfortable because I did not know how to get my point across after all that have said without being afraid of what he would do for my work. In addition to these constant requests, he had told me of the nudes he had shot. He showed me his portfolio and he had several pictures of nude women, one in particular which was not tasteful to show any women in the least. I was surprised to see them and embarrassed and upset that he had showed me this, especially because he was so intent on seeing my reaction. He was amused at my reaction. I felt uncomfortable but was afraid to say so, so when he asked how I like them I said they were okay. What was I supposed to say. He showed me in his office. When the secretary had mentioned interest in his photography, I told him that she would not like those pictures, thinking that he would have the decency to take them out of his portfolio. When he showed her, I stayed in the office with them. When she turned to the page of the nudes, she was immediately embarrassed and the expression on his face was a mocking amusement. He has shown this to other women and they and he had the same reaction.

Fall 1995. He has asked if Lynda Doyon and myself wanted to go to his house at lunchtime to go swimming on several occasions, to have a barbecue during the hot summer days. He then mentioned that some people have even been known to swim nude in his pool and that we didn't have to wear a suit if we didn't want to. I felt threatened and uncomfortable and his suggestiveness made me believe that he meant to invite us only to see us in our bathing suits and perhaps naked.

January 1997. He has asked the other Linda Brassard and myself to go on an all-day retreat to Calebogie. He then suggested Tremblant and I did not take his seriously because the unit could never justify a retreat, which is what I said. He replied that he was the boss and he could arrange it. He then told us that he could get the key for his cottage for the day and we could have full use of the facilities, and that we could even go in the hot tub because no-one else would be

around probably. I felt uneasy because he was suggesting the same as his swimming pool.

Winter 96-Spring 96. He has asked me several time to go to Montreal with him during the week and once over a weekend. At first I thought it was for business training course and was excited because I like the city. He told me of his friend who lives there and that they could show me a good time in Montreal. He then said he knew of a great hotel we could stay at to get a room and then go party all night. and that his friend and him would show me a Montreal I would never forget. I replied that I had many friends in Montreal and that if I was going to go that I would stay with them. He insisted that a hotel would be more fun because it was more central to Montreal and I repeated that if I ever went to Montreal, that I would definitely stay with my friends. He told me that it would be okay because the hotel room would be paid for and I repeated that I would stay with friends. He has brought up going to Montreal again, that he could meet me before work, drive in his car, stay in Montreal for the day, do some shopping or whatever else comes to mind (this said very suggestively) and told me of his friend again and that he could get me back home before dinner, unless of course we stayed the night in Montreal. I repeated, that if I went to Montreal, I would stay with friends and get there and back on my own.

We were coming up from coffee in the elevator. There were only the two of us. I was leaning in the corner as I usually do. He kissed me on the cheek. I was surprised and before I could say anything, he said something along that lines of "That's for the great work you are doing. Just wanted to thank you." and then the elevator door opened. I could not say anything and went straight to the bathroom to get away from him. I am uncomfortable to be in an elevator alone with him. He always stands too close.

He has made comments which are embarrassing and inappropriate: 'Are you wearing a new bra?', 'Those pants fall very nicely off your rear', 'I can see your panty line', 'You shouldn't wear underwear with those', 'You should wear short skirts more often to show off your nice legs'. I hardly wear skirt anymore. I cannot wear half of what is in my closet because I am afraid that what I may wear will cause him to comment or ogle. He has told me that he could see right through one of my skirts and laughed while he was saying it. I checked with one of the women I work with and you had to be looking very hard to see anything at all. I feel like a piece of meat when he says this. He commented once that I didn't take compliments very well and I replied that some comments make me uncomfortable and that I'd rather not hear them.

We had lunch plans to go to a restaurant and he asked me if I was going to wear underwear under what I was wearing.

I was leaning over Lynda Doyon's desk to show her something on her computer. I saw the look on her face and turned to see what she was looking at. He was staring at my behind and said something I didn't understand, but Lynda Doyon did. I immediately stood up and turned to face him, crossing my arms together. I felt disgusted, angry and like a piece of meat.

He had stayed home from work one day because he was sick. I had to call him to clarify something from the office and politely asked him how he was feeling. He replied I want to eat you." I was shocked, did not know what to say, so I hung up the phone. I immediately told Lynda Doyon and felt upset for the rest of the day. When he came in the next day, he tried to cover his remark by saying that he had such a fever that he had no idea what he was saying. I became angry and upset that he would think I was stupid enough to believe that. He never apologized.

During lunch, he said during normal conversation "I bet you'd be the type to let me eat you right here, on the table. I can see you with your legs spread and me licking you." and proceeded to lick his lips. I was shocked that he would say this again, and especially in public, afraid if anyone would have heard. We were sitting at a table for two in a busy restaurant at lunch, so I was sure no one heard. I was afraid of what people would think because of his actions and was afraid to say anything, to cause a scene. So I pretended that I had not heard him.

He has told me of an apartment that he has complete access to whenever he wants it at his disposal somewhere in Hull not too far from the office. He has many friends who can set him up that way.

I was sitting at my desk during lunchtime when not very many people were around. He came up behind me and started to rub my shoulders. I stiffened and felt intimidated and uncomfortable. I was afraid. When I got up to leave, from the corner of my eye, I saw someone there who had seen. I was afraid of what that person must think. He must've seen that person too because he took his hands from my shoulders right away, smiled and said 'Oh' and tried to cover up my telling me what to add to the document that was on my screen. I got up and left.

He told me how great a father he was because he had coached his daughter on how to insert a tampon into her vagina by reading the instructions from the other side of the bathroom door. He has also told me that his sex life at home

is not very good, at the same time telling me that he can tell me because he sees me as a friend, someone to confide in. I am uncomfortable with these comments, they are not my business and I do not want to know.

He tries to manipulate the timing of tasks so that there may be the possibility to stay overtime-during the night or come in on weekends. (August/September 1996) The Minister's Allocations Exercise: Louise Larose and myself stayed after hours to finish the production of binders due before the next morning. He wanted to take a break for dinner but I did not want to. We could have finished earlier because it was essentially copies which had to be made. As he has to review everything before we could make the copies, we had no choice but to eat. I went to make copies on the fifth floor, not wanting to leave Louise alone with him because she seemed nervous. I returned earlier than I had said and she looked very relieved at seeing me back so soon. She wanted to come to the copy room with me the next time but he told her she couldn't because he had things for her to do right away. She seemed nervous.

Has made reference to all the women who work for him as 'Charlie's Angels', 'My girls' in a meeting with another colleagues.

He insists that you tell him where you are every second of the day, even when you go to the bathroom.

He has a picture of a young African women with breasts exposed on his all at eye level which everyone can see. He told me that a friend of his sent this to him because he knows how much he likes breasts. I am not impressed at all by this which he can tell and then says that "Other people have development pictures in their offices" and laughs at his own joke.

Returning from coffee, I ran into a friend of mine on the elevator ride up to the 11th floor, where he works as well. We stopped in the hallway to chat some more and he stood there repeatedly asking "Are you coming" until finally my friend said "Well, I don't want you to get in trouble, so I'll talk to you later". We did not have any urgencies nor meetings to go to. He intimidated my friend as well.

He often makes you go to coffee with him: even after giving excuses, he says, I'm the boss, so you feel obligated and pressured to go. When walking down to coffee he whistles to women as they walk by, he ogles and sometimes bends his body backwards to get a better look. He tries to cover his behaviour by commenting on her 'nice lines' or 'nice features' to bring his photography in as an excuse to why he is looking so hard.

He reminds me always that I work for him, that he signs my bills and contracts. I feel vulnerable, intimidated and worried when he mentions this repeatedly.

I provide two bills in October 1996 which I left in plain sight, on his desk, to review before he signs it, as I have done for the last year and a half. After three weeks, I asked him for a copy of a signed portion for my records, assuming that he had signed the contract. He told me that he had seen it somewhere in his files on his desk but had not signed it. He tells me he would find it and look it over. A week goes by and he still hadn't looked at it. I went through his papers to find it myself and could not find it. I provided him with another copy and he assured me he would look at it immediately. Another week goes by and I still had heard nothing. I ask him and he said he had never seen it. I go through his paper right away and it is near the top of his files. He laughed. He tells me he will review it immediately. Another week goes by and I had to ask again and he told me there were some changes to be made, and he would give me this copy so I can change them. I did not receive this copy until a few days later. I go into his office again telling him that I am willing to sit down with him and sort this out with him and he says that it is not necessary that he 'believed most of what you have claimed'. Another day goes by and he finally signed my bill. Over a period of 6 weeks, he withheld reviewing, discussing and signing my bill. He is aware that I am only paid once a month, that it takes 30-45 days to receive a bill payment and that Christmas is coming. This situation made me stressed and I was insulted at his attitude. He also had the secretary mark down when I came in to work, when I went to break, when, with whom and for how long I was gone at lunch. etc. I have never heard of a consultant being put under such a magnifying glass.

He asked me to keep track of Linda Brassard's hours which flatly refused to do, because I was not in a position to do it, I did not want to do it and that I would not do it. He said that I was the only person in a position to do so because I worked beside her. I responded that I am only a consultant and that it would be the responsibility of a full-time employee to do this.

He hollers at the secretaries and gets mad when they do not come right away or do not answer right away. You can hear him from the window (my office) and it is embarrassing to the secretaries.

Has constantly referred to being sent personally by the Vice-president to Egypt to investigate a harassment charge when he worked in personnel. This makes me feel as if I had received a warning - do not say anything because you will not be believed.

Often makes sexual interpretations of words you say i.e. 'coming', 'hard'

At the Blitz committee meeting, he was persistent and adamant about having Louise Larose's contract under his name when it was pointed out by committee members that all of the work would come from the director of the informatics unit.

(Sic throughout)

The oral evidence of Linda Brassard and Lynda Doyon varied little from their written statements. Patty Hurd testified also about the consternation she felt when she discovered that someone unknown to her had put her name on a web site indicating her availability to the world at large and featuring what purported to be a nude photograph of her. She said that she was unaware that André Couture, who was a friend of hers, had done this. She stated, however, that although she reported this incident to the investigator, Mr. Chartrand, she did not accuse Mr. Pankhurst. She simply did not know who had done this. (After the close of the hearing a document was submitted to me on consent of both parties, signed by André Couture wherein he admitted that he was the one who set up Ms. Hurd's material on the web site.)

Louise Larose added to her original written allegations quite substantially. She testified that since the completion of the written statements, her memories of other incidents had revived. She testified that she had been traumatized by the events and her memories of them had been submerged in her subconscious. She had been advised by her personal physician to seek counselling at a Rape Crisis Centre and because of her treatments there her memories had revived over the course of time.

At the time of the hearing, she was not sure even at that stage that all of her memories had revived. During the counselling process, she became stronger and was able to remember some aspects of her encounters with Mr. Pankhurst that she could not previously recall because they were very traumatic to her and she had buried her memories of them. This is why she had left out some things in her previous accounts of the incidents. In her testimony, she revealed that in August 1996 the incident with Mr. Pankhurst in the parking garage included not only a kiss but Mr. Pankhurst forcibly putting his hands inside her clothes and in her panties.

She described her discomfort with Mr. Pankhurst in February 1997. She refused to have coffee with him and had arranged for a co-worker to drop into her office unexpectedly so she could arrange to avoid Mr. Pankhurst.

Ms. Larose stated that she did not share all the details of her report (Exhibit E-2, Annex C) with Ms. Hurd. Some details remained private to her. She was assisted by her boyfriend, John, in drafting the final report because “his English is better than mine”. She stated that she only told Mr. Pankhurst about her financial problems and her custody problems with her son. She described her state of mind after these events as being in shock, disbelief, disgusted and ashamed.

Ms. Larose stated that she had deleted from her computer an obscene e-mail she received from Mr. Pankhurst after her encounter with him in the parking garage. This has never been recovered. In her first reference to the destruction of this e-mail, she said she had torn it up. Later, in cross-examination, she admitted it was never printed and what she really meant was that she deleted it.

Patricia Hurd was questioned in cross-examination about an incident that occurred during Mr. Chartrand’s investigation. Ms. Hurd received information that her name and a nude photograph purporting to be her was placed on a web site. She did not do this herself, nor did she know who had done so. She denied that she had accused Mr. Pankhurst of this but admitted that she had considered that it might have been him.

Mr. Pankhurst testified that he had used British idioms such as “luv” in the past. He used these unconsciously and, when it was pointed out to him by Lynda Doyon, he apologized, explained his background and tried, quite successfully, not to ever do so again. He, however, denied ever participating in a conversation when the expression “I’m coming” was used in a double meaning sexual sense. Mr. Pankhurst denied pressing any of his subordinates to go for coffee with him although Lynda Doyon was asked casually and often accepted. The situation was the same for Linda Brassard although the latter usually had other plans. On the other hand, for one and one-half years after Patricia Hurd commenced her employment, she took almost all her coffee breaks with Mr. Pankhurst.

None of the complainants were ever invited to swim nude by him. None of the complainants were invited to Montreal, nor were they invited to his time share unit in Calabogie. There was nothing more than a joke about the Department sponsoring a three-person conference there. He denied kissing Ms. Hurd and Ms. Larose and the touching of Ms. Larose in the parking garage.

Mr. Pankhurst testified that he and Patty Hurd regularly went on coffee breaks and lunches. He even played pool with Ms. Hurd during breaks. He did go to Pink's Lake to take photographs of her during her lunch hour. He was a professional photographer and offered to have Ms. Hurd pose for him because she was interested in having a portrait study done for her parents. He brought his portfolio of samples in for Ms. Hurd to see. This portfolio contained a variety of photographs and included "figure studies" - photographs of nude women in various poses (Exhibit E-3). Certainly, there was no intent to give Lynda Doyon a "hint".

Mr. Pankhurst stopped at a sex shop while walking with Ms. Hurd. She went further into the shop, while he stood around the door.

While there was a delay in his signing Ms. Hurd's bills, this happened because he disputed the hours she was claiming. She had to correct these before he would sign. He required that these be changed and rewritten because he believed that she had claimed compensation she was not entitled to.

He has occasionally complimented others in the workplace on their clothing as he himself was often complimented on his own hand-knit sweaters; when one of the complainants was wearing a beautiful sweater he commented "nice sweater" and asked her if it was hand-knit.

He did not stare at women's breasts, nor did he make sexually explicit or suggestive comments, nor did he smile suggestively when he met Lynda Doyon's boyfriend for the first time. On one occasion, he suggested rubbing Lynda Doyon's temples when she had a headache. As she agreed, he went behind her and rubbed her temples.

He did not tell Ms. Larose that he was not having sex with his wife. He said something to this effect, but only in the context of having a quarrel with his wife one evening. While he did take Ms. Larose to a friend's apartment at noon, it was because she wanted to talk privately to him.

He spoke to Lynda Doyon and Patty Hurd about coming to his house for a swim at noon in hot weather. He was offering hospitality for the whole staff and not just to them. He saw no reason that anyone would feel intimidated, embarrassed or uncomfortable with this invitation.

He stated that he told Lynda Doyon on one occasion that her dress was see-through because he was concerned that she might not have realized this. He did speak about teaching his daughter how to deal with her first menstruation and how he had to give her a step-by-step instruction on how to insert the tampon into her vagina. He did so, he stated, in the context of sharing the trials of single parenthood. He denied referring to anyone's "buns".

He did keep a postcard of a bare-breasted native woman on his office wall. This was sent to him unsolicited. None of the complainants had ever mentioned it.

When Lynda Doyon wanted to work in another area, Mr. Pankhurst made this possible for her. She then sent him an e-mail stating that he was the best boss she ever had.

Mr. Pankhurst was aware of the definitions of harassment and abuse of authority contained in CIDA's "Harassment in the Workplace" handbook (Exhibit E-7), which reads as follows:

2. *DEFINITIONS OF HARASSMENT AND ABUSE OF AUTHORITY*

***Harassment** means any improper behaviour by a person employed in the Public Service that is directed at, and is offensive to, any employee of the Public Service and which that person knew or ought reasonably to have known would be unwelcome. It comprises objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles, or causes personal humiliation or embarrassment to an employee.*

It includes harassment within the meaning of the Canadian Human Rights Act, i.e.: harassment based on the following prohibited grounds of discrimination: race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction of an offence for which a pardon has been granted.

Harassment may include:

- a) verbal abuse or threats;*
- b) unnecessary physical contact;*
- c) inappropriate remarks, jokes, innuendoes, or unwanted comments;*
- d) practical jokes which cause awkwardness or embarrassment;*
- e) inappropriate invitations, requests or actions whether implicit or explicit, or intimidation; and/or*
- f) display of suggestive and/or offensive materials.*

Sexual harassment means any conduct, comment, gesture or contact of a sexual nature, whether on a one-time basis or in a continuous series of incidents:

- a) that might reasonably be expected to cause offence or humiliation to any employee; or*
- b) that the employee might reasonably perceive as placing a condition of a sexual nature on employment or on an opportunity for training or promotion.*

Abuse of authority is a form of harassment and occurs when an individual improperly uses the power and authority inherent in his or her position to endanger an employee's job, undermine the performance of that job, threaten the economic livelihood of the employee, or in any way interfere with, or influence the career of the employee. It includes intimidation, threats, blackmail or coercion and can apply to the distribution of work assignments, training opportunities, promotional opportunities, performance evaluations or the provision of references.

Managers' proper exercise of their responsibility regarding job related activities including criticism of work relative to ongoing performance does not constitute harassment. However, the use of one's position to intimidate, coerce or harass is forbidden.

In his evidence, Mr. Pankhurst stated that he had learned a great deal from these experiences and that there were many things that he would be very careful not to do again. He also testified to a clean disciplinary record.

Argument

Both counsel for the grievor and for the employer reviewed the facts and interpreted them according to the situation of their clients. Counsel for the grievor attacked the credibility of the complainants. He noted that the complainants had talked to each other, had met together at one point and had the opportunity to concoct evidence.

He suggested that, while he did not deny that the grievor had made mistakes and some things had happened, not all of the allegations cited in the evidence of the complainants were factual. Some of the complainants had added details and varied from their first accounts of their allegations. He drew particular attention to the details which had been added by Ms. Larose and he questioned the authenticity of recovered memories. Ms. Hurd should have realized that the placing of a nude photograph on the Internet in her name was not Mr. Pankhurst's work, but that of her friend André Couture.

Counsel for the employer referred to the inappropriate conduct of Mr. Pankhurst in his dealings with much younger, junior female subordinates. The amount and kind of interactions of Mr. Pankhurst with his subordinates, the sexual overtones, the double entendres were offensive in the extreme. This combined with Mr. Pankhurst's tendency to display his authority and power as shown in his first interview of Ms. Brassard created a difficult and uneasy environment for the complainants to work in. The complainants were sincere and by their evidence and Mr. Pankhurst's admissions, they suffered mistreatment of a sexual nature of which they had a right to complain. There is no evidence to suggest that anyone manufactured evidence. There is nothing that affects the credibility of their evidence.

Reasons for Decision

In *Janzen v. Platy Enterprises Ltd.* [1989] 1 S.C.R. 1252, at page 1284 the term "sexual harassment" is described as follows:

...

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 workplace, 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.

...

All four of the complainants are much younger than Mr. Pankhurst. All of these four women were subordinate to Mr. Pankhurst in rank and all except Ms. Hurd were support staff. The latter, Ms. Hurd, was an entry level consultant on contract. All were very vulnerable from the point of view of their security of employment. In addition, Ms. Larose has additional vulnerabilities due to her emotional state over the loss of custody of her son and her financial problems. As she quickly made Mr. Pankhurst aware of these problems, he had knowledge of these vulnerabilities.

In dealing with the complainants, Mr. Pankhurst, as their supervisor, embarked on a course of conduct which was foolish and dangerous. He became familiar with Ms. Hurd to the point where he was taking almost all his coffee breaks and lunches with her. He spent lunch time with her playing pool. Their fellow employees could see them spending what can only be described as an inordinate amount of time together. It is little wonder that when Patty Hurd submitted her bills for payment, which contained hours of work that Mr. Pankhurst disputed, problems ensued. When he “pulled rank” and began to treat her as a subordinate again, having a secretary monitor her hours of work and demanding that claims be re-written, Ms. Hurd felt angry. After all, they had worked together very closely, took breaks together, walks together, once even visiting a sex shop together while on a break from the office. They had driven to Pink’s Lake at noon and had played pool together. Ms. Hurd, as an attractive young

woman, can hardly be blamed for thinking that Mr. Pankhurst was attracted to her, considering all the time he was spending socializing with her. Mr. Pankhurst who is a manager put himself in a difficult position.

Other women in the office were able to observe the close relationship between Mr. Pankhurst and Ms. Hurd. It is not surprising that, when they received repeated requests to join Mr. Pankhurst for coffee, they were concerned about the extent of socializing he expected of them. These requests were received by them as unwelcome attempts to push himself upon them. Clearly, Ms. Brassard and Ms. Doyon valued their space, preferred to be in company of their own choosing and they viewed his attempts at socializing as intrusive. They had relationships with boyfriends and they considered Mr. Pankhurst's invitations as intruding on that space.

I find that they did feel pressured to socialize with Mr. Pankhurst and it made them nervous and uncomfortable.

I accept that Mr. Pankhurst engaged in a course of conduct that was unwelcome and offensive to his junior female staff. He introduced an element of intimacy with sexual overtones into their workplace which was inappropriate to the work environment and which caused his staff discomfort.

The fact that the women involved did not confront him earlier and give him a chance to change his conduct could be a troubling aspect of the case. It is not, however, unusual in such cases. He was their boss. He should have known how offensive his behaviour was. He says that he stopped using the word "luv" to Lynda Doyon when she sent him an e-mail complaining of it. Linda Brassard, however, felt that Mr. Pankhurst was making fun of Lynda Doyon when he told her about Lynda Doyon's complaint. Although Mr. Pankhurst promised to do his best to avoid the use of pet names, he did slip on three occasions with Ms. Brassard. In the perception of the employees, it might be risky for them to complain. Some were in very vulnerable circumstances as term employees and felt a pressure to please and go along with Mr. Pankhurst who was their manager. Mr. Pankhurst made them very aware of the fact that he was the "boss". Mr. Pankhurst should have been aware of the body language of these women and the discomfort he was causing. He engaged in very risky behavior and should have been aware of his intrusiveness.

Bringing in his portfolio containing sexually explicit pictures of nude women showed poor judgment. He should have anticipated it causing embarrassment. Warning people about it when they are ready to look through it is not good enough. The fact that he saw fit to warn Lynda Doyon and Patty Hurd about the “figure studies” shows that he knew the portfolio might give offence.

The result was that he introduced an inappropriate sexual element into the workplace that made his subordinate female staff uncomfortable.

Mr. Pankhurst walked a fine line sometimes – the postcard of the bare-breasted African woman which he kept on display at eye level in his office is another example. To people of some sophistication, it may have been no problem whatsoever. He should have been aware of the fact that some women, including the younger female subordinates in his office, might find it offensive. It signaled to them an attitude on the part of Mr. Pankhurst and created an atmosphere in which certain language and actions of Mr. Pankhurst, if taken as individual incidents, might have been viewed as only borderline but which appeared to the complainants, when considered as a whole, to have more offensive sexual connotations.

Telling Louise Larose that he and his wife had had a quarrel and were experiencing sexual problems and taking Louise Larose to the apartment of a friend at noon hour were most inappropriate acts. A manager should know better than to engage in such intimate behaviour with his female staff. While there were opportunities for the complainants to get together and collude in their complaints, there is no evidence to support the conclusion that this happened.

I find that some of the allegations of harassment and sexual harassment have been made out. The grievor himself admitted to many of the incidents, but tried to rationalize them differently. He stated that it was Ms. Larose who wanted to chat privately with him. However, he was the one who took her to a friend’s apartment near the office. This was his decision. It is not a far reach for a woman in Ms. Larose’s position to believe that sex was on Mr. Pankhurst’s mind.

The amount of socializing that a man in Mr. Pankhurst's position did with his subordinate staff was abnormal. I agree with counsel for the employer that Mr. Pankhurst's socializing with his junior female staff in this manner fostered an atmosphere that was not healthy.

He was their manager. He could influence their futures. He and Ms. Hurd were almost inseparable, taking most of their breaks together. Mr. Pankhurst denies making smutty remarks, using double-entendres and staring or leering. It is possible that the women misconstrued some of the comments. Mr. Pankhurst is responsible, however, for the atmosphere in the workplace which might foster such misconceptions.

It was inappropriate for Mr. Pankhurst to stand behind Ms. Doyon and to rub her temples to soothe her headache. He is a male manager in his fifties and she is a young woman, support staff. She may have believed that she was not in a position to say "no" and just decided to endure it in discomfort. It was also inappropriate for Mr. Pankhurst to decide to tell Ms. Doyon himself about a see-through dress. This caused her great discomfort and embarrassment and, even if the dress was inappropriate, this was not the proper way to handle the situation.

Talking to his junior female employees about teaching his daughter to use a tampon and deal with her first menstruation is almost beyond belief in its inappropriateness. Yet, Mr. Pankhurst admitted it.

All of the above mentioned incidents were proven by the employer and assisted by the admissions of Mr. Pankhurst. Some of the complaints are corroborated by photographs and objective evidence, including the admissions of Mr. Pankhurst himself. However, there were a number of allegations of incidents of kissing, sexual assault and extreme sexual language that were not proven on a balance of probabilities. Although I find Ms. Doyon and Ms. Brassard to be very credible witnesses, it is apparent to me, through examining all the evidence and considering the probabilities arising out of the evidence, that Ms. Larose and Ms. Hurd decided to embellish their position by adding allegations that are untrue in relation to the kisses in the elevator, the sexual invitations to Ms. Hurd, the touching of Ms. Larose's thigh during the overtime period of work, the obscene e-mail and the comments related to the wearing or not wearing of underpants. In particular, I find Ms. Larose's testimony

to be unreliable insofar as it relates to matters which she had not raised in her written statement.

It is suspicious that Ms. Hurd was not aware immediately that the placing of a nude photograph (claiming to be Ms. Hurd) on Mr. Couture's web site was the work of Mr. Couture and not Mr. Pankhurst. (With the consent of both parties, a written admission by Mr. Couture that he was the author was submitted to me after the hearing.) It is also suspicious that Ms. Larose says that she tore up an e-mail, which she admits was never printed. This e-mail, extremely obscene in its content, was never found.

Having carefully considered all the evidence as well as the submissions of the parties, I am of the opinion that discharge is too severe a penalty under the circumstances. I believe that Mr. Pankhurst has learned his lesson and can now work with female employees without a problem. He also has long service and a clean disciplinary record. An appropriate penalty for Mr. Pankhurst is a six-month suspension without pay or other benefits and this is substituted for the termination of his employment.

Accordingly, for all these reasons, the grievance is allowed to the extent indicated.

**Rosemary Vondette Simpson,
Board Member**

OTTAWA, October 18, 1999.