

**Files:** 161-2-809  
161-2-810  
161-2-812



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**AMANDA KATHLEEN DAY**

Complainant

and

**CAPTAIN B. BLATTMAN, NEIL BRIGHT  
AND MICHAEL C. HORTIE**

Respondents

**RE:** Complaints under Section 23 of the  
Public Service Staff Relations Act

***Before:*** Rosemary Vondette Simpson, Board Member

***For the Complainant:*** Dan Quigley, Federal Government Dockyards Trades  
& Labour Council

***For the Respondents:*** Judith Begley and J. David Houston, Counsel

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Heard at Victoria, B.C.,  
March 17, 1998.

## DECISION

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On September 9, 1996, the complainant submitted a complaint under section 23 of the *Public Service Staff Relations Act (PSSRA)*. Section 23 of the *PSSRA* is set out as follows:

*(1) The Board shall examine and inquire into any complaint made to it that the employer or an employee organization, or any person acting on behalf of the employer or employee organization, has failed*

*(a) to observe any prohibition contained in section 8, 9 or 10;*

*(b) to give effect to any provision of an arbitral award;*

*(c) to give effect to a decision of an adjudicator with respect to a grievance; or*

*(d) to comply with any regulation respecting grievances made by the Board pursuant to section 100.*

*(2) Where, under subsection (1), the Board determines that the employer, an employee organization or a person has failed in any manner described in that subsection, the Board may make an order directing the employer, employee organization or person to observe the prohibition, give effect to the provision or decision or comply with the regulation, as the case may be, or take such action as may be required in that behalf within such specified period as the Board may consider appropriate.*

*(3) An order under subsection (2) directed to a person shall*

*(a) where that person has acted or purported to act on behalf of the employer, be directed as well*

*(i) in the case of a separate employer, to the chief executive officer thereof, and*

*(ii) in any other case, to the Secretary of the Treasury Board; and*

*(b) where that person has acted or purported to act on behalf of an employee organization, be directed as well to the chief officer of that employee organization.*

Sections 8, 9 and 10 provide:

**8. (1) No person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall participate in or interfere with**

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*the formation or administration of an employee organization or the representation of employees by such an organization.*

*(2) Subject to subsection (3), no person shall*

*(a) refuse to employ, to continue to employ, or otherwise discriminate against any person in regard to employment or to any term or condition of employment, because the person is a member of an employee organization or was or is exercising any right under this Act;*

*(b) impose any condition on an appointment or in a contract of employment, or propose the imposition of any condition on an appointment or in a contract of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Act; or*

*(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or any other penalty or by any other means to compel an employee*

*(i) to become, refrain from becoming or cease to be, or, except as otherwise provided in a collective agreement, to continue to be a member of an employee organization, or*

*(ii) to refrain from exercising any other right under this Act.*

*(3) No person shall be deemed to have contravened subsection (2) by reason of any act or thing done or omitted in relation to a person who occupies, or is proposed to occupy, a managerial or confidential position.*

**9. (1)** *Except in accordance with this Act or any regulation, collective agreement or arbitral award, no person who occupies a managerial or confidential position, whether or not the person acts on behalf of the employer, shall discriminate against an employee organization.*

*(2) Nothing in subsection (1) shall be construed to prevent a person who occupies a managerial or confidential position from receiving representations from, or holding discussions with, the representatives of any employee organization.*

**10.** (1) *Except with the consent of the employer, no officer or representative of an employee organization shall attempt, on the premises of the employer during the working hours of an employee, to persuade the employee to become, refrain from becoming, continue to be or cease to be a member of an employee organization.*

(2) *No employee organization, or officer or representative of an employee organization, that is the bargaining agent for a bargaining unit shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the unit.*

The complaint submitted (Exhibit R-1) reads as follows:

*After reviewing the information provided in the Public Service Staff Relations Act I would like to submit complaints under section 23 of the Act against the following respondents:*

1. *Fleet Maintenance Facility (formerly called Ship Repair  
CAPE BRETON Unit Pacific)  
FMO Victoria, BC  
VOS 1B0*

*I am complaining that the above named respondent is negligent in acknowledging my ongoing chronological complaints concerning the individual who was in charge of my apprenticeship training at their facility. The respondent, in conjunction with their personnel advisory, have intentionally tormented my emotional state and successively proceeded to allow an insidious progression of a toxic, dysfunctional, and unproductive working and learning environment.*

*I have made diligent and multiple efforts to communicate my needs around being kept informed and being allowed to speak to the decisions concerning my complaint. The respondent responded by stating that I had no such rights to grievances or appeals and furthermore that they refused to communicate with me in writing. I did not have adequate representation to meet with the abuser in person. And on more than one occasion I was refused the right to have the representation of my choice.*

*Over a year later I tried to file a grievance in order to be informed on the findings of the investigation into my complaint against the man who was sexually harassing me and abusing me; the Captain responded by stating that he was upholding my grievance and then proceeded to inform me that there had been no sexual harassment and that all of*

*my complaints were completely unfounded, while the investigation report clearly stated the finding that I had been sexually harassed (page 37 of 40).*

*I fear that for some sick reason these people think that by implementing a failure to dismiss the man who sexually abused, sexually assaulted, and mentally battered me while indoctrinating me to the workplace through his personalized apprenticeship training program, that I will be eligible for a higher damage award.*

*What is resulting with me is that I am presently at a high risk of suicide, and I have been without an income since the 23 of July. I am without a future.*

*In response to filing a second grievance I was sent home and told not to return. In addition to this, the civilian personnel office offered to help me clear my personal items from the workplace, and advised me to apply for sick leave, unemployment insurance, and disability income assistance.*

*I have made several phone calls asking for assistance to various people including the Admiral's Office. They stated that they would provide an independent review, which they did and involved many people so that my personal business is very widespread, and then informed me that they do not deal with civilian personnel. I found this unnecessary invasion of my personal life very depressing.*

*As I originally stated to the employer that I did not wish to file any complaints, but that I did feel that the harasser should be kept away from me for health and safety reasons, the employer responded that they would in no way assist me unless I filed a formal written complaint. The employer then proceeded to badger me into making a written complaint with BCPO as the advisor on my behalf; what resulted was extensive retaliation toward me and further damages on the socialization of my professional career in the workplace. The employer, since forcing me into this situation, has dumped me and left me high and dry.*

*The employer has failed to implement and respect my rights according to the Treasury Board Policies concerning my situation. The employer has failed to implement and respect my rights concerning Civilian Personnel Administrative Orders 7.18, 8.13. The employer has also failed to acknowledge that since September of 1994 I have been complaining of BRIBERY and extensive theft regarding the harasser and his immediate supervisor. The employer fails to*

*acknowledge that this situation is also encumbered by a CONFLICT OF INTEREST.*

*Even more so, this employer is negligent to acknowledge my right to HEALTH AND SAFETY which is an issue included in the collective agreement with the bargaining agent.*

*I request that the Board order the respondent to acknowledge my complaints, dismiss the abuser from the workplace and allow me to have access to a remedial process.*

2. *The Federal Government Dockyard  
Trades and Labour Council  
P.O. Box 1779  
Victoria, BC  
V8W 2Y3*

*I cannot access reasonable constructive or even remotely helpful assistance in trying to deal with the employer. After being sent home by the Captain and told not to return, the vice president of the council telephoned me and insisted that he be allowed to come to my home and have me sign a letter he had prepared which would relieve the council of their responsibility to provide me with any further assistance.*

*I cannot seem to access any remedial process and I cannot seem to access the help which is necessary to do so.*

*I do not have access to reasonable representation.*

*I do not have reasonable representation. I am not getting the kind of help that is fair. The bargaining agent is failing to protect my interests and rights according to the workplace policies, the Treasury Board Policies, and the collective agreement.*

*I request that the Board issue an order that the collective bargaining agent in this case, the Federal Government Dockyard Trades and Labor Council, take effective steps to represent my interests of fair and equitable access to the services and facilities of the workplace according to the rights afforded to me as a member of the employee organization under the Act.*

3. *Mr. Michael Cyrile Hortie  
Fleet Maintenance Facility  
CAPE BRETON  
FMO Victoria, BC  
VOS 1B0*

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*I am complaining that Mr. Hortie used his position of employment and his teaching and supervisory authority to enforce conditions of a sexual nature onto my employment and training opportunities. To enforce these conditions onto my employment and training opportunities Mr. Hortie used techniques of lying, manipulation, coercion, physical and verbal threats against me and against others, brainwashing, battery, blackmail, bribery, and theft of crown property. In addition to the damage upon myself as personal injuries and financial losses, Mr. Hortie has robbed me of an educational opportunity, the ability to provide for my family, and a future which took the greater part of my life and energy to achieve. He has succeeded in doing this by creating a most volatile and toxic social working environment.*

*Mr. Hortie has purposefully and intentionally victimized me in a most sickening and devious manner and failed to adhere to a sense of morality which is so obvious that it does not need to be written down. Mr. Hortie has failed to respect his responsibilities to his subordinate and to the workplace and to the Crown with respect to the policies of the workplace (CPAO 8.13, 7.18, CONFLICT OF INTEREST) and the policies of the Crown regarding BRIBERY and theft. Mr. Hortie has breached his duties with respect to the Crown. Mr. Hortie has violated my life in such a way as to rob me of any remote sense of dignity which I may have once been entitled to. And in this way I have received a very unwanted injury and extensive damages on my working and domestic life. Mr. Hortie is a constant threat to me and therefore a relevant and real concern to Health and Safety under the collective agreement.*

*I am requesting that the Board issue an order to make Mr. Hortie responsible for his own actions.*

The Public Service Staff Relations Board (PSSRB) sent a letter dated September 10, 1996 to Ms. Day in which she was advised as follows:

*I acknowledge receipt of your letter of September 3, 1996 along with accompanying documents and received at the Public Service Staff Relations Board on September 9, 1996.*

*As indicated in my letter of August 22, 1996, each complaint filed with the Board must identify the respondent(s) by name and address. It must also identify the paragraph under section 23 of the Public Service Staff Relations Act under which the alleged failure is covered as well as the section of the Act or P.S.S.R.B. Regulations and Rules of Procedure that is alleged to be contravened.*

*In describing your complaint under section 23 of the Act, you cite three(3) respondents: the "Fleet Maintenance Facility"; "The Federal Government Dockyard Trades and Labour Council" and "Mr. Michael Cyrile Hortie".*

*In order not to cause undue delay in the completion of this matter, the Board requires more clear and precise information regarding the "Fleet Maintenance Facility" (i.e. names(s) [sic] and address(es) of individuals). To that end, I am enclosing for your information, two(2) copies of Form 2, "Complaint under Section 23 of the Act".*

*Although the filing of a complaint is not subject to rigid time limits, it should be noted that the complainant is required to provide a **clear, concise and legible statement of each act or omission complained of**, giving dates and names of persons involved. Failure to provide these particulars may delay the processing of the complaint. A copy of the statement or allegations is forwarded to the respondent(s) and they are given the opportunity to respond. The complainant is entitled to respond to any reply submitted by a respondent.*

*Once the parties have had the opportunity to comment on the statement(s) complained of, a hearing, if necessary, is then scheduled by the Board to determine the issue. In other words, at the time the complaint is filed, the rules require that the complainant provide the allegations on which the complaint is based and not the material by which the complainant will attempt to prove the allegations.*

*In light of the above, the Board cannot process this reference until you clarify this matter. I am therefore returning the material you have submitted.*

The following material was attached to the section 23 complaints against Captain B. Blattman, Mr. Neil Bright and Mr. Michael C. Hortie that the complainant, Ms. Day, submitted to the PSSRB on September 19, 1996 (Exhibits R-2, R-3 and R-4).

*2. I lodged a very formal complaint against Mr. Hortie in September of 1994 to Mr. C. Lundgren who was the foreman for the work area of both myself and Mr. Hortie. I complained of sexual harassment, fear of sexual assault and behaviour such as the displaying of pornography. I complained about Mr. Hortie bribing the chargehand in his shop to get him to keep quiet about the sexual harassment which the chargehand (Mr. Reid Mitchell) was witnessing and confronting Mr. Hortie about. Mr. Mitchell was encouraging other shop members to harass me in the work area.*



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*The result of lodging a formal verbal complaint to the foreman was that in early October I was informed that if I tried to pursue my complaint any further that it would most likely result in a reprimand to myself and Mr. Hortie, as the foreman viewed my situation to be one of a personal problem and not work related.*

*On January 17, 1995 Mr. Hortie was charged by the foreman for being away from his place of duty after I had been advised by the foreman and a HEART agent (Kris Mikkelson) and the group Manager (Vic Smith) that it was in my interests to make a formal written complaint against Hortie citing the alleged sexual harassment.*

*On January 25, 1995 Mr. Hortie continued to bother me on my way to the parking lot on Signal Hill. I found this coercive behaviour made me feel threatened and I contacted the Military Police for advice. I made an application for a Peace Bond through the M.P. and attended a court hearing on May 09, 1995. The application served to be very effective through process, however, Judge Smith made the disposition that while Mr. Hortie had been manipulative and coercive, the harassment issue was one which the workplace should be dealing with, not the provincial court, and the case was dismissed.*

*Following reprisals from Mr. Hortie's friends in the workplace I was removed from the workplace and relocated to another shop in February of 1995.*

*On February 07, 1995 I was ordered to attend the office of the Administration Officer at the Unit. They expected me to give details of my complaint immediately. I expressed a concern over my safety at the present time and the Officer stated "I am not concerned about your safety!!". I refused therefore to discuss the matter any further.*

*That incident had been preceded by three solicitations for a written complaint about the harassment made by the foreman, the group manager, and finally the production Manager who at that time was Steve Anderson. No assistance was provided to me to do so, nor any information about CPAO's or other policies. Then a naval officer named Commander E. Paquette was soliciting me to attend his office and give details about my situation. I again expressed a concern for my safety and that I felt it was more important to be safe than worrying about a written complaint. I was then hollered at and the result was that after two or three more of these verbally intimidating and threatening discussions with a very loud and belligerent officer in uniform I relented to prepare a written complaint. I was commissioned three*

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*working days to stay at home a [sic] prepare the written complaint.*

*With the request to meet with management I was informed by Mr. Smith to bring representation with me.*

*I detailed a chronological sequence of events which I considered to be relevant to my situation in the work environment.*

*With these chronological details of information I then sought the assistance of the Base Civilian Personnel Officer who was Neil Bright. I was sent to see Ms. Carol Cumberbach who was subordinate to Mr. Bright and placed in charge of my need for assistance in accordance with CPAO 7.18.*

*I wrote a letter to Ms. Cumberbach specifically requesting that she look at the details provided by me in chronological order in order to advise me further on how to format and present the actual allegations. Ms. Cumberbach not only failed to acknowledge my request through negligence and simple hurried error, but did not have the experience, knowledge, or ability to complete this task in the first place. It would have been more appropriate for her to redirect me to another source for qualified and much needed advice. In addition to this omission of my request for this assistance, Ms. Cumberbach failed to assess the chronological events which I had recorded into categories of harassment; essentially it was never established what I was actually specifically complaining and requesting to obtain evidence about.*

*The complaint was signed on March 08, 1995, and the complaint submitted in its incompleated state to be investigated by Commander Paquette.*

*The investigation team also failed to designate what the specifics of the complaint were about. The issues were simply not identified. The investigation was faulty and biased throughout. Witnesses who had nothing to do with my complaint were interviewed and in the manner of as though they were taking a poll of opinion an investigation report was issued which was essentially a large waste of time. The result of the manner in which this episode was conducted resulted on further damage to my work environment and I was subjected to further reprisals. Although I complained about this further reprisal business to management, again nothing was done.*

*In May I requested in accordance with CPAO 7.18 to be not only kept informed but notified of how to appeal the decision*

*on my complaint. I was informed that no sexual harassment had taken place, that I certainly had no say in the matter and no grievance rights. And furthermore that it was no longer acceptable for me to make any written submissions on the matter. In January of 1996, nine months following the issues of the findings, I was permitted disclosure of the investigation report and discovered that my complaint of sexual harassment had in fact, contrary to the Captain's written statement to me, been upheld by the investigation team.*

*There has more than definitely been an intentional infliction of mental suffering upon me by the Captain of the Unit and by the Base Civilian Personnel Officer (and the people who work subordinate to the Captain and the Personnel Officer).*

*I filed a grievance to request that the complaint of sexual harassment be upheld and the result was issued that my request was denied and that my perception was unreasonable. Because I do not have adequate representation to continue the grievance process I cannot seem to access the process. The result of my grievance was also that I was dismissed from the workplace and told not to return by the Captain and instructed to remove my things from the workplace by the Base Civilian Personnel Office (Laura Leigh) and by the Production Manager (Steve Anderson). I was then informed by them that I am disabled and incapable.*

*Prior to the grievance hearing on July 23, 1996 I stated the intention to exercise a 'right or refuse' and commence leave without pay because I feel that my work environment is both unhealthy and unsafe.*

3. *The relief sought under subsection 23(2) of the Act.*

4. *I went to the Military Police in August of 1995 to complain about the bribery and theft with regard to Mr. Hortie and the chargehand Mr. Mitchell. An investigation found that what I described did take place and the complaint was forwarded to the Captain. The Production Manager at that time was Wayne Lundgren then concluded that since Mr. Lundgren the foreman (the two men are brothers) had originally condoned the theft and bribery when I originally complained in September of 1994 that the issue was then irrelevant because of condonement (and Mr. Lundgren the foreman retired in March of 95). And the case was dismissed.*

*Although not only was there evidence of bribery and theft but Mr. Hortie has also built himself a sailboat by mean of the crown's time and property supplied through his employment which is approximately \$24,000 of her Majesty's wealth. In addition to this I reported the countless times I witnessed*

*Mr. Hortie supply stolen property from the workplace as favours to other employees. On several occasions witnessed Mr. Hortie arrange to procure property for people at a local marina who are not public service employees but for which he was offered in each case upwards of \$250.00.*

*I had previously thought that this kind of theft was illegal. Management at the FMF Cape Breton has explained it to me that it is actually called 'condonement'.*

*In addition to Bribery being in the CPAO Manual 7.11 it is also mentioned in the CPAO 7.18 and is considered relevant to sexual harassment.*

*The investigation team, as well as the Captain also overlooked this complaint.*

*While I also complained of unwanted sexual touching, no one bothered to ascertain whether or how these incidents of unwanted physical battery took place.*

*The employer failed to take into account that unwanted repeated pressure for a relationship is considered to be personal harassment under CPAO 8.13.*

*As Mr. Hortie was pressuring management for sole supervisory authority over my training the employer should also recognize that it is also a 'conflict of interest' in the way that Mr. Hortie is using his position of employment to benefit from pressuring me for a relationship. It is also a 'conflict of interest' for Mr. Hortie to use his position of employment for self monetary gain as in the case of the thousands of dollars of crown property which he has procured from the workplace not only for himself but for his neighbors, relatives, acquaintances and coworkers which included members of management.*

*I also found that blackmail was a part of Mr. Hortie's training technique and it is part of CPAO 7.18.*

*I also noted that Mr. Hortie on several occasions arranged for a coworker to punch out his time card and take messages from his wife so that he could leave the workplace several hours early from the late shift so that he could arrange to surprise me with visits at my residence.*

*As a result of my complaint of harassment made on March 08, 1995 no substantial action has been taken by management to alleviate the effects of sexual harassment. Mr. Hortie was given a five day suspension from the workplace for abuse of authority because he had 'obtained*

*my phone number under false pretenses' during the hiring phase of my apprenticeship.*

*No acknowledgment for the abuse which followed the obtaining of my phone number has come into effect.*

*I feel that it would have been more appropriate for the punishment to be given for the time when in May of 1994 after Mr. Lundgren had a personal talk with Mr. Hortie about conducting himself more professionally, that Mr. Hortie arrived at my work area and screamed to me to "Would you please bend over so I can look up your asshole?!!!" The employer failed to include this as well as other verbal threats and abuses in the punitive award.*

5. *I have done everything within my power to prevent myself from being harassed by Mr. Hortie and to seek remedy from the damages caused by it. The Union is failing to take action to preserve my interests of employment and training the Employer (the Captain of the Unit and the BCPO) have constructively dismissed me from the workplace.*

A letter from the Treasury Board, dated October 18, 1996 and signed by Mr. John McLeod, was sent to the PSSRB. It reads as follows:

*Re: Amanda Kathleen Day Complaints, 161-2-809, -810*

*Thank you for your letter of October 4, 1996, attaching the above Complaints. The following is the reply on behalf of Respondents Captain Blattman and Mr. Bright.*

*The essence of the allegations in the Complaints against the two Respondents, although serious, does not relate to sections 23, 8, 9, or 10 of the PSSRA. Indeed, this entire matter is now before the Canadian Human Rights Commission. The only possible connection between the allegations and the PSSRA consists of her references to her grievance rights.*

*The Respondents, Captain Blattman and Mr. Bright, both deny that they have interfered with any of Ms. Day's rights under the PSSRA, or violated Sections 8, 9, or 10 as alleged or at all.*

*In light of the above, the Respondents request:*

- (1) that these Complaints be dismissed, and*
- (2) that the PSSRB restrict the Complainant to matters which fall under the jurisdiction of the PSSRB, and not matters currently before the CHRC.*

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This was followed by another letter, dated November 4, 1996, from Ms. Day to the PSSRB. It reads as follows:

*In response to the letter dated October 18, 1996 from Mr. McLeod who responded on behalf of Captain Blattman and Mr. Bright I wish to make the following comments:*

1. *Captain Blattman and Mr. Bright have provided documentation to me which states that I have no grievance rights. They have also provided contrary information concerning my rights to be informed. I have a right to be informed under the act. On my specific requests to obtain information on my grievance rights and rights to be informed I was told that I was to stop written communications. Agents acting on behalf of Captain Blattman and Mr. Bright also refused to acknowledge my grievance rights and rights to be duly informed. I was also advised on occasions not to have union representation with me when confronted with intimidation and coercion by management staff on behalf of Captain Blattman.*

*I feel that using intimidation and coercion to cause an employee to suffer the effect of ceasing to be a member of an employee organization has interfered with my rights under the act and does demonstrate a violation of sections 8, 9, and 10 as stated.*

*The employer used intimidation and coercion initially to prevent me from continuing to speak my concerns to management and later the employer used intimidation and coercion to force me to provide written documentation of the particulars of my complaint. This coercion and intimidation has led to constructive dismissal, eventual dismissal, and therefore prevents me from participating in the "employee organization". Additionally, being forced into this position with coworkers made it constructively impossible to participate in regular "employee organization" activities such as union meetings or extra-curricular activities.*

2. *The employer has made it their business to systematically deny me every possible avenue of access to a remedial process. The employer has done this by denying my rights under the act. The employer has had ready access to assist me in my employment endeavours despite their stipulation that conditions of a sexual nature be enforced onto my employment and training opportunities. In addition to enforcing these conditions onto my employment, the documentation provided by the employer demonstrates that the employer has failed to follow through on their responsibilities to the complainant under the act.*

3. *My understanding is that the Canadian Human Rights Commission can address issues pertaining to the Canadian Human Rights Code. I do not understand why the employer cannot address the serious issues which fall squarely in the jurisdiction of the workplace under the policies of the Treasury Board, the Civilian Personnel Administrative Orders, and the Public Service Staff Relations Act. It seems that the sooner opportunity to resolve these kinds of issues is **preferable** when weighed against the damages incurred by the victim/complainant through a systematically negligent process, and a lengthy wait for the CHRC to address only those issues which can be applied to the Human Rights Code.*

4. *I am prepared to request that the CHRC hold their process in abeyance while my grievance rights are fulfilled by the responding negligent parties and while I raise the issues involving my rights under the Public Service Staff Relations Act to the Board. I believe that this process should be available to victims as method of seeking immediate remedy; presently it is not even accessible.*

5. *As it is also my choice to pursue persons who were in a position of authority to stop the sexual abuse(s) and prevent the sexual assault(s) for damages through litigation, it can be necessary to request that the CHRC hold their process in abeyance in any event.*

*Originally, I opted with the police and legal advice not to pursue criminal or civil action against the abuser/harasser because it would mean that the CHRC would have to hold their investigation in abeyance. My reason for continuing on with the CHRC investigation was with the hopes of accessing a remedial process which would allow me to continue my apprenticeship training and continue with a career. However, now that any hopes of securing these opportunities have been crushed by Captain Blattman and with the help to him by Mr. Bright, it appears that I do not have any reason to continue to try to salvage my employment opportunities.*

*I would, however, like to continue to try to access an avenue of redress through the employer.*

*It is therefore suitable with me to cease to pursue the matters pertaining to the Human Rights Code at this time and focus on the aspects of my complaint pertaining to the PSSRB which involve the employer.*

*The documentation concerning my complaints against the respondents are available upon request.*

A hearing was held in Victoria, B.C. on March 17, 1998. Objections to my jurisdiction were made by Mr. David Houston, counsel for Mr. Hortie, and Ms. Judith Begley, counsel representing Captain Blattman and Mr. Bright.

Counsel for Captain Blattman and Mr. Bright set out her objections to my jurisdiction. The points she made were covered in her letter of February 16, 1998 to the PSSRB.

She then reviewed the complaints and all of the correspondence between Ms. Day and the PSSRB. On a point-by-point analysis she argued that, even if the complainant's allegations can be proved, they would not support a successful complaint under section 23 of the *PSSRA*. Most of the allegations refer to a sexual harassment complaint against Mr. Hortie which is presently before the Canadian Human Rights Commission. Other allegations are made but they do not specify who and what acts are complained of, putting the respondents, Captain Blattman and Neil Bright, in the position of being unable to prepare a defense.

Ms. Begley also argued that before the response by Ms. Day to Mr. McLeod's letter, nothing at all relating to a breach of section 23 was ever alleged in Ms. Day's material. She stated that Mr. McLeod's letter was a response to the material submitted and not an invitation to make further allegations.

Ms. Begley argued the following points that she made to the Board in her letter of February 16, 1998:

*... In the Employer's view, the only allegations that could possibly be brought within the jurisdiction of the Board to review under section 23 of the Act are listed below. Please note, the Employer reserves the right to assert an objection to jurisdiction with respect to these allegations as well, pending further explanation of those allegations at the hearing. In addition, the Employer in no way accepts the accuracy or validity of those allegations.*

*In the letter dated September 03, 1996:*

- *the second sentence of the last paragraph on page one.*
- *the last sentence of the last paragraph on page one. However the complainant does not identify who is supposed to have committed the impugned conduct.*



- *the first sentence of the fourth paragraph on page 2. However, the complainant does not suggest that the impugned conduct was that of either of named respondents.*

*In the document stamped as received by the PSSRB on September 19, 1996:*

- *the second paragraph on page 1. However, the complainant does not suggest that the impugned conduct was that of either of named respondents.*
- *paragraph 2 on page 2. However, the individual identified in this paragraph, Mr. Smith, is not a named respondent in the complaints.*
- *the first full paragraph on page 3.*
- *the third full paragraph on page 3. However, neither Laura Leigh nor Steve Anderson, who are identified in this paragraph, are named respondents in the complaints.*

*In the letter dated November 04, 1996*

- *the second, third, fourth and fifth paragraphs on page 1.*

*It is the Employer's submission that none of the other allegations in these documents is within the Board's jurisdiction to address in the context of a section 23 complaint, because they do not fall within the ambit of section 23, and/or because they relate to the conduct of individuals not named as respondents.*

*The second ground for our objection to jurisdiction is that, in the Employer's respectful submission, none of the remedies sought in the two (2) complaints is within the power of the Board to award in a section 23 proceeding. In a section 23 proceeding, the Board does not have the power to force the employer to acknowledge wrong-doing, may not take disciplinary action of any kind against a respondent, may not award damages and may not make a finding of constructive or wrongful dismissal. As it is clear from the provisions reproduced above, the only remedy available in a section 23 proceeding, as per subsection 23(2) and (3) of the Act, is for the Board to issue a direction to the Employer or the individual respondent. The Board can do no more than direct the employer, or person acting on behalf of the employer, to observe the prohibitions contained in sections 8, 9 and 10 of the Act, to give effect to any provision of an*

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*arbitral award, to give effect to a decision of an adjudicator, and/or to comply with any regulation respecting grievances made by the Board pursuant to section 100 of the Act.*

Mr. Houston, counsel for Mr. Hortie, argued that none of the allegations made by Ms. Day against Mr. Hortie came within the ambit of the prohibitions in section 23 of the *PSSRA*.

Ms. Day's representative was given an opportunity to respond to show why the complaints should not be dismissed for want of jurisdiction. He was unable to add to Ms. Begley's analysis of the jurisdictional issue, nor was he able to clarify with any specificity what acts by the respondents could be considered to be in breach of section 23 of the *PSSRA*.

He also agreed that Ms. Day was still an employee and that her sexual harassment complaint was before the Canadian Human Rights Tribunal.

### Decision

Having examined the complaints, the exhibits and heard submissions from the parties, I have concluded that the majority of the allegations in the material submitted by the complainant do not come within the ambit of section 23 of the *PSSRA*.

Some of these concern the details of a sexual harassment complaint which is now before the Canadian Human Rights Commission. I would have to agree with Mr. Houston, counsel for Mr. Hortie, that none of the allegations made by Ms. Day against Mr. Hortie comes within the ambit of the prohibitions in section 23 of the *PSSRA*. The Board hereby dismisses the complaint against Mr. Hortie (Board file 161-2-812) for want of jurisdiction.

Despite their vagueness and non-specificity, the Board will entertain evidence and argument on the following allegations raised in the material attached to the complaints (Exhibits R-2, R-3 and R-4) as they may fall within the ambit of section 23 of the *PSSRA*:

- (1) the allegation that as a result of her grievance the complainant was dismissed from the workplace and told not to return by Captain Blattman and was instructed to remove her things from the workplace by Mr. Bright's office. I

note that two of the people named, Laura Leigh and Steve Anderson, are not named as respondents;

- (2) the allegation in her letter dated November 4, 1996 to the PSSRB that Captain Blattman and Mr. Bright provided her with documentation that stated she had no grievance rights. The letter continues:

*... On my specific requests to obtain information on my grievance rights and rights to be informed I was told that I was to stop written communications. Agents acting on behalf of Captain Blattman and Mr. Bright also refused to acknowledge my grievance rights and rights to be duly informed. I was also advised on occasions not to have union representation with me when confronted with intimidation and coercion by management staff on behalf of Captain Blattman.*

The complainant is hereby directed to provide the PSSRB and counsel for Captain Blattman and Mr. Bright with sufficient particulars by Friday, October 23, 1998, to allow the respondents an opportunity to prepare a defense to the allegations. Failure to do so may result in the dismissal of the complaints against Captain Blattman and Mr. Bright (Board files 161-2-809 and 810). On receipt of this material the Board will schedule a further hearing to enable the complainant to adduce evidence to substantiate these allegations on a balance of probabilities and to establish, on the basis of the evidence, that the actions of the respondents fall within one or more of the prohibitions contained in section 23 of the PSSRA.

**Rosemary Vondette Simpson,  
Board Member**

OTTAWA, August 24, 1998.