

**2004-NSHRC-5**

IN THE MATTER OF:       The *Human Rights Act*, R.S.N.S. 1989,  
c. 214, as amended by 1991 c. 12

IN THE MATTER OF:       A complaint of Patricia Saunders against The Town of Kentville  
(Kentville Police Service) and/or Brian A. MacLean, Chief of  
Police

HEARD BEFORE:         Gilles Deveau, Chair

LOCATION:                 Kentville, Nova Scotia

DATE HEARD:             June 7, 8 and 10, 2004

COUNSEL:                Michael J. Wood, Q.C. and Devin Maxwell  
for Nova Scotia Human Rights Commission

                              Michael V. Coyle for the Respondents

                              David W. Fisher for the Police Association of Nova Scotia and the  
Kentville Police Association

**INTRODUCTION**

1. Patricia Saunders alleges in a complaint signed March 10, 2000 that she was discriminated against based on her gender by the Kentville Police Service (“KPS”) and/or Police Chief Brian MacLean (“Chief MacLean”) when she became pregnant, contrary to s. 5 (1) (d) & (m) of the Nova Scotia *Human Rights Act* [R.S.N.S. 1989, c.214].
2. There is no great dispute over the evidence presented to the Board of Inquiry. In particular, although Mr. Wood, on behalf of the Commission, raises the issue of circumstantial evidence at the beginning of the hearing, he submits on closing that it is not necessary for the Board of Inquiry to examine such evidence as the facts pertaining to the employment of Ms. Saunders with KPS involve the duty to accommodate and that the Commission is not presenting the case on the basis of circumstantial evidence.
3. Mr. Coyle has ably and forcefully made the point that KPS, a small municipal police force, is governed by the Nova Scotia *Police Act*, the latter pertaining to the organization of police work in Nova Scotia. As such, he takes the position that a hearing of the Nova Scotia Human Rights Commission under the Nova Scotia *Human Rights Act* is not the proper forum for adjudicating Ms. Saunders’ complaint. I will deal with the issue of the jurisdiction of this Board of Inquiry as part of the determination of two preliminary motions.

4. At the hearing, Ms. Saunders stated that she was satisfied to have Mr. Wood, with the assistance of Devin Maxwell, both on behalf of the Commission, present her case but was provided with the opportunity to present evidence and arguments in support of her complaint. Evidence at the hearing was presented by the Commission and included testimony from many of the relevant players within KPS. Mr. Coyle indicated that he was appearing on behalf of both KPS and Chief MacLean. He cross-examined witnesses on behalf of both KPS and Chief MacLean. With respect to the relationship between KPS and Chief MacLean (as he then was – he has since retired from KPS and has been replaced by former Deputy Chief Mander), the evidence before the Board of Inquiry makes it clear Chief MacLean was at all relevant times an employee of the Town of Kentville.

5. Mr. Wood provides a useful orientation by way of preliminary submissions with respect to the rules of evidence to be observed by the Board of Inquiry as well as the way in which he undertakes to present the case before the Board. The actions (or lack thereof) alleged to have constituted discrimination are the failure to provide light or modified work in order to accommodate Ms. Saunders during her pregnancy. Given that it is Ms. Saunders' evidence that she was left with no other choice but to leave KPS, the departure of Ms. Saunders from KPS on December 17, 1999 raises the issue of constructive dismissal. However, neither the Commission nor Ms. Saunders raises the issue of constructive dismissal as part of their formal arguments. I therefore presume that "constructive dismissal" is not part of a formal argument which I need to consider.

6. There was also an objection raised by Mr. Coyle in anticipation of questions which could possibly be raised by Mr. Wood regarding "in camera" proceedings of the Town of Kentville Board of Police Commissioners. Both counsel made reference to the relevant provisions of the *Nova Scotia Municipal Government Act* and reached agreement that in camera sessions were private and confidential and its contents (particularly personnel matters) could not be divulged without being expressly waived by the person in question.

## PRELIMINARY MOTIONS

7. At the commencement of the hearing, two preliminary matters were brought before the Board of Inquiry. The first matter was a motion by the Respondents on the issue of jurisdiction: whether the Board of Inquiry has jurisdiction to hear and determine this matter or whether the matter lies within the exclusive jurisdiction of the Nova Scotia Police Review Board (or, in the alternative, that there is concurrent jurisdiction as between the Nova Scotia Police Review Board and the Nova Scotia Human Rights Commission) in view of Section 49(1) of the *Nova Scotia Police Act* ("*Police Act*"). The second preliminary issue before the Board of Inquiry consisted of a request by the Police Association of Nova Scotia ("PANS") and the Kentville Police Association ("KPA") for intervener status pursuant to Section 33(e) of the *Nova Scotia Human Rights Act* (the "*Human Rights Act*"). The Board of Inquiry recessed at the conclusion of both

submissions on these preliminary motions and then returned to render a decision with reasons on each of these preliminary motions. The following sets out the issues before the Board of Inquiry and the determination of each matter with reasons.

## **JURISDICTION**

### **Legislative intent – does *Police Act* prevail?**

8. I will proceed first with the motion on the issue of jurisdiction. Mr. Coyle, on behalf of the Respondents, submits that the *Police Act* provides exclusive jurisdiction to the Police Review Board with respect to matters of discipline of police officers in the province. Specifically, he cites s. 49(1) of the *Police Act* which provides as follows: "When there is a conflict between this Act and another Act, the provisions of this Act prevail." He submits the Nova Scotia legislature clearly intended the *Police Act* to prevail over any other legislation in the case of a conflict between legislation.

### **Does the *Police Act* constitute a “complete code”?**

9. Mr. Coyle submits that the *Police Act* provides a "complete code" for dealing with issues of discipline of police officers within the Province of Nova Scotia. He argues that the *Police Act* provides a legislative umbrella under which other significant legal schemes, such as the Collective Agreement between the Board of Police Commissioners and KPA (the “Collective Agreement”) derive their authority. He points to the conflict between the two legislative schemes, specifically, the *Human Rights Act* and *Police Act*, and their respective legislative provisions. Mr. Coyle states that the organization and discipline of police work in Nova Scotia is a specialized matter and, as such, requires the Police Review Board as an expert tribunal to make findings on such things as the workings of a municipal police force, determination of standard practice in police work and the organization of police work, and understanding the legal context under which police officers work, such as the *Police Act*, regulations under the said Act and collective agreements.

10. Mr. Coyle states that the authority and reach of the *Police Act* is enough to permit the Police Review Board to apply the *Human Rights Act* and, in particular, makes reference to Article 4.1 of the Collective Agreement. Mr. Coyle argues that the clear legislative intent as provided in the wording of Section 49(1) of the *Police Act* is for the *Police Act* to govern police work in Nova Scotia. Mr. Coyle relies on the Supreme Court of Canada decision in *Regina Police Association Inc. v. Regina Police Commissioners* (2000), 183 D.L.R. (4<sup>th</sup>) 14 (S.C.C.) as authority for the proposition that as between a grievance under a collective agreement and a discipline matter under the *Police Act* (in this case in Saskatchewan), the latter prevailed, even if the issue of discipline in that case only arose inferentially, and that the *Police Act* must be given liberal interpretation. He also submits that the Supreme Court in that case held that the Saskatchewan “equivalent” to the Nova Scotia *Police Act* constituted a “complete code” for the resolution of dismissal complaints between a police officer and his employer. Therefore,

exclusive jurisdiction over matters of police complaints lies with the relevant Police Commission. In contrast, Commission counsel argues that Section 34 of the *Police Act* deals specifically with "discipline" matters, but that Patricia Saunders was not disciplined and that the issue of discipline has nothing to do with Ms. Saunders' claim of discrimination on account of her pregnancy. Consequently, Mr. Wood argues there is no conflict between the two legislative schemes with respect to the *Police Act* and the *Human Rights Act* because Ms. Saunders' claim does not involve the issue of "discipline". Specifically, Mr. Wood submits that the thrust of the *Police Act* is to deal with complaints against police officers for alleged disciplinary misconduct. Mr. Wood distinguishes the *Regina Police Association* case from Ms. Saunders' case in that the former case involved choosing between the following: the issue of grievance under a collective agreement, versus a discipline matter under the *Police Act* where Mr. Wood submits that the person in question had resigned in order to avoid discipline. In contrast, he argues Ms. Saunders' complaint involves different conflicting statutes: human rights legislation (*Human Rights Act*) and another particular Act (Nova Scotia *Police Act*). He further argues that the *Human Rights Act* offers a more complete set of remedies to Ms. Saunders that is not available to Ms. Saunders under the *Police Act*.

### **Does human rights legislation have a higher status?**

11. Although not raised directly by the Respondents, except for their submission denying that human rights tribunals have exclusive jurisdiction over all discrimination claims, Commission counsel submits that the Supreme Court of Canada has consistently held that human rights statutes hold higher status than other statutes. In *Re: Winnipeg School Division No. 1 v. Craton et. al.* (1985), 21 D.L.R. (4<sup>th</sup>) 1 (S.C.C.), the Supreme Court considered a conflict between the *Manitoba Public Schools Act* and the *Human Rights Act* and commented as follows at p. 6:

Human Rights legislation is of a special nature and declares public policy regarding matters of general concern. It is not constitutional in nature in the sense that it may not be altered, amended, or repealed by the Legislature. It is, however, of such nature that it may not be altered, amended, or repealed, nor may exceptions be created to its provisions, save by clear legislative pronouncement. To adopt or apply any theory of implied repeal by later statutory enactment to legislation of this kind would be to rob it of its special nature and give scant protection to the rights it proclaims.

12. In *Cadillac-Fairview v. Saskatchewan* (Human Rights Code Board of Inquiry) (1999), 173 D.L.R. (4<sup>th</sup>) 609 (Sask. C.A.), the Court held that where employees alleged sexual harassment by their supervisor, they could elect not to proceed by way of grievance under the collective agreement consistent with the provisions of the *Trade Union Act* but rather proceed by way of complaint under the *Human Rights Act*. The Court held that the true nature of the dispute was a violation of human rights legislation and concluded the following regarding the special status of human rights legislation at paragraph 29: "Unless the legislature has expressly provided otherwise, the Code takes precedence over all other laws when there is a conflict." In *Okanagan School District No. 23 v. Renaud* (1992), 16 C.H.R.R. D/425 (S.C.C.), the Supreme Court of

Canada held that a collective agreement is subject to human rights legislation such that the employer and the union cannot contract out of the legislation's requirements.

13. Finally, Commission counsel refers to the comments from *Discrimination and the Law* (Tarnopolsky and Pentney, Carswell) at p.15-125 regarding *Craton* and the special status of human rights legislation:

From this it is submitted that an express legislative declaration to the effect that "this law applies notwithstanding the provisions of the human rights code" is required in order to override human rights statutes. Anything less would not give effect to the clear language of the *Craton* judgment.

### **Is there concurrent jurisdiction?**

14. Finally, Mr. Coyle argues in the alternative that in the absence of statutory direction to the contrary, a human rights tribunal may share concurrent jurisdiction and that conversely, there is no authority in support of the view that only human rights tribunals can decide on issues arising from human rights violations: *Kaiser v. Dural, a division of Multibond Inc.*, 2003 NSCA122; Alberta and AUPE (Shupak), (2001) 100 L.A.C. (4<sup>th</sup>) 326.

15. The Board of Inquiry considered the particular facts pertaining to the special circumstances of a small municipal police force such as KPS, extensively and emphatically presented by Mr. Coyle, as well as the general agreement of the parties that the main issue before me is whether the

16. Respondent KPS as employer has provided fair accommodation to Ms. Saunders, I conclude Ms. Saunders' complaint is properly before this Board of Inquiry. First, I find that it is settled law that in a conflict between human rights legislation and a particular legislation, human rights legislation prevails. Specifically, it is clear from the Supreme Court of Canada's decision in *Craton* that human rights legislation must be given a liberal interpretation and prevails over particular legislation. In addition, I find that *Discrimination and the Law* (Tarnopolsky and Pentney, Carswell) at p.15-125 regarding *Craton* and the special status of human rights legislation goes even further, requiring that particular legislation contain an express provision specifically overriding human rights legislation in order to prevail over the latter.

17. I accept Mr. Wood's interpretation of Section 34 of the Nova Scotia *Police Act*, when he submits that it deals with "discipline" and that Ms. Saunders' complaint is not a discipline-type of complaint in its very nature and effect. I also accept Mr. Wood's interpretation of *Regina Police Association* in that it clearly distinguishes as between two conflicting statutes, none of those two statutes being human rights legislation. I also accept Mr. Wood's position that human rights legislation provides broader remedies to Ms. Saunders than remedies found in the Nova Scotia *Police Act*.

18. Finally, I cannot agree with the Respondent's submission that the clear legislative intent in Nova Scotia is that human rights legislation should be subordinate to the *Police Act*. While s.

49(1) of the *Police Act* provides that when there is a conflict between the *Police Act* and another Act, the provisions of the *Police Act* prevail, it is not a sufficiently clear statement from the legislature that it intends to deprive a police officer of all rights to file a complaint under the *Nova Scotia Human Rights Act*.

19. I therefore find that the Board of Inquiry has full and complete jurisdiction to hear Ms. Saunders' complaint under the *Nova Scotia Human Rights Act* and that the Respondent's motion, cannot be granted.

## **INTERVENOR STATUS**

20. Proceeding to the issue of intervenor status, David Fisher, counsel for both PANS and KPA, submits in support of the latter's interest in these proceedings the fact that the term "collective agreement" arises four times in the Respondents' oral submission on the first preliminary motion before the Board of Inquiry regarding jurisdiction. He submits it is the responsibility of each of PANS and KPA to ensure that the employer discharges its responsibility towards employees in a way that is lawful and consistent with the collective agreement as PANS is charged with the negotiation and administration of collective agreement. He also directs my attention to the legal commentary in *Discrimination and the Law* (Tarnopolsky and Pentney, Carswell) at p.15-70 and the case of *Christian versus Northwestern General Hospital* (No. 1) (1993), 20 C.H.R.R. D/487 (Ont. Bd. of Inq.) where the Ontario Nurses' Association was granted the status of *amicus curiae* with liberty to call evidence and make submissions, in view of the Association's specialized knowledge of the administrative and operational realities of hospitals.

21. Mr. Fisher specifically requests that the status of intervenor be conferred upon PANS and KPA upon the following terms: each could present a legal submission to the Board of Inquiry; each would not be calling any witnesses; and he would be permitted to do "limited" cross-examination, focusing on the interests of his clients, specifically with respect to the interpretation of the collective agreement and the examination of the employment context created by the collective agreement.

22. Commission Counsel Wood submits that the Board of Inquiry has jurisdiction, but that it has to be exercised with caution, specifically with respect to being sensitive to the time limitation and scheduling issues created by adding the PANS and KPA as intervenors.

23. Mr. Coyle, on behalf of the respondents, submits that s. 33(e) does not contemplate the addition of parties at the request of parties. Rather, it contemplates such addition upon the direction of the Commission.

24. The Board of Inquiry grants the request for intervenor status. I find that Section 33(e) clearly provides for the opportunity to be heard as a party. I find the Board of Inquiry should value the contribution of a specialized party such as PANS and KPA to the proceedings in the interpretation and application of the collective agreement. I find that the application of the

collective agreement has already been brought up by Mr. Coyle on behalf of the Respondents and is relevant to these proceedings.

25. I am also reminded of Mr. Coyle's submission that these proceedings are of a certain particular and specialized nature in terms of examining the workings and organization of a small municipal police force. I find that PANS and KPA may be able to provide valuable insight into this issue. I also find that it may be in the public interest to have an organization like PANS and KPA observe these proceedings, reflect on the evidence, and make submissions.

26. However, I grant the request under the following specific conditions: that PANS and KPA may provide legal submissions by way of closing submissions; each of them will not present any witnesses; and each will be limited in cross-examination focusing on the interest of each of them with respect to the interpretation of the collective agreement and the examination of the employment context created by the collective agreement.

## BACKGROUND

27. Patricia Saunders resides in Bridgetown with her husband and her two children who at the time of the hearing were 4 years and 11 months. Originally from the Valley area, Ms. Saunders attended Middleton Regional High School and then completed the Library Technician program at Kingston Community College in 1991. She then worked six years at the elementary school level and one year at the high school level at R.C. Gordon in Bridgetown. But her career took a rather significant turn when she enrolled at the RCMP training academy from February 1997 to September 1997. Upon completion of her RCMP training, she became employed with the Burnaby, British Columbia detachment of the RCMP in the Vancouver area, where she completed six months of training and six months of field work. She described the Burnaby detachment as a rather large detachment, which at the time of her tenure consisted of 230 members, broken down into four districts with four teams per district, e.g., gang, police dog, sex crimes and fraud. Her duties on the Burnaby force consisted of regular work, including traffic violations, laying charges, preparing files, taking statements for court and completion of registered firearm training. She also got married during the time she was in Burnaby.

28. However, Ms. Saunders found living in the Lower B.C. Mainland area less than desirable and after sickness in the family, left Burnaby in May 1998 and returned to Nova Scotia. Upon her return, she got a job on September 2, 1998 at the rank of constable on a part-time basis in the Valley area with the Wolfville Police Force in Wolfville, Nova Scotia. At that time, the Wolfville Police Force was a 12-14 member force where her duties included patrol work, responding to 911 calls, dealing with university students, traffic violations and preventive (community policing) work. Ms. Saunders makes the point that preventative policing is the "optimum goal" of police work and is basically achieved by being present in the community and establishing solid relationships with community groups. In contrast to her experience in Burnaby where she described herself as being "anonymous" because of the size and urban setting, she saw herself as being a "role model" in the eyes of people in the small community. In relation to her evidence

regarding Constable Weir who was responsible for community policing at KPS, she stated that community policing was the “wave of the future”. In response to a question by Mr. Wood as to whether she had done community policing, she answered: “everyday, I would go out and do it”. However, she found that although she did part-time work at Wolfville, she actually worked more than part-time, given that she worked split shift. She acknowledges not having received any training while she was a member of the Wolfville Police Force.

29. In 1999, Ms. Saunders applied for a position with KPS to fill a vacancy resulting from the suspension of a KPS police officer under criminal investigation. Specifically, she completed an application, went through an interview which included an oral interview with Chief MacLean, Deputy Chief Mike Mander and Corporal Wilf Andrews as well as a written interview. While she was not the successful applicant, the same position she had applied for was offered to her when the successful applicant left her new position after only four shifts. Of course, Ms. Saunders accepted the position. On direct examination, Chief MacLean said he believed Ms. Saunders was the next best candidate during the application process. Ms. Saunders did not recall in her evidence how she got to know she was offered the position or whether she was told the job was on a “probationary basis”. Chief MacLean’s evidence was that Ms. Saunders was given a general orientation, including being shown the ins/outs of the office and introduced to co-workers. However, Ms. Saunders’ evidence is that she was hired as a constable, her understanding being that this was a “term position of undetermined length”. Chief MacLean’s evidence is that he could not predict at the time the duration of the investigation of the suspended officer and remembered telling Ms. Saunders that it could be for the “long haul - maybe two years”.

30. Ms. Saunders’ duties at KPS included criminal investigations, preventative and community policing, responding to calls and various criminal, provincial and municipal offences. She also contrasted the Kentville area from the Wolfville area; having to deal with students versus seniors in Wolfville, in contrast to the Kentville area with its issues of a more serious nature, from dealing with mentally challenged persons served by the regional hospital to the town’s more business orientation.

31. Ms. Saunders described KPS as a small municipal police force comparable in nature and size to that of Wolfville, with its operations consisting of four platoons of three police officers per platoon. Her own platoon consisted of herself, Corporal Wilf Andrews and Constable George Dunphy. In terms of line of authority and support, she stated that she followed the following line of authority: first to Constable Dunphy of her own platoon because of his experience and seniority, then to Corporal Andrews as the head of her platoon, then to Deputy Chief Mander and finally to Chief MacLean. Ms Saunders stated that she worked twelve hour shifts, on the basis of two day shifts and two night shifts, from 7am to 7pm, four days on and four days off. She would be working in the field about 80% of the time doing patrols and being accessible to the public, versus being in the office for about 20% of the time, doing “paper work”, including taking statements and doing phone follow-up. Ms. Saunders unequivocally observed as part of her evidence that “officer safety is paramount”. This balance was confirmed by Chief MacLean in a clear and emphatic way, saying that he agrees with Ms. Saunders’ 80/20 proportion and said the objective of a police officer should be to spend as little time in the office as possible and that



generally the more visible the police force is, the lower the crime. He described office work as generally consisting of such things as telephone calls, log entries and interviews.

32. The geographical limits of her platoon's territory were the Town's geographical limits (excluding New Minas, Canning and Coldbrook). As a rule, she traveled by herself in a squad car (she did not like to share the same vehicle as Constable Bishop as the latter smokes) and recalled how there were times when there may not have been anyone at the station during nighttime. In that case, she would need to call for help from a colleague if she required support. She indicated that she undertook training while a member of KPS, including domestic violence sensitivity training and defensive tactics (both of these before she was pregnant); and firearm training (while she was pregnant).

33. Current Chief Mander (Chief Mander was Deputy Chief when Ms. Saunders was a member of KPS) explained that funds were limited at the Town of Kentville and that the implication of going over budget on overtime pay in order to deal with platoon staff members which are off work may be that layoffs are necessary. He described the current compliment of KPS as consisting of the following 15 members: 12 platoon members; 1 investigator (Preston Matthews, position created about April 2000, investigating major crimes such as drug investigation, intelligence gathering and sensitive files assigned by the Chief); 1 crime prevention officer (now Angela Bishop); and himself as the Chief. There was no Deputy Chief at the time of the hearing.

34. KPS has not had to deal with pregnant police officers in the past. This is clear from Chief MacLean evidence. Neither Corporal Glenna McMurtry nor Constable Angela Gibson has taken maternity leave.

35. The adequacy of Ms. Saunders job performance is not raised as an issue. Evidence before the Board of Inquiry showed some of her work at photocopying documents required some redoing and Chief MacLean stated that Corporal Andrews did indicate to him that a "few" files were sent back to Ms. Saunders to make corrections. However, Chief MacLean stated that he was confident of Ms. Saunders' competence during the orientation phase and that generally Corporal Andrews did not report any problems with Ms. Saunders.

#### PATRICIA SAUNDERS' PREGNANCY

36. It is clear from the evidence that on or about September 9, 1999, Ms. Saunders told Chief MacLean that she was pregnant. At that point, she remembers being about 12 weeks pregnant. She stated that the pregnancy was unintentional and unexpected. She did, in her words, go to the Chief, and they talked outside his office. She stated that she told him she "found out unexpectedly" that she had become pregnant and told him she would be looking to do light duties. Specifically, she remembers telling him, "I hope you don't think I intend to resign" to which he replied, "I didn't think that". Chief MacLean's evidence is that he heard of Ms. Saunders' pregnancy from Corporal Andrew and that he later talked with him about light duties without getting into the details of such light duties. At the hearing, she described what she

understood to be “light duties”: not wearing a police officer uniform; not carrying a sidearm and remaining in the office. She based her understanding on her own observation of the situation which prevailed during her service with the Burnaby RCMP detachment where she said “several” police officers had become pregnant while they were members of the force. Specifically, she said that her request for light duties was based on her understanding that regular field duties held the possibility of danger where a blow to the abdomen could detach the placenta, with the result being that the mother could possibly bleed to death. In his evidence, Chief MacLean agreed Ms. Saunders’ description of how pregnancies were treated within the RCMP as being “fairly accurate”, especially in bigger detachments, such that if an officer became pregnant in a smaller detachment she would be moved to a larger detachment. Chief MacLean is very clear about the reasons for moving a pregnant police officer to light duties: for the officer’s protection, the safety of other officers as well as that of the general public. He provided a very clear and practical explanation, rich in common sense, of the nature of the risk involved in having a pregnant officer on duty: she may not be able to defend herself and fellow officers may be overprotective and do more to protect her, take more risks and make errors in judgment. Chief MacLean explained that his own sense was that a pregnant police officer would not be permitted to go into the field at 6-7 months into her pregnancy, such time being relevant because her pregnancy “would be showing”, the “baby would be bigger, and there would be a safety issue if she was hit in the stomach in a fight”.

37. In her evidence, Ms. Saunders says that she felt “a little panicky” while she had her conversation with Chief MacLean standing in the main area of the office as she then felt Chief MacLean did not want to discuss this with her anymore. Under cross-examination from Mr. Coyle, Ms. Saunders described her conversations with “them” as being “short” as she left it open for Chief MacLean to come up with some arrangement of light duties. Chief MacLean’s idea of light duties is of a specialized job that can be done behind the desk, e.g. wire taps, where a pregnant officer is at lower risk of physical harm. He remembered telling Ms. Saunders: “Patti, I have no light duties”. He stated that his impression was that she wanted to do other people’s jobs and told her that some of the things she was suggesting were jobs held by other people. In total, Ms. Saunders remembered two telephone conversations with Chief MacLean when she asked him about light duties and one conversation in his office. Chief MacLean remembered a 30 second telephone conversation with Ms. Saunders shortly before December 17 when she asked him “what’s going to happen to me Chief?” to which he answered, “You told me you would be leaving on the 17<sup>th</sup>.” She vaguely remembers going to Chief MacLean’s office and saying to him that it would not be necessary for her to leave if there were light duties for her to do. She remembers that none of the conversations with Chief MacLean were very long - maximum five minutes. She remembered him saying she would be back in June or July, to which she answered that it would be after her maternity leave, therefore returning in the fall 2000. On cross-examination by Mr. Coyle as to any “dialogue” she would have had with Chief MacLean about options for light duties, Ms. Saunders answered that she was having a dialogue with him, but was not convinced he was.

38. Chief MacLean’s evidence of his efforts to find light duties for Ms. Saunders requires careful examination. He said that there were numerous discussions between him and Deputy

Chief Mander. Also he had conversations with the two other platoon commanders. He raised the issue at an “in camera” session of the Board of Police Commissioners. Chief MacLean’s meeting with the Board of Police Commissioners was explored in detail at the hearing. His evidence is that he raised the subject of Ms. Saunders’ request for light duty on one occasion prior to his September 29, 1999 letter to Ms. Saunders by way of oral presentation to the Board. His account of the discussions is particularly vague. As to whether it was the only issue or the most important issue, Chief MacLean could not recall. As to whether there was a discussion of any budgetary implications pertaining to the issue, he said he expected so, but could not recall. He said he had no specific advice to give to the Board and could not recall getting any directions from the Board. He simply proceeded to seek to find things for Ms. Saunders to do from late September to early October. Asked by Mr. Wood whether other police officers would have known about Ms. Saunders’ availability to do light duties, he answered, “she was there, she was available” suggesting that it was a small office and common knowledge that Ms. Saunders was available for light duties. He recalled speaking to platoon commanders separately as to whether they had anything for Ms. Saunders to do and they said no. Asked by Mr. Wood whether or how he would explain “light duties” to the latter, he replied: “No, they would understand it in a policing sense”. In addition, Chief MacLean’s evidence is that he spoke with Debbie Raines, Director of Finance (spoke to her once) and Bill Boyd, Chief Administrative Office for the Town of Kentville (spoke with him 3-4 times) regarding light duties for Ms. Saunders.

39. Ms. Saunders then provided an account of how she proceeded to deal with her quest for light duties. She contacted PANS, the bargaining agent for police officers with the Town of Kentville. PANS advised Ms. Saunders to seek medical advice in order to determine when she should “stop working” (although it is not clear whether it is meant to address the time at which she is to seek light duties or to go on maternity leave) as set out in a letter from Mr. Fisher to Ms. Saunders dated September 27, 1999 (Tab 12 of Exhibit 1 - Commission’s Book of Hearing Exhibits). The efforts of PANS are set out in a letter dated September 27, 1999 (Tab 11 of Exhibit 1 - Commission’s Book of Hearing Exhibits). In the said latter letter, Mr. Fisher on behalf of PANS presents to Mr. Coyle a number of functions that Ms. Saunders “...could perform within the department without causing undue hardship”. These functions included the following, as listed in the said letter in numerical order, but presumably not in any particular order of priority:

1. Investigative work that is required to be done during the day;
2. Cst. Saunders is also prepared to help with administrative and other types of work that need to be done within the police department;
3. There may be community relations and other similar work that is required to be done;
4. Cst. Saunders is also prepared to take administrative and other types of work at other places within the Town of Kentville. It is important to keep in mind that Cst. Saunders’ employer is the Town of Kentville and therefore accommodation on the job can be anywhere within the Town;
5. In addition, Cst. Saunders is open to a combination of the above activities or in discussing any other alternatives the Town may have.

40. At the hearing, she provided comments on each of these possibilities as laid out by PANS, stating that she was “fighting desperately to keep my job”. Such day time investigative

work would include "routine" work such as taking a statement with respect to incidences that are not in progress such as property damage or fraud. Community work could include school presentations; her evidence was that she actually did two school talks with Community Constable Weir. She stated that although she was told by KPS that there were no such light duties, she was "vigorously disputing" this fact at the time and compiled a list entitled "light duties" that is attached to the said September 27, 1999 letter.

41. Creating a new position for Ms. Saunders was described by Chief MacLean in his evidence as being not an easy sell. Chief MacLean's evidence is that he clearly did not have the discretion to create a new position as such authority rested with the Board of Police Commissioners. Although the budget of KPS was generally up by \$30,000.00 each year, the budget-making process itself took six months of planning and preparation. Positions are sometimes created with conditions attached. For example, part of the condition struck with the union to accommodate Corporal Weir's position of crime prevention officer at the rank of constable was that if he held the position for less than two years he could go back to his previous rank of Corporal. Following Weir choice to return to regular platoon duty, Constable Gibson was able to become crime prevention officer after she had been at KPS for 1 ½ to 2 years.

42. Chief MacLean's assessment of PANS's list of options was shared with the Board of Inquiry. He did not believe Ms. Saunders could do major investigations work as she only had two months experience with KPS. He added that in police work, police officers should not be assigned to the same file simply because limiting investigations to one officer per file means less police officer time in court, thereby reducing overtime pay. He added that this is standard RCMP practice. However, his evidence was that while the Chief reviews each complaint received and assigns it to a particular investigator (normally an officer on the day shift), his estimation is that 80% of complaints are concluded within one week, and therefore do not go to court. However, Corporal Matthews stated in his evidence that some files have more than one police officer assigned to them, such as domestic violence cases where one police officer may be assigned to one party in the dispute. He also pointed out that shift police officers would do the initial investigative work if the rest could wait until later, and that the General Investigation Service (GIS) officer can ask the regular platoon police officer to carry out certain investigations.

43. Deputy Chief Mander's evidence is that he and Chief MacLean examined the possibility of assigning community policing to Ms. Saunders and concluded that Corporal Weir was the best fit for the position: he was afflicted with a neck condition for a number of years resulting from a previous injury and "...knew all of the people from years before". However, Deputy Chief Mander stated that he did not have discussions with Weir about assigning Ms. Saunders to community policing and did not seek out more information on her experience or background in crime prevention. Chief MacLean made inquiries with the Town, such as with Debbie Raines, Director of Finance about such duties as photocopying. Chief MacLean concluded his comments as follows: "I regret. I would have liked to keep her on and have her stay as long as possible". Deputy Chief Mander's evidence supported Chief MacLean's evidence regarding the search for light duties: "It was an issue the Chief was dealing with on an ongoing basis".

44. Ms. Saunders wrote to Chief MacLean in a letter dated September 18, 1999 (Tab 10 of Exhibit 1 - Commission's Book of Hearing Exhibits). Chief MacLean does not recall asking Ms. Saunders to pursue ideas for light duties as a result of, or in connection with, the said letter. Although she has no knowledge of the date of receipt of the letter by Chief MacLean and does not recall having discussed the contents of the letter with him personally, Ms. Saunders is clear in her letter about her intentions as indicated in the letter:

"From my previous experience with the RCMP, I can tell you that pregnant members were placed on light duty as a matter of course. They wore plain cloths, no longer carried side arms, and worked all dayshifts until their maternity leave began."

"This could certainly cause some inconvenience in a small department such as this, but I am convinced that given this scenario, I could continue to contribute to the efficient functioning of this office. I am prepared to discuss with each member of this department how my time could be put to best use."

45. Ms. Saunders pursued her intentions as expressed in her September 18, 1999 letter and approached Corporal Ken Reid, Exhibit Custodian with KPS. Corporal Reid was a regular constable with his own regular platoon. Reid's testimony is that he had observed secondary tasks being shifted around within the Force and stated that Ms. Saunders had approached him about helping out with the exhibits, to which he replied that he did not see anything now but that he would let her know if something came up. She approached Secretary Fitch about assisting with older files, as she could apply her skills as a librarian. Chief MacLean stated that Corporal Reid's exhibit duties took about ten minutes of an ordinary day.

46. The possibility of investigation work was also raised before the Board of Inquiry. Constable Matthews gave evidence related to his position as responsible for GIS, including both general investigation and major crimes unit. Although he stated that he understood that pregnant police officers were assigned to light duties, Constable Matthews stated that he was not asked to assist finding light duties for Ms. Saunders by either the Chief or the Deputy Chief. Constable Matthews also mentioned he was in charge of keeping the search warrant ledger at KPS but that the work included only a 3-4 page ledger with a total of 15-20 lines per page. Constable Matthews, under cross-examination from Mr. Coyle, rejected the possibility that a secondment could have been arranged with the RCMP for Ms. Saunders because he remembers the time when an RCMP employee was seconded to a project but the RCMP would not permit her to undertake the project on account of her pregnancy. Deputy Chief Mander also provided evidence of his experience in investigation work. He testified that while he first worked as a patrol constable upon his arrival at KPS, he then moved on to investigation work. Upon becoming Deputy Chief, he continued to do investigation work. He described the work of the GIS as involving a senior, experienced individual dealing with major crimes, such as homicide, rash of break and enters, large fraud or theft or sensitive (political) investigations. He told the Board that his own investigation experience included fraud investigation, forensic audit, issuance of search warrants and the seizure of documents.

47. She considered a job sharing arrangement with fellow police officer Corporal Glenna

McMurtry, a member of another platoon at KPS. Ms. Saunders stated that she concluded such an arrangement would not be in her best financial interests as she would be cutting her salary by half, thereby reducing her employment insurance benefits by half. She actually wrote a note to Chief MacLean to that effect dated October 1999 (Tab 15 of Exhibit 1 - Commission's Book of Hearing Exhibits). On cross-examination by Mr. Coyle, Ms. Saunders stated she did not get the impression that Corporal McMurtry was interested in job sharing and did not believe Corporal McMurtry approached Chief MacLeod about the possibility of job sharing.

48. Finally, Ms. Saunders approached Corporal Weir about doing some community policing with him. Specifically, she said Corporal Weir told her he was surprised "...they didn't come after my job." Chief MacLean's evidence is that he did not consider these duties as they were already part of somebody else's job (Weir) and did not consider reassigning Weir to a platoon to free up his position because Ms. Saunders had already indicated she was leaving on December 17, 1999. However, it is Chief MacLean's evidence that Corporal Weir returned to his regular platoon position in the spring 2000 at which point Angela Gibson became crime prevention officer.

49. In a letter dated September 29, 1999, Chief MacLean tells Ms. Saunders that he is not able to offer her light duties as none are available (Tab 14 of Exhibit 1 - Commission's Book of Hearing Exhibits).

50. In a letter dated October 1, 1999, Dr. Paul MacLean writes to Chief MacLean and sets out Ms. Saunders' estimated delivery date of May 5, 2000 and states as follows: "She should do light duties only and avoid unnecessary exposure to possible physical violence until after she has delivered." (Tab 16 of Exhibit 1 - Commission's Book of Hearing Exhibits). Upon examination by Commission Counsel Wood as to why she did not present the said letter to Chief MacLean, Ms. Saunders stated: "I should have given him the letter but he would have had grounds to dismiss". Chief MacLean did not recall asking Ms. Saunders to get a letter from her doctor, except to say that such request of Ms. Saunders would have been part of a very short conversation.

51. At around mid-November to December 17, 1999 light duties became available. Ms. Saunders does not remember whether it was Chief MacLean or Deputy Chief Mander who told her of these light duties and was not told how long such light duties would last except that she was told there was an "abundance" of photocopying to be done in relation to a disciplined police officer with KPS. It is upon seeing Deputy Chief Mander at the photocopier "for hours" and upon determining from him that he was photocopying evidence related to a suspended police officer that Chief MacLean directed that Ms. Saunders carry out the photocopying, which she did over a three week period from 8am-4pm. Louise Dean, Administrative Assistant, was called upon on an as-needed basis to do photocopying upon Ms. Saunders' departure upon the direction of Chief MacLean and Deputy Chief Mander. In particular, Chief MacLean said that he learned from Deputy Chief Mander that some of the copying that had been done by Ms. Saunders was not legible and had to be redone, amounting to two weeks worth of photocopying that had been previously done by Ms. Saunders, according to Chief MacLean's evidence.

52. Following the photocopying work, Chief MacLean then allowed Ms. Saunders to stay in the office to do light duties, including general office duties, answering the phone, taking statements and interviewing witnesses - all of which were normally done by someone else, such as Chief MacLean's secretary or a regular platoon member working the day shift. Chief MacLean described the light duties as "low risk, office oriented", which he further described not as full time but extra work Ms. Saunders could do. His own secretary needed help from time to time, when there would be a major drug investigation and when she was sick or on vacation. His evidence is that unfortunately, he could not come up with duties that were not already part of somebody else's duties. And according to Chief MacLean, it would simply not have been efficient use of resources to have kept Ms. Saunders doing "stuff in the office" such as making phone calls every half hour. In general, Chief MacLean speculated in his evidence that Ms. Saunders could have done photocopying, taken care of inquiries and done Canadian Police Investigation Centre (CPIC) work, but Secretary Fitch was already performing these duties. In addition, he stated Ms. Saunders could have done community relations or crime prevention work, but Corporal Weir was already assigned those duties.

53. December 17, 1999 was Ms. Saunders' last day at work. Chief MacLean does not remember talking to Ms. Saunders about her choice of December 17 and that it did not occur to him that if Ms. Saunders were to be assigned light duties, she may stay. It is her evidence that up to that last day of work she still did not know Chief MacLean's intentions. Her evidence is that while the two of them are in the lunchroom, Chief MacLean told her he could not accommodate her until spring. She was very upset, in tears, and told the secretary she was going home. Chief MacLean's evidence is that he learned of Ms. Saunders' intention to leave on December 17 from Corporal Andrews and the "general discussion in the office". He added "Normally, I would think a police officer would come to me to say she is leaving. I saw no reason to go to her." Deputy Chief Mander recalled how he did not have any impression as to why Ms. Saunders was leaving and did not sit down to discuss Ms. Saunders' decision to leave either with Ms. Saunders or Chief MacLean. He did not recall talking to others about light duties work for Ms. Saunders. As to the reasoning behind her choice of December 17, 1999 as the date chosen for leaving, Ms. Saunders stated in her evidence that as Christmas was approaching and she was approaching five months pregnant, the chosen date seemed like a convenient time to leave. She stated that she remembers telling Deputy Chief Mander about leaving on the 17<sup>th</sup>, but that he referred her to the Chief: "he always referred me to the Chief". Chief MacLean remembered hearing about this from Deputy Chief Mander and thinking that he would be proceeding with a replacement with the benefit of a salary and a list from the previous job recruitment exercise. He stated he did not try to talk her out of it. However, she remembered that the two of them did not discuss light duties at that time.

54. Little evidence was presented at the hearing about any dealing between the parties after December 17, 1999. Ms. Saunders stated that she wrote to KPS at the end of her maternity leave period at about the fall 2000 to inquire about a position with KPS. She said she never heard back and was eventually told the position had been filed.

55. Her departure from KPS is described by Ms. Saunders as filling her with anxiety and mixed emotions, including "...disbelief and tremendous, financially". It is not clear from the

evidence of the nature and extent of the financial burden on her family caused by her leaving KPS. However, it is clear she earned about \$25,000.00 to \$30,000.00 as a police officer, based on the salary scale for KPS and confirmed at p.25 of the Collective Agreement at Exhibit 2. This is in contrast to the roughly \$12,000.00 she earned working at her husband's family nursing home business in Bridgetown which she and her husband have gradually taken over. She made it clear that there has not been a time in her life with children that she has not had this issue hang over her head. She felt like she had done something wrong, although all she did was get pregnant. Although her husband's family nursing care business was acceptable to her and her husband as a source of income, she remained the primary bread winner for her family. While she said she is welcome to return with the RCMP service, she does not appear to have made up her mind whether she wants to return to police work.

#### SMALL MUNICIPAL POLICE FORCE AND THE PLATOON SYSTEM OF POLICING

56. Mr. Coyle urged the Board of Inquiry to very carefully consider the reality of KPS as a small town police force so as to provide context for Ms. Saunders' complaint. He tells the Board that Kentville is a small town of about 6000 residents with a small municipal police service of 14 to 15 officers, including a Chief and "when it has one", a Deputy Chief. In fact, he adds that small municipal forces in the Valley area are essentially a dying breed, with Kentville and Annapolis Royal being the only towns left with a municipal police force, the balance of town and municipal units being served by the RCMP. KPS operates on a standard platoon system, each platoon consisting of three members: one Corporal (as head of the platoon) and two Constables. Each platoon member works a twelve hour shifts (7am-7pm), on a schedule of four days on and four days off. When one member of the platoon is off for any reason, the remaining two members essentially do the work of three members. Mr. Coyle submits that this situation of being "short" can be tolerated for short periods of time but causes problems if it persists in the long term, such problems including bad morale, gaps in service, increased risk to other platoon members and, potentially, to the public in the Kentville area.

57. Chief MacLean himself has a long record of service as a police officer in small towns, particularly with the RCMP. He joined the RCMP in 1968 and spent the following 23 years with the RCMP in Newfoundland, moving up the ranks from constable to corporal to sergeant, the latter rank he held for twenty years. While being responsible for criminal intelligence for the entire province, he also was posted to a variety of communities across Newfoundland, including Corner Brook (city), Corner Brook (rural), St. Anthony's, Harbour Grace (plain cloths corporal), Fort Hope (Labrador) and finally St. John's. In 1990, he relocated to Halifax with RCMP headquarters (informatics - record keeping division), followed by Windsor, Nova Scotia in 1997 (municipal/town police force) and finally to Kentville as Chief. In particular, he added that the scale of operations in Windsor would be similar to that of Kentville. He retired from the police service on October 31, 2003. At KPS, he reported to the Board of Police Commissioners through its Chairman, Mr. Honey. He described the role of the Board of Police Commissioners as follows: approve the budget, hire the Chief and generally ensure an effective police service in the Town of Kentville, without reaching into the day-to-day workings of the police force.

58. He is particularly proud of his accomplishment, through his "lobbying" of the Board of



Police Commissioners, in securing the position of crime prevention officer in the fall 1999. The position had previously existed and Chief MacLean lobbied for 1 ½ - 2 years to get it back. The position was intended to have been filled on April 1, 1999 but the funding was not available until the fall 1999. Constable Angela Gibson took over the position from Corporal Bruce Weir over two years ago.

59. Chief Maclean's evidence is that the collective agreement provides for three police officers to a platoon but that, in his evidence, "technically" there is a violation of the agreement as a platoon is sometimes short at two officers per platoon. Article 33.01 of the Collective Agreement (Exhibit 2) provides as follows:

"33.01 The EMPLOYER shall insure a minimum of two (2) police officers (which may include the Chief or deputy-Chief) shall be on duty in the Town of Kentville available by radio to answer calls or provide backup at all times." [emphasis mine]

60. Chief MacLean's evidence was that a platoon was "generally short" for holidays or a police officer on course, typically for a period of two weeks. He recalled one incident when Constable Fraser was off work for six weeks when he cut himself while cutting a deer and used his sick time. He was not placed on modified duties. Chief MacLean described the impact of working short as being unpredictable. Thursday, Friday and Saturday are particularly busy nights as the "bars are hopping" and the intensity of work is unpredictable. If it is particularly busy, police officers working while short get stressed out and productivity goes down. In practical terms, he stated that if the platoon does not have its third police officer, the further away the on-duty officer is, the longer it will take to respond, therefore potentially increasing risk.

61. Preston Matthews, in his evidence, referred to a memorandum of understanding between the Town of Kentville and the RCMP whereby an officer from the Kentville Force may seconded to the RCMP to carry out special duties such as investigative work. Specifically, he recalled recently being away on secondment for one month and having also been on a six month secondment and was not replaced on his regular platoon. He added that a situation of two-person platoon was "relatively common" as people are on leave. He specifically remembered Corporal McMurtry being away for 4-5 months about 4 years ago while her platoon was left with only two officers.

62. Corporal Andrews' evidence is that he was off work sick recently for a total of eight weeks and he was not replaced on his platoon. He also stated two-person platoons also occurred during vacation, which includes regular vacation plus extra allowance taken yearly either as pay or time off, the latter of which totals 104 hours or 8-2/3 days. Corporal Andrews stated that the platoon is left short every time a police officer goes on vacation, which turns out to be 4 weeks, plus possibly an extra 8 2/3 days. A police officer is not replaced on his platoon while on vacation. He agreed that a two-person platoon is not at all unusual during the summer vacation months. For him, such arrangement did not compromise the safety of either the public or the officers involved, although he agreed on cross-examination by Mr. Coyle that it was not an ideal situation. He did not recall any discussions with Chief MacLean about Ms. Saunders' departure and the possibility of finding light duties for her, although he agreed on cross-examination by

Mr. Coyle that it was generally common knowledge that Ms. Saunders was pregnant. As head of his platoon, Corporal Andrew could not recall if he was aware of any modified duties assigned to Ms. Saunders or when she left the platoon or how long she was off her platoon. He remembered Mike Goss replaced her on the platoon. This suggests to me that an officer leaving the platoon was a relatively normal occurrence.

63. Corporal McMurtry stated that she was off work due to a medical condition (nerve damage in her shoulder), first in April 2002 when she was off for several months, then a second time in April 2003 when her position was filled later that fall.

64. Deputy Chief Mander's evidence is that the standard platoon size is three officers, but if the Collective Agreement provides for a minimum of two members, that is not enough. While one is simply dangerous, there is no indication that two is sufficient.

## ANALYSIS

65. At this point it is necessary to consider the legal principles relevant in Ms. Saunders' complaint. Section 5 (1) (d) & (m) of the Nova Scotia *Human Rights Act* [R.S.N.S. 1989, c.214] provides as follows:

- 5 (1) No person shall in respect of
- (d) employment
- discriminate against an individual or class of individuals on account of
- (m) sex

“Sex” is specifically defined in the *Act* as follows:

- 3 In this *Act*
- (n) “sex” includes pregnancy, possibility of pregnancy and pregnancy-related illness.

66. The law relating to the duty to accommodate as it relates to Ms. Saunders' complaint is well established. It is clear the Respondents do not dispute that they owe a duty to accommodate Ms. Saunders to the point of undue hardship. The issue lies in what constitutes undue hardship and whether the Respondents in this case fulfilled their duty to accommodate Ms. Saunders up to the point of undue hardship. I also further find that the duty to accommodate has been read into and applied in complaints under the Nova Scotia *Human Rights Act*: *Blanchard v. Labourers' International Union, Local 1115 and Doug Serroul and Bernie MacMaster* (2002), CHRR Doc. 02-122 (N.S. Bd. Inq.); and *MacEachern v. St. Francis Xavier University* (1994), 24 C.H.R.R. D/225 (N.S. Bd. Inq.).

67. The burden of proof in this matter is also not in dispute. The burden first lies with Ms. Saunders as complainant to establish on the balance of probabilities that she was the subject of discrimination by the Respondents on the basis of gender for failing to continue to employ her while she was pregnant. Therefore, I must first find that Ms. Saunders was pregnant at the relevant time and that she was treated adversely by the Respondents, and that her pregnancy was a factor in the adverse treatment. If Ms. Saunders is able to establish discrimination on a *prima facie* basis, then the burden shifts to the Respondents to show that they were justified in not continuing to employ Ms. Saunders until her maternity leave and that they fulfilled their duty to accommodate to the point of undue hardship.

68. The Act does contain provisions whereby respondents can claim exemption from claims of discrimination under certain circumstances. Section 6 of the Act provides as follows:

6 Subsection (1) of Section 5 does not apply

(f) where a denial, refusal or other form of alleged discrimination is

(i) based upon a bona fides qualification, or

(ii) a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society.

69. In the leading case of *British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U.* (1999), 35 C.H.R.R.D/257 (S.C.C.) (commonly referred to as *Meiorin*) the Supreme Court of Canada establishes a three-part test to determine whether the employer's operational requirement (claim for exemption) from the duty to accommodate is justified or *bona fides*. The Court set out the three part test as follows:

Therefore, in order to satisfy *Meiorin*, the Respondents will have to establish (1) what the standard is designed to achieve and show that there is a rational connection between the purpose and the objective requirements of the job; (2) if the rational connection is shown, then they must show the standard was adopted in good faith and was necessary for the fulfillment of the purpose without intention to discriminate against Ms. Saunders; and (3) upon the Respondent clearing the two hurdles, they must show that they attempted to accommodate Ms. Saunders up to the point of undue hardship.

70. The issue of what triggers undue hardship in the context of pregnant employees has been addressed in several cases. In *Lord v. Haldimand-Norfolk Police Services Board* (1995), 23 C.H.R.R.D/500 (Ontario Bd. Inq.), the complainant was a police officer assigned to regular duties. She found out she was pregnant and requested light duties, with the support of her doctor. Her employer had a policy that did not provide for modified work programs (light duties) for police officers. The tribunal struck down the "no light duties" policy and found that the employer had granted restricted duties to a male officer while under criminal investigation. It stated:

In the case before me, there was no evidence of any effort to accommodate the needs of the complainant. There was, however, evidence of various positions within the force that required less physical exertion and less exposure to danger, at least to the extent that anyone can guarantee a

risk free environment...I am satisfied, based on the evidence before me, that there would have been several options open to the Board in considering alternative duties for the complainant.

71. In *Sidhu v. Broadway Gallery* (2002), 42 C.H.R.R.D/215 (B.C.H.R.T.), a pregnant employee of a tree nursery requested that she be exempt from lifting and pulling work and kept away from chemicals applied to trees. The Respondent employer operating a rather small workplace offered to remove her from the nursery and assign her to a reduced part-time position in the show gallery. Her doctor advised that although she was fully able to work full time, she should not be exposed to spraying of chemicals and heavy lifting. The tribunal, considering the constraints of accommodating employees in a small workplace and recognizing the obligation of the complainant to assist in the search for accommodation, applied *Meiorin* and held that despite the small workplace, an employer failed in its obligation to take all reasonable steps to accommodate short of driving itself into undue hardship. It failed to see if such work could have been reorganized and failed to make inquiries to see if such reorganization was possible. In *Woo v. Fort McMurray Catholic School Board of Education* (2002), 43 C.H.R.R.D/496 (Alberta H.R.P.) the complainant was terminated “due to maternity reasons” upon indicating her intention to take maternity leave from a certain date. The Tribunal held that although accommodation does not include undue hardship, it does conceive of inconvenience and some degree of disruption and expense.

72. Mr. Coyle distinguishes *Sidhu* as he submits that the employer in *Sidhu* made absolutely no attempt to accommodate and showed a predetermined mind, i.e., accommodation would simply not be provided by the employer. He also distinguished *Lord* (in that the employer in that case actually had a policy against accommodation, which he submits is hardly the case with the Respondents) and *Woo* (he submits the employer had no maternity leave policy and did not recognize accommodation of pregnant employees). Furthermore, Mr. Coyle relies on

73. *Communications, Energy and Paper Workers Union, Local 440 v. Kimberley-Clark, Nova Scotia* as raising the possibility of an employer raising the defense of undue hardship in a grievance adjudication with human rights issues intertwined. In *Kimberley-Clark*, Davison, J. held that the essential issue in that case was a question of fact: could the employee return to work? In that case, the determination of fact was that the employee could not return to work: he had paranoid schizophrenia, an incurable disease, and was still under treatment; and a return to his position would result in danger to himself and his fellow workers as such position required physical and mental alertness.

74. Ms. Saunders’ evidence is clear that she notified Chief MacLean directly shortly upon finding out she was pregnant. She also sought her doctor’s advice, and his letter (Tab 16 of Exhibit 1 - Commission’s Book of Hearing Exhibits) clearly indicates he is against Ms. Saunders continuing to assume regular patrol duties, presumably from the date of the letter. I find that Chief MacLean’s statement that he had no light duties for Ms. Saunders to be conclusive that he was indicating to Ms. Saunders that she could no longer continue to be employed with KPS. There was also nothing in the Respondent’s decision to consider and ultimately conclude there were no light duties other than the issue of Ms. Saunders’ pregnancy. There were no other factors complicating the decision to deny Ms. Saunders light duties. One aspect of the Respondents’

defense is that Ms. Saunders was not dismissed but rather chose to leave. Chief MacLean does not remember talking to Ms. Saunders about her choice of December 17 and that it did not occur to him that if Ms. Saunders were to be assigned light duties, she may stay. I cannot accept that faced with Chief MacLean's position that there were no light duties, Ms. Saunders chose to simply walk away in time for the Christmas holidays. Chief MacLean's evidence is that he was told of Ms. Saunders choice of December from Corporal Andrews. But he never took the initiative to approach Ms. Saunders directly. I accept Mr. Wood's submission that the choice of December 17 was the consequence of Chief MacLean stating that he had no light duties. I agree Ms. Saunders' decision to pick December 17 is not material. I therefore conclude that Ms. Saunders was pregnant at the relevant time, was adversely treated by the Respondents and that her pregnancy was a factor in her adverse treatment.

75. It is clear from the evidence that Chief MacLean was genuinely engaged in finding work to which Ms. Saunders could be assigned in the office during her pregnancy. I agree with Mr. Coyle's submission that Chief MacLean did not have a "closed mind" about finding light duties but that he made good faith efforts to find light duties. Firstly, the evidence is clear that Chief MacLean held the view that a pregnant police officer needed to be treated differently from other police officers. His experience as a member of the RCMP provided him with an excellence reference point contemplating a workplace with pregnant police officers. Specifically, his own evidence is that he agreed with Ms. Saunders' account of the RCMP's approach to dealing with pregnant police officers from his own experience. Chief MacLean is very clear about the reasons for moving a pregnant police officer to light duties: for the officer's protection, the safety of other officers and public safety. In all of his evidence before the Board of Inquiry, Chief MacLean presented a very clear, common sense-based explanation of the nature of the risk arising as a result of a pregnant officer on duty.

76. There is no evidence before the Board of Inquiry that would suggest that Chief MacLean was not sensitive to dealing with a pregnant police officer in particular or a police officer's gender in general. Corporal McMurtry's evidence on cross-examination is that she has not experienced or felt a situation of sexual harassment at KPS nor has she heard Chief MacLean speak in any way that was sexually inappropriate. In conclusion, I find Chief MacLean did not approach the removal of Ms. Saunders from regular duty and search for light duties in a matter-of-fact, abstract manner. In view of the total evidence, nothing would suggest that Chief MacLean's intentions were reprehensible.

77. I now turn my attention beyond the issue of intention. I agree with Mr. Wood that the issue as to whether the Respondents discharged their duty to accommodate is not the intention of Chief MacLean. Rather, I accept the test to be about whether Chief MacLean understood and followed the nature and intent of the duty to accommodate. Mr. Coyle makes much of the need to leave "command decisions" with KPS given the specialized nature of police work in a small town and the difficulty for the Board of Inquiry to attempt to put itself in the role of Chief MacLean and in essence second guess Chief MacLean. Chief MacLean's evidence is that he was consistent and firm in concluding he had no light duties for Ms. Saunders, despite searching purposefully for such light duties, considering advice from PANS, and ultimately even finding

photocopying work for a period of about one month.

78. I find that creating a new position for Ms. Saunders as described by Chief MacLean in his evidence would probably have resulted in undue hardship. I accept Chief MacLean's evidence that he clearly did not have the discretion to create a new position for obvious reasons: such authority rested with the Board of Police Commissioners; the budget of KPS is limited; and the turn-around time for adding new positions was complicated by the budget-making process itself taking roughly six months of planning and preparation.

79. However, it is necessary to explore attempts by KPS to accommodate Ms. Saunders short of resulting in undue hardship. While counsel for the Respondents acknowledges that there is a general obligation on the employer to accommodate to the point of undue hardship, he submits that the threshold of undue hardship would be crossed by the Respondents in the following situations: assigning Ms. Saunders to a position for which she is not qualified; creating a new position for Ms. Saunders that is not an operational requirement; taking away duties from someone already performing such duties; and patching together various duties, some of which are already performed by someone, thereby taking away from someone already performing such duties. It is also particularly important to examine the evidence of Chief MacLean's attempt to accommodate Ms. Saunders, particularly in light of the suggestions made by PANS and Ms. Saunders.

80. I find that the evidence regarding investigation work covers two types of investigations which arose as part of the duty to accommodate: major (special) investigations and general investigations. Despite PANS' suggestion that Ms. Saunders could assist with investigation work during the daytime shift, Chief MacLead's evidence is that Ms. Saunders could not do major investigations work as she only had two months experience in the force. However, although I accept that she could perhaps not do major investigation work on her own, the Respondents have not provided the Board of Inquiry with any evidence as to the proportion of major investigations which Ms. Saunders could have undertaken under the guidance and supervision of more senior and experienced officers. Specifically, it is clear from the evidence that Deputy Chief Mander joined KPS with investigation experience and that upon becoming Deputy Chief, he continued to do investigation work. He described the work he carried out in GIS as requiring a senior, experienced individual dealing with major crimes, such as homicide, rash of break and enters, large fraud or theft, or sensitive (political) investigations. The Respondents have not presented evidence of their efforts in having explored the possibility of Deputy Chief Mander mentoring Ms. Saunders with major investigations work. It is clear from the evidence that the position of Deputy Chief has been determined to be expendable over time, it being vacant at the time of the hearing. I therefore conclude from this evidence that the role of the Deputy Chief can be molded, expanded or contracted over time. However, no evidence is presented by the Respondents regarding any attempts made to re-organized the Deputy Chief's responsibilities to include a mentoring of Ms. Saunders in general or major investigation work. Constable Matthews also gave evidence related to his position as responsible for GIS, including both general investigation and major crimes unit. Therefore, could investigation work have been broken down into major and general investigation, with some general investigation work being assigned to Ms. Saunders?

The Respondents provide insufficient or no evidence of having explored this possibility.

81. It is Mr. Coyle's submission that it is awkward and inefficient to assign more than one police officer to the same general investigation – it is simply not a viable command decision. Chief MacLean stated that it is standard police practice – including RCMP practice – to avoid having several police officers on the same file simply because limiting investigations to one officer per file means less police officer time in court, thereby reducing overtime pay. However, Chief MacLean's evidence was that while the Chief reviews each complaint received and assigns it to a particular investigator (normally an officer on the day shift), his estimation was that 80% of complaints are concluded within one week. Therefore, I conclude that the bulk of complaints, while subject to investigation work, rarely result in KPS police officers spending significant time in a courtroom. In contrast, Corporal Matthews stated in his evidence that some files have more than one police officer assigned to them, such as domestic violence cases where one police officer may be assigned to one party in the dispute. He also pointed out that shift police officers would do the initial investigative work if the rest of the investigation can wait, and that the GIS officer can ask the regular platoon police officer to carry out the investigation. I therefore conclude that it is neither prohibitively inefficient nor unusual to have a second officer carry out investigation work. Therefore, I find that Ms. Saunders could have been assigned to assist in general investigation alongside another officer without giving rise to undue hardship for the Respondents. I therefore cannot accept Mr. Coyle's submission that such practice would not be a viable command decision as the evidence points to it being a relatively common practice.

82. Could Ms. Saunders have been assigned to do administrative duties? Mr. Coyle submits that to characterize the office work carried out by police officers as "down time" and therefore easily assignable to Ms. Saunders' would be to completely misunderstand police work. Chief MacLean's evidence was that assigning administrative duties to Ms. Saunders would mean taking away work already done by someone else. Ms. Saunders went to talk with Corporal Reid, Exhibit Custodian, who himself stated in evidence that he had observed secondary tasks being shifted around within KPS and stated that Ms. Saunders had approached him about helping out with the exhibits, to which he replied that he did not see anything now but that he would let her know if something came up. While Chief MacLean stated that exhibit duties took about ten minutes out of an ordinary day, Corporal Reid stated he was clearly not opposed to the possibility of including Ms. Saunders in such duties. I also accept Corporal Matthews's evidence that it takes him little time to administer the search warrant ledger. However, Ms. Saunders could have done search warrant ledger work. Chief MacLean also speculated in his evidence that Ms. Saunders could have carried out secretarial or clerk-type duties, including photocopying, taking care of inquiries and done Canadian Police Investigation Centre (CPIC) work, but that Secretary Fitch was already performing these duties. Ms. Saunders' evidence is that she approached the secretary about assisting with older files, as she could apply her skills as a librarian. However, it is clear that the bulk of Ms. Saunders' time while off regularly duty during her pregnancy was spent photocopying documents related to the fraud investigation. I therefore conclude Ms. Saunders was competent to carry out administrative duties.

83. Chief MacLean said in his evidence that Ms. Saunders could have done community

relations or crime prevention work, but Corporal Weir was already assigned those duties. Deputy Chief Mander's evidence is that he and Chief MacLean discussed community policing and it was felt by them that Corporal Weir was the best fit for the position as he was afflicted with a neck condition and "...knew all of the people from years before". However, Mander stated that he did not have discussions with Weir about putting Ms. Saunders into community policing and did not seek out more information on her experience or background in crime prevention. A flagrant omission which arises from the evidence is that no one actually asked Corporal Weir if he needed assistance with community policing. Furthermore, may have contemplated returning to regular duties earlier than expected, freeing up the position for Ms. Saunders. But no one asked Corporal Weir directly and explicitly. It is also clear from the evidence that Ms. Saunders had demonstrated to the Respondents a clear aptitude and interest in crime prevention and actually did a school presentation while off regular duty during her pregnancy. Although Mr. Coyle submits that Corporal Weir's position was one that Chief MacLean lobbied to get for years and was the product of a special arrangement between KPS and PANS whereby Weir could stay in the position for two years and then return to regular duty, I fail to agree that the position as newly created and specially staffed by Weir was so iconic that it could not be reexamined and reshaped in view of the duty of accommodating Ms. Saunders. In particular, I cannot agree with Mr. Coyle's submission that Ms. Saunders' candidacy for the position of crime prevention officer was not considered because she was a "junior officer". I conclude from the evidence that the position was a junior position given that Corporal Weir had to accept a decrease in rank from Corporal to Constable in order to move into the newly-created position. Furthermore, it is Chief MacLean's evidence that Constable Gibson was given the position with about 1 ½ years experience with the RCMP, roughly equivalent to Ms. Saunders' experience. I also fail to agree with Mr. Coyle's submission that in the face of the special arrangement with PANS, the decision was best treated as a command decision for Chief MacLean to make. Unfortunately, as was the case in *Sidhu* with the small workplace, I conclude the Respondents failed in their obligation to take all reasonable steps to accommodate short of driving itself into undue hardship, and, specifically, failed to see if light duty work could have been reorganized and failed to make inquiries to see if such reorganization was possible. The fact remains that Corporal Weir was never asked about his intentions regarding the possibility that Ms. Saunders could take over community policing. In addition, there is no evidence that Ms. Saunders was not qualified to do community policing. On the contrary, Chief MacLean stated in his evidence that she would have been a good choice.

84. Was there work that could possibly have been assigned to Ms. Saunders outside of KPS? Chief MacLean made inquiries with the Town, such as with Debbie Raines, Director of Finance about such duties as photocopying. But Chief MacLean's account of the discussions with the Board of Police Commissioners is particularly vague. As to whether it was the only issue or the most important issue, Chief MacLean could not recall. As to whether there was a discussion of any budgetary implications pertaining to the issue, he said he expected so, but could not recall. He said he had no specific advice to give to the Board of Police Commissioners and could not recall getting any directions from the said Board.

85. Mr. Coyle's submission is that KPS is a small workplace and that it was well known that



Ms. Saunders was pregnant and looking for alternative duties. Could work have been generally reassigned within KPS? Chief MacLean recalled speaking to platoon commanders separately as to whether they had anything for Ms. Saunders to do and they said no. Asked by Mr. Wood whether (or how) he would explain “light duties” to the latter, he replied: “No, they would understand it in a policing sense”. He simply proceeded to seek to find things for her to do from late September to early October. Asked by Mr. Wood whether other police officers would have known about Ms. Saunders’ availability to do light duties, he answered, “she was there, she was available” suggesting that it was a small office and common knowledge that Ms. Saunders was available for light duties. Chief MacLean concluded his comments as follows: “I regret. I would have liked to keep her on and have her stay as long as possible”. Deputy Chief Mander’s evidence supported Chief MacLean’s evidence regarding the search for light duties: “It was an issue the Chief was dealing with on an ongoing basis.”

86. In general, I find the operations of both the Town of Kentville and the Kentville Police Service feature hands-on, inter-personal communication among staff and between superiors and subordinates. However, it is not clear from the evidence the extent to which Chief MacLean formalized and fully described Ms. Saunders’ qualifications (formerly a library technician) and skills (service with the RCMP in Burnaby) as may have been readily available from Ms. Saunders’ resume. I conclude there is no evidence of the Respondents rearranging work within KPS either by way of alerting personnel about which tasks might constitute light duties, compiling an inventory of such tasks, providing a comprehensive profile of Ms. Saunders’ qualification, experience, skills and aptitude to other members of KPS, and explicitly and systematically asking each person about his interest in freeing up such tasks for the benefit of Ms. Saunders. The evidence overwhelmingly confirms KPS to be a small workplace where everyone knows each other and that Ms. Saunders pregnancy would have been obvious. While such personal and hands-on approach to employee communication is commendable, I find that it is not clear from the evidence that KPS members intended to be reached by the search for light duties actually understood the purpose and urgency of the undertaking. I find that some members of KPS had a vague, general notion of wanting to be nice towards Ms. Saunders during her pregnancy and showed clear awareness of safety issues arising from Ms. Saunders’ pregnancy, but were not provided with guidance and direction from their superiors as to what was expected of them regarding Ms. Saunders’ pregnancy. I accept Mr. Wood’s submission that Chief MacLean should have identified work carried out by other persons and examined ways to reassign such work. While I agree that using Ms. Saunders to do photocopying may not be the best use of resources, I find that it was acceptable as being one of several possible duties of a short, predictable duration and would mean reduced spending on outside contractors such as Ms. Dean.

87. Perhaps the most obvious conclusion from the evidence is that little effort was made to assemble a number of duties and functions on a temporary basis in spite of the persistent and formal offer of support and cooperation of PANS in searching for ways of accommodating Ms. Saunders. While it cannot be denied that such an arrangement would be out of the ordinary, awkward and inconvenient, the Respondents have not proven on the balance of probabilities that such arrangements would result in undue hardship. This was clearly considered in the Tribunal’s

decision in *Woo* where it was held that although accommodation does not include undue hardship, "...it does conceive of inconvenience, and some degree of disruption and expense..." As in *Lord*, there were several options open to KPS in considering alternative duties for Ms. Saunders, short of creating a new position for Ms. Saunders or resulting in undue hardship to KPS. Although I cannot conclude given Chief MacLean's efforts that there is "no evidence of any effort to accommodate" the needs of Ms. Saunders as was the case in *Lord*, I do find that as in *Lord* there were light duties within KPS requiring less physical exertion and reduced exposure to risk of harm that constituted options available to the Respondents. However, the latter chose not to explore these in a comprehensive, systematic and purposeful manner. As Mr. Wood submits, Chief MacLean wanted more police officers in the field. Was it not advantageous to have Ms. Saunders load up on office duties in order to possibly free up more officers to maximize police officer time in the field? Although I appreciate Mr. Coyle's submission that it is not up to the Board of Inquiry to craft with precision a bundle of duties that can be conveniently hammered out into a job description, I nevertheless conclude that the Respondents failed to meet their duty to fully and completely explore opportunities for light duties to the point of undue hardship.

88. It also appears from a review of the evidence that Chief MacLean directed his mind more towards Ms. Saunders' maternity leave than finding light (modified) duties as part of the respondents' duty to accommodate. For example, Ms. Saunders stated in her complaint dated March 10, 2000 that Chief MacLean indicated to her that it would not be a problem to find a replacement for her once she was on maternity leave. It is Mr. Coyle's submission that under the provisions of the *Police Act Regulations* s. 3 (a) "the services of any member may be dispensed with while the member is on probation", meaning that all new members are on probation for the first twelve months. Also, Mr. Coyle argues the Nova Scotia *Labour Standards Code* provides that an employee with less than one year's service is not eligible for maternity leave. However, the complaint before the Board of Inquiry is not that the Respondents failed to meet its obligations to provide Ms. Saunders with maternity leave. Rather, it is that it failed to accommodate her as an employee during her pregnancy.

89. It is clear from Chief MacLean's evidence that he did not formally direct Ms. Saunders to undertake her own due diligence and thereby assist in providing him with suggestions on how light duties could be arranged. In the alternative that he did expect Ms. Saunders to help with suggestions, he does not state in his evidence that such efforts by Ms. Saunders were not made or were unacceptable, except to say that it appeared to him that she was looking at taking away someone else's work. I find that Ms. Saunders was diligent and did attempt to identify light duties for herself.

90. The nature and purpose of the platoon system is particularly relevant to the issue of accommodation for Ms. Saunders. Chief MacLean presents himself as a seasoned, confident and experienced person having spent his entire life in law enforcement. He clearly understands the nature of police work, the division of labour and the platoon system, saying it is less than ideal when the platoon is short. It is also clear from his evidence that his extensive experience with RCMP detachments in small, relatively remote areas of Newfoundland and Labrador were a perfect fit for a small municipal police work in rural Nova Scotia such as KPS. It certainly cannot

be denied that the law enforcement workplace is unique and specialized with the overlapping and concentric considerations of law and order, safety and overt presence in the community. It is also clear that the organization of a small municipal police force is particularly challenging given the budgetary constraints of a small town.

91. It is Mr. Coyle's submission that a two-member platoon can be tolerated but for short periods of time but causes problems if it persists in the long term, such problems including bad morale, gaps in service, increased risk to other platoon members and, potentially, to the general public in the Kentville area. However, the evidence is overwhelmingly clear that KPS's platoons were short on a regular basis. I accept Mr. Wood's submission that although a two-member KPS platoon is less than ideal, it prevails on a regular basis. The Collective Agreement itself provides for a minimum of two police officers per platoon, which Deputy Chief Mander attributed in his evidence as being for safety reasons. Chief Maclean's own evidence is that "technically" there is a violation of the agreement every time a platoon is down to two officers. Mr. Wood points to a number of time periods where KPS had two member platoons. Ms. Saunders herself was in the office for over two months without being replaced on her regular platoon. Corporal Matthew was once seconded to the RCMP for six months without being replaced on his regular platoon. Constable Fraser was off sick for six weeks without being replaced on his regular platoon. Corporal McMurtry was off with a bad back for 4-5 months about 4 years ago while her platoon was left with only two officers without being replaced on her regular platoon. KPS had been operating with only two members in the suspended officer's platoon since the spring 1999.

92. It is also significant that police officers may have yearly vacation periods of three to five weeks plus  $8 \frac{2}{3}$  days of extra time off. There are also sick days and court appearances that take time away from regular duty and result in a two-member platoon. If there is an increased risk arising from two member platoon situation, I conclude that such risk, while less than ideal, is certainly neither unusual, unpredictable nor unacceptable. I accept Mr. Wood's submission that a simple calculation of the time off work of a police officer on regular platoon would typically consist of roughly four week vacation, plus  $8 \frac{2}{3}$  days extra time off, plus sick days, plus time off for court duty, totaling at least one month off work. I therefore do not find that Ms. Saunders' absence from regular duty on her platoon during her pregnancy would compromise safety and operations of KPS to the point of causing undue hardship for the Respondents. I cannot conclude as Mr. Coyle submits that the safety issues in *Kimberley-Clark* are a good example of how an employer can be pushed into undue hardship. These are not the circumstances of Ms. Saunders and KPS. A reduced platoon cannot possibly be seen as plunging KPS into the undue hardship of risking the lives and safety of police officers and the general public. Reduced platoons at KPS were not a sudden, irregular occurrence. The fact is KPS regularly had short platoons. Also, the duration of employee's disability in *Kimberley-Clark* was not known, while the duration of Ms. Saunders' absence from regular duty due to pregnancy could be ascertained with some precision.

#### FINDING OF DISCRIMINATION AND FAILURE OF DUTY TO ACCOMMODATE

93. I find that the Respondents failed in their duty to accommodate Ms. Saunders to the point

of undue hardship.

## REMEDY

94. Ms. Saunders and the Commission requested by way of remedy that the Board of Inquiry attempt to rectify the effect of discrimination against Ms. Saunders by considering a number of remedies.

### **Compensation for loss wages**

95. Ms. Saunders claims compensation for loss wages, for a period from December 17, 1999 to May 2000 (up to the time she would have left on maternity leave). Mr. Coyle submits that Ms. Saunders failed to mitigate her damages in that she presents no evidence of having sought alternative employment except for the last few months of her pregnancy, specifically that she did not apply for police work in Kentville or Annapolis or pursue her standing offer to return to the RCMP, preferring to make a career change to her husband's family's nursing home business. I conclude from Ms. Saunders' own evidence that she applied for a position with KPS after her pregnancy. I find it difficult to see how Ms. Saunders could possibly be expected to go out seeking employment when she was pregnant. I therefore award compensation for loss wages, for the period from December 17, 1999 to May 2000 (up to the time she would have left on maternity leave), based on the pay scale set out in Schedule "A" of the Collective Agreement, subject to any amounts earned by Ms. Saunders in mitigation of her damages. If the parties should fail to agree on the details of such award, I shall retain jurisdiction to make a determination regarding such award.

### **Return to KPS**

96. Mr. Wood claims Ms. Saunders should be permitted to return to KPS. On cross-examination by Mr. Coyle, Ms. Saunders appeared undecided, acknowledging she is focused on her present work with her husband's family nursing home business, but stated: "...it is not to say I would not go back to policing." However, it is clear from the evidence that Ms. Saunders is conscious of her status in the community as a police officer and strongly feels that it is the obligation of a police officer to be a role model in the community. She clearly has particularly high regard for the role of community policing and the preventative aspect of law enforcement. It is also clear from Chief MacLean's evidence that Ms. Saunders was generally competent in her work with KPS. I would therefore order as part of this decision that Ms. Saunders be considered by KPS for the first available position for which Ms. Saunders is eligible to apply given such considerations as her qualifications, experience and rank.

### **Sensitivity training for KPS members**

97. Ms. Saunders stated that training programs in general are not unusual for police officers as they routinely take domestic violence courses so as to gain a new, different perspective on an

issue. On cross-examination by Mr. Coyle, Ms. Saunders said that what she meant by “insensitive” was that she was treated in a way that was “evasive” and “non-committal”, and, specifically, that Chief MacLean’s letter to her of September 29, 1999 sounded to her like a “form letter”. She said she would leave it up to the Commission to decide on the details of such training. Mr. Coyle submits that sensitivity training should not be part of the remedy as there is no evidence before the Board of Inquiry that members of KPS were insincere or disrespectful towards Ms. Saunders. Mr. Fisher submits that while a policy would be useful, sensitivity training for police officers would be inconsistent with the evidence that officers were genuinely concerned about how they could deal with Ms. Saunders during her pregnancy. I find that Chief MacLean could have expressed and shown greater empathy towards Ms. Saunders. I accept Ms. Saunders’ evidence that conversations between her and Chief MacLean were often very brief and curt, such as “...what’s going to happen to me Chief...?” to which Chief MacLean answered, “You told me you would be leaving on the 17<sup>th</sup>.” However, I agree with Mr. Coyle that the Respondents generally dealt with Ms. Saunders in a respectful manner and that there is nothing in the evidence to suggest KPS is a poisoned work force. I also do not find the September 29, 1999 letter as sounding like a “form letter”. It was simply a formal reply to a serious inquiry. I found Chief MacLean to be forthright, open and honest in his evidence. I have found current Chief Mander to be generally aware of gender issues in his recollection of the details of efforts to find light duties for Ms. Saunders. I therefore cannot conclude that sensitivity training is required in this case.

### **Gender-based policy for KPS**

98. Although it is clear from the evidence of Corporal McMurtry that she has not herself experienced sexual harassment while being a member of KPS, the reality is that KPS has not had to deal with the accommodation of pregnant police officers in the past except for Ms. Saunders. This is clear from Chief MacLean evidence. Neither Corporal Glenna McMurtry nor Constable Angela Gibson has taken maternity leave. Meanwhile, KPS continues to have women police officers. I therefore conclude that KPS must develop a workplace policy to deal with pregnant police officers. I shall retain jurisdiction over this matter if the parties are not able to agree on the details of such policy, including the terms and implementation of such policy.

### **General damages**

99. Ms. Saunders seeks compensation for emotional stress and embarrassment resulting from not being provided with light duties and not feeling that her pleas for light duties were taken seriously by the Respondents. She submits her financial situation resulted in stress as a result of being off work from December 17, 1999. It is her evidence that up to her last day of work she still did not know Chief MacLean’s intentions and was upset as she felt she did not know what was going to happen to her. Mr. Wood submits that jurisprudence contemplates general damages in the range of \$2000.00 to \$10,000.00. Mr. Coyle submits that the range of damages is more in the range of \$2000.00 to \$6000.00 than the range submitted by Mr. Wood. I award \$2000.00 in general damages against the Respondent Town of Kentville for emotional stress and anxiety resulting from loss of wages and the embarrassment to Ms. Saunders of leaving KPS against her wishes.

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Gilles Deveau  
Board of Inquiry

Dated at Halifax, Nova Scotia, this 20<sup>th</sup> day of August 2004.