

IN THE MATTER OF AN ARBITRATION

BETWEEN:

DAVID THOMAS GIRDLESTONE
(Grievor)

and

THE TORONTO POLICE SERVICES BOARD
(Employer)

AND IN THE MATTER ACTION NO. 99-CV-166966CM
COMMENCED APRIL 6, 1999

BETWEEN:

DAVID THOMAS GIRDLESTONE
(Plaintiff)

and

THE TORONTO POLICE SERVICES BOARD, JOSEPH HUNTER,
DR. ERIC RUMACK, MICHAEL BOYD, KENNETH CENZURA,
KIM DERRY, JOHN BROWN
(Defendants)

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DR. ERIC RUMACK, MICHAEL BOYD, KENNETH CENZURA,
KIM DERRY, JOHN BROWN
(Defendants)

AND IN THE MATTER OF AN ALLEGED CONSTRUCTIVE DISMISSAL
BETWEEN:

DAVID THOMAS GIRDLESTONE
(Plaintiff)

and

THE TORONTO POLICE SERVICES BOARD
(Defendant)

BEFORE: Hon. George W. Adams, Q.C.

APPEARANCES:

FOR THE GRIEVOR:

Kevin D. Sherkin, Counsel

FOR THE EMPLOYER:

Michael A. Hines, Counsel

Heard at Toronto on July 31, August 1,2,3 and 4, 2000; November 13, 14, 15, 16 and 17, 2000; February 26, 27,28, 2002; March 1, 2, 28, 29 and 30, 2001; April 3, 4, 5 and 6, 2001.

AWARD

Subject Matter

This matter pertains to a grievance dated July 29, 1997 (transfer grievance) and a lawsuit (Superior Court of Justice action No. 99-CV-166966CM commenced April 6, 1999). By minutes of settlement dated November 18, 1999, the parties agreed that the factual issues and allegations contained in the lawsuit would be joined with and become part of David Girdlestone's transfer grievance. The transfer grievance alleges that, by Routine Order No. 1192 dated July 9, 1997, Girdlestone was transferred in a discriminatory manner or without reasonable cause contrary to Article 3.01 (b) of the Uniform Collective Agreement. The lawsuit seeks \$5,000,000 for conspiracy to injure and defamation; \$1,000,000 for special damages; and \$2,000,000 in punitive damages.

Paragraph 55 of the Statement of Claim alleges that Kenneth Cenzura, Kim Derry, John Brown and Dr. Eric Rumack conspired to undermine Girdlestone's relationship with the Toronto Police Services Board and besmirch his reputation as an officer in that:

- (a) they disseminated information that the Plaintiff was not mentally fit to carry his service revolver;
- (b) they took away his service revolver without justification;
- (c) they transferred the Plaintiff from the Sexual Assault Unit without justification;
- (d) they continually disparaged the Plaintiff's character to other units of the Board, making it very difficult to work at the Board;
- (e) they disseminated falsehoods that the Plaintiff had been involved in a domestic dispute; and
- (f) they intentionally breached the *Police Service Act*, the *Charter of Rights and Freedoms* and the *Ontario Human Rights Code*.
- (g)

At paragraph 62, Girdlestone states that the alleged conduct was engaged in for the following reasons:

- 1) to attempt to discredit the Plaintiff and dissuade him from pursuing his complaints relating to the Sexual Assault Squad;
- 2) to induce the Plaintiff to resign from the police service;

- 3) to delay the Plaintiff's complaint from becoming public until after the "Jane Doe" trial, as the allegations would have a serious impact on the credibility of officers involved in the "Jane Doe" trial.
- 4)

Details of the alleged defamation are set out at Tab 4 of Exhibit 1. They are:

- 1) Derry and Cenzura reported that they were concerned about Girdlestone's mental stability and wellness;
- 2) Derry reported that Girdlestone's symptoms of whitish foam around his mouth were symptoms of a person needing medical treatment;
- 3) Derry reported that Girdlestone was under the care of Peter Collins;
- 4) Derry reported that Toronto Police Association lawyer Gary Clewley said Girdlestone should not have a gun;
- 5) Derry or Cenzura circulated information that Girdlestone has involved in a domestic dispute.

These words by their plain and ordinary meaning and by innuendo were meant to state:

- (a) Girdlestone was mentally unbalanced.
- (b) Girdlestone was not fit to carry a weapon.
- (c)

Rumack, it is alleged, republished (a) by making the order he did on May 26, 1997. Boyd and Hunter are alleged to also be party to the conspiracy. Finally, Girdlestone alleges that he was constructively dismissed in relation to his departure from the Board on May 4, 2000.

Michael Boyd was Deputy Chief of Police in charge of Detective Support Command until replaced by Joseph Hunter. John Brown was a Detective Sergeant and Supervisor in the Sexual Assault Squad ("SAS"). Ken Cenzura was Unit Commander of the SAS and holding the rank of Staff Inspector. Kim Derry was a senior officer assigned by Boyd to review Girdlestone's concerns as conveyed in an e-mail dated May 6, 1997. Dr. Rumack was the head of the Board's Medical Advisory Service ("MAS").

Girdlestone filed related complaints against Dr. Rumack with the College of Physicians and Surgeons of Ontario; against Association lawyer Gary Clewley with the Law Society of Upper Canada; and against Metro Toronto Police Service, Detective Sgt. John Brown and Staff Inspector Ken Cenzura with the Ontario Human Rights

Commission ("OHRC"). On February 14, 2001 the OHRC held that the complaint was more appropriately dealt with as a grievance pursuant to the *Police Services Act*.

Evidence

David Girdlestone was appointed a Detective in 1990 after highly satisfactory service as a police officer following his hiring in 1976. He is forty-five years old and has a grade 12 education. He has no children. He joined the SAS in 1993 and worked there until his contested transfer in July 1997. In the SAS he was supervised by Detective Sargeant John Brown.

In April of 1996 Girdlestone and four other officers in the SAS (Marie Drummond, Wendy Lever, John Relph and Daryl Campbell) by-passed their immediate supervisors, Tony Warr and John Brown, to complain to Deputy Chief Michael Boyd about inappropriate remarks and sexual touching by the then Unit Commander of the SAS, Staff Inspector Brian Duff. Boyd, while immediately taking action, asked the officers to speak to their supervisors. Boyd kept the officers apprised of his investigation and Duff was eventually transferred mid-way through that review and replaced by Staff Inspector Ken Cenzura. Girdlestone testified that when he tried to explain his actions to Brown as requested by Boyd, Brown became upset and told him that he had cost Brown a promotion and that he would never forget it. Girdlestone did not complain against Brown at the time the statement was allegedly made.

The officers who went to Boyd and their supervisors were themselves charged with neglect of duty in failing to report various incidents of apparent harassment involving Duff as required by the Workplace Harassment Policy. However, Deputy Chief Boyd appealed the recommendation to document these officers and Chief Boothby, on November 12, 1996, accepted the appeal. Instead, Deputy Chief Boyd was directed to meet with all members of the SAS to discuss workplace harassment and review the responsibilities of all police officers.

Girdlestone testified that his working relationship with Brown changed after this incident. At the time, Girdlestone was in a common law marriage with Louise Gray, a

fellow employee, and alleges that Brown interfered with his marriage by making comments to Gray about his relationship with his female partner in the SAS, Barbara Hammond. Hammond was also married to a fellow police officer at the time and had a young daughter. Girdlestone also alleges that Brown directed him to lie in court, increased the monitoring of his workplace responsibilities and ended his partnership with Hammond in March of 1997. Girdlestone attributed this harassment to the Duff incident and to Brown's romantic interest in Hammond. Brown, too, was married. Girdlestone's marriage with Gray ended in September 1996. Hammond's marriage failed in May 1998 and Hammond and Girdlestone began living together in August 1999. Both disclaimed anything other than a professional relationship during the events in question despite workplace rumours to the contrary at the time.

On March 17, 1997 Girdlestone and Hammond were assigned new partners by Brown. Both officers were unhappy about this change. They had a number of outstanding investigations and believed that the new assignments were the product of erroneous workplace rumours and jealousies. Hammond and Girdlestone reviewed their concerns with Brown on March 20, 1997. This meeting became acrimonious between Brown and Girdlestone after Hammond was asked to leave. Girdlestone complained to Brown about an alleged comment to Louise Gray that Girdlestone and Hammond appeared "joined at the hip" and about a leave which had been refused. Brown also confirmed there were rumours in the office that Girdlestone and Hammond were having an affair. Hammond and Girdlestone also believed that Louise Gray and Wendy Lever had played an unwarranted role in the breakup of their partnership and accusations to this effect were leveled at Brown.

Brown, however, advised that Cenzura had chosen Girdlestone to train Marisa Reggimenti, an officer temporarily assigned to the SAS to replace Doug Cavanaugh. When Girdlestone asked if the assignment had anything to do with Cavanaugh's illness, Brown announced that the decision had been made. Girdlestone was interested in the Cavanaugh connection because there were rumours that he "had something on John Brown" involving Hammond. Hammond confirmed to Girdlestone that there was something between her and Brown in the past but did not want to elaborate. This appears to have reinforced his belief that the transfer might involve Cavanaugh, Hammond and

Brown. Cavanaugh's driving licence had been suspended for an alcohol related offence necessitating his temporary transfer out of the unit. Girdlestone and possibly other officers saw his exchange for Reggimenti as undue favourable treatment. Girdlestone then spoke to Brown, feigning that he knew what Brown had done to Hammond and demanding Brown stop harassing him. Brown was told he was affecting Girdlestone's personal life who was now without his own home. Indeed, Girdlestone appears to have lost considerable weight following the breakup with Gray and was living with his parents.

Girdlestone testified he went to see Cenzura on March 25, 1997 to get advice about the situation after speaking to Hammond. He told Cenzura about the rumours concerning him and Hammond; about Brown speaking to Gray; and about his concerns over the partnership reassignment. Cenzura said he had chosen Girdlestone to train Reggimenti because he was one of Cenzura's best detectives. Girdlestone repeated the rumours that Cavanaugh suffered from alcohol addiction and questioned how he was able to get his preferred temporary reassignment. Cenzura assured Girdlestone that his reassignment to work with Reggimenti was not part of a "sweetheart deal" and that Brown had nothing to do with Cavanaugh's transfer. Cenzura, therefore, asked him to meet with Brown to see if they could work out their differences.

Girdlestone and Brown met on March 27, 1997 but the meeting did not go well. Girdlestone told his supervisor that the sight of him made him "want to puke" and that he found it difficult to be in the same room. He said Brown did not deserve to be a Detective Sergeant. Indeed, he should not even be a police officer. The fact that he worked in the SAS made Girdlestone "sicker". Brown, in turn, accused Girdlestone of "stabbing him in the back" by going to Cenzura. He said Girdlestone had a lot of problems and that he was the most insecure officer he had ever met. He felt sorry for Girdlestone. Girdlestone replied that Brown's worst nightmare had just come true and that it was Brown who had the problems. It may also be at this meeting that Girdlestone made references to Cavanaugh and Hammond and warned Brown to stop harassing him. Sometime after this incident Girdlestone recalled Brown inviting him out "to the parking lot" but the precise timing and circumstances were not established.

On April 10, 1997 Hammond advised Girdlestone that Brown had wanted an affair with her following an incident at the Colony Hotel in Toronto during an off-duty

plaque party in 1995. Hammond said she advised Brown she was not interested. Hammond told Girdlestone she was sharing this information with him as a friend so he would presumably understand the circumstances surrounding their partnership reassignments. Unfortunately, this information appears only to have encouraged Girdlestone to pursue the matter. He then had a meeting with Cenzura where he discussed the Duff matter; his altercation with Brown; Brown's behaviour toward him and Hammond; an incident at the plaque party involving Brown; Brown's attraction to Hammond; and Brown's comment to Louise Gray. Cenzura observed "he was talking in circles" and Girdlestone apologized for doing so explaining that he did not want to jeopardize the source of his information. He also referred to complaints which had been made to Brown about the smell of alcohol on Cavanaugh's breath; to the fact that in April 1996 Hammond had told him and Lever that Brown would leave the squad to have a relationship with her; to the fact that Cavanaugh might be aware of something between Hammond and Brown and be using it against Brown to avoid action against himself; to Lever having difficulty maintaining confidentiality; to Brown acting inconsistently toward him because of the Duff incident; to the fact that Brown had said to him he would never forget it; and finally to Brown possibly suffering from a drinking problem.

Cenzura appears to have explained why people may not want to complain, giving the example of family repercussions. Girdlestone indicated he was not aware of all the details concerning Brown and Hammond but speculated that this information may explain Brown's attempts to interfere with his partnership and his daily investigative strategies. He said it was difficult being in possession of knowledge that could be of a criminal nature involving colleagues. Cenzura shared with him a health related incident in the Homicide squad involving one of the officers. He asked Girdlestone if he had considered speaking to psychiatrist Peter Collins "as a friend". As Girdlestone departed, Cenzura indicated that he understood what Girdlestone was talking about and that he should think about talking to Peter.

Girdlestone later made copious notes of this conversation with his Unit Commander. The notes included a record of his apology for "talking in circles", explaining it was difficult when the victim does not want to complain and when she speaks to you as a friend. Girdlestone subsequently spoke to Hammond about this

meeting. He testified that he assumed Cenzura would understand he was complaining against Brown, fill out a 787 harassment complaint form, and have him sign it. He drew this from Cenzura's alleged comment that he knew what to do.

Soon after, another meeting with Brown was aborted when Brown involved Tony Warr as a witness and Girdlestone objected to Warr being present. On April 28, 1997 Cenzura asked to speak to Girdlestone concerning an incident in which Girdlestone was believed to have upset Marisa Reggimenti. Girdlestone informed Reggimenti of his dislike for Lever and Brown and his perception of related office politics. Girdlestone defended his comments to Cenzura by reviewing the rumours about him; Brown's suspected alcohol use; what were described to Reggimenti as "Wendy cases"; Cavanaugh having liquor on his breath; and Brown asking him to lie at trial. Cenzura said he was disappointed that the problem between himself and Brown could not be resolved and told Girdlestone that it may be time for a change.

Girdlestone testified that he was surprised Cenzura had done nothing about his sexual harassment complaint. Instead, all that was being discussed was his possible transfer. While his surprise was not shared with Cenzura at the time, Girdlestone testified that on April 29, 1997 he told Cenzura he was now prepared to go to Internal Affairs. Cenzura is alleged to have told him to be careful and Girdlestone replied he was retaining a lawyer.

From early April 1997 Girdlestone and Hammond were away from the office working on the Alvin James preliminary hearing. Nevertheless, on April 30, 1997 Hammond spoke to Cenzura to "fill in the pieces" because she too understood that Girdlestone had previously spoken in circles. She described the Colony Hotel incident; gave examples of Brown's tight rein over their partnership; and mentioned "the joined at the hip" comments of Brown. She encouraged Cenzura to speak to everyone. It was her impression, however, that Cenzura believed Girdlestone's symptoms indicated he had been in the field too long; that he was disrupting the office; and that Girdlestone, therefore, would be leaving the SAS, not Brown. Hammond advised Girdlestone on May 7, 1997 of what Cenzura had told her, particularly that Girdlestone should consult the Employee Advisory Program and a psychiatrist.

The day before, May 6, 1997, Girdlestone sent an e-mail to Deputy Chief Boyd concerning these matters. The e-mail read:

Sir,

I write this letter to you with deep concern for the manner in which an internal investigation is being dealt with in the Sexual Assault Squad. After the S/Inspector Duff investigation I would never have anticipated the need for writing this letter to you. However the circumstances have left me with no other course of actions. It is quite apparent to me that as time passes, the perception of scandal increases as well as the evidence to support such a scandal. My career history of dedication and loyalty to the Service will not permit me to allow this to occur. I found it disturbing that on 03-April-97, I was placed in a position requiring the need to retain legal counsel concerning this matter.

On Thursday, 10-April-1997, on the advice of counsel, I met with S/Inspector Cenzura and reported a number of allegations to him concerning certain members of the Sexual Assault Squad. These incidents were in relation to alcohol abuse, tones of sexual harassment and misconduct. Management styles and candidate selection for the Sexual Assault Squad were discussed as they related to the nature of my allegations. The events that have taken place, and in particular those that have not occurred since my disclosure cause me to believe that no action is, or has been initiated. It was my belief that I had taken the correct action when I met with S/Inspector Cenzura on 10-April-97. I am fully aware of my responsibilities as a supervisor in dealing with matters of this nature.

I am presently on annual leave. However, under the present circumstances I will be available for any information you may wish to discuss with me. It is my intention to meet with Internal Affairs on Monday, 12-May-1997. I informed S/Inspector Cenzura of my intentions on Tuesday, 29-April-1997 and have not been contacted by him since this date. I have been informed that D-Constable Barbara Hammond also met with him on Wednesday, 30-April-1997. I believe in good communication up and down within the ranks and believe I have made every effort to respect the chain of command.

There was a telephone conversation between Boyd and Girdlestone on May 7, 1997. Boyd advised he would assign Kim Derry, Boyd's assistant and an experienced officer, to review the situation to ensure there was no misunderstanding with Cenzura. Derry met briefly with Girdlestone on May 8, 1997 and Girdlestone provided his memo book notes to that date to establish there had been no misunderstanding. Girdlestone had been taking very extensive notes of his conversations with his supervisors as he would in a criminal investigation. Girdlestone testified that Derry asked for his views on moving Cenzura, Brown, Hammond and himself. Girdlestone told him this would be

unacceptable because it punished the victim and complainant. He preferred a full investigation to disclose the truth. Girdlestone's proposed immediate resolution was the removal of Brown and an investigation of Cenzura's actions.

Girdlestone became aware of a SAS meeting conducted by Cenzura on May 9, 1997 where the squad was told that there would be an investigation conducted by Detective Sergeants Dick and Clarke as a result of Girdlestone's complaints. Girdlestone believed that, in doing so, Cenzura had breached the confidentiality requirements of the Workplace Harassment policy. Girdlestone could also not understand why Boyd would have allowed this meeting. He concluded that management was trying "to make him look crazy." Hammond was also upset because Girdlestone had breached her confidentiality. The squad was told at the May 9, 1997 meeting that Brown was to be transferred as a result of a past incident. And out of concern for Girdlestone's well-being, it was also decided to change the combination to the gun locker room.

The grievor, however, was on vacation during the first week of May and was not aware of all these events at the time. Derry called him Friday, May 9, 1997 to meet and take a statement the following week. He was also contacted by Cenzura and directed to report to Bob Montrose at 8:00 a.m. when he returned for work on the Monday, May 13, 1997. Girdlestone attended at Montrose's office with Association representative Dodson. He was unwilling to go the SAS office to meet Montrose out of fear that Brown was armed and likely upset. Montrose then escorted him to the MAS where he met with Dr. Rumack and Barbara McCormack, a nurse. Rumack appears to have told him he was not what he had expected. Girdlestone told Rumack about his harassment complaint and Girdlestone testified that Rumack replied that he would not be used or compromised by management. While Girdlestone believed that he was declared fit for duty, he did not feel well. Accordingly, he booked off sick and attended on his family doctor.

He had previously met with Hammond on Saturday May 10, 1997 and she had told him Boyd had initiated an internal investigation. She also had expressed concern over her involvement and advised him everyone in the office was also upset over Brown's transfer. Hammond further advised Girdlestone that the gun locker combination had been changed and that Cenzura thought he was crazy. In his view, these events were all part of an attempt to discredit him. Rumack was told that this previous meeting with

Hammond had made him sick to his stomach and that he was experiencing headaches. (See Exhibit 2, vol. 1, Tab 41) Girdlestone stayed off work for the next two months. His family doctor advised Dr. Rumack of the reasons for his absence in a letter dated July 25, 1997. This letter followed an earlier note of May 27, 1997 and was a response to Dr. Rumack's inquiry of May 30, 1997. (Exhibit 2, vol. 1, Tab 40) It read:

Dear Dr. Rumack;

First, my apologies for not sending this letter sooner. As per our recent telephone conversation, I have been seeing David Girdlestone since May 12, 1997. At that time, David complained of insomnia and decreased appetite as well as acute anxiety. It became evident that David's symptoms were triggered by work related stressors, the nature of which you are well aware.

Between May 12 and July 3, 1997, I saw David on seven occasions during which time we discussed the details of his work situation. A short course of anxiolytics were prescribed which were effective but stopped after a short time. Relaxation therapy was taught and David's emotional state steadily improved. This was most likely due to changes at work including a transfer to another division. I understand that the case is ongoing.

At no time during his visits did David express any suicidal or homicidal ideation. (I understand that David was relieved of his firearm for a period of time). At the writing of this note, I am happy to say that David's condition has significantly improved. He is eating and sleeping better and has begun a regular exercise program.

His symptoms are most in keeping with an acute situational stress. I do not believe that there are any underlying psychiatric disorders (i.e. depression, GAD).

I hope that this information is helpful. Feel free to contact me at anytime if you have any questions.

Yours truly;
Dr. Christopher Martin

Girdlestone testified that he was now very concerned about his career and being identified as a member of "the rubber gun squad" – an apparent term of police culture referring to officers with mental health problems who cannot be trusted to perform as partners or to withstand the scrutiny of defence counsel during a trial.

On May 22, 1997, while off duty, Girdlestone met with Derry at the law office of Gary Clewley. Clewley is a lawyer for the Association and was representing Girdlestone at the time. Girdlestone explained his allegations to Derry including the failure of

Cenzura to investigate, the reprisals by Cenzura and Brown, the harassment by Brown because of his attraction to Hammond and the adverse effects on his personal and professional life. Girdlestone may also have advised Derry of the existence of a personal firearm which he kept at home. It is Girdlestone's view that Derry's failure to request his personal gun was inconsistent with any real concern for his mental health. Derry also spoke to Clewley privately at this time.

Girdlestone and Clewley next met with Cenzura on June 4, 1997 away from the workplace. Cenzura explained that his gun was returned to his locker as soon as Rumack had declared him fit for duty on May 12, 1997. He offered Girdlestone a number of units where he could return to work. Cenzura and Clewley then spoke privately. Girdlestone testified that Clewley later advised that he could transfer to an investigative unit if he "kept his mouth shut". Otherwise, he would be sent to uniform service. Exhibit 2, vol. 1, Tab. 43 is a restricted duty form executed by Rumack and dated May 26, 1997. It notes that Girdlestone's firearm had been removed by his Unit Commander and that he must be assessed by Medical Advisory Services before returning to work. The form's limited circulation is noted at the bottom and Girdlestone received a copy in the mail. The grievor was assessed fit for duty on July 7, 1997 by Nurse McCormack and assigned to Special Investigative Services (SIS) under the supervision of Staff Inspector Paul Gottschalk (Exhibit 2, vol. 1, Tab 18). At the time of this assessment, Girdlestone was alarmed by certain documents contained in his medical file. These documents were notes from Cenzura and Derry. There was also a note authored by Dr. Rumack dated May 26, 1997 which described information provided by Derry and Cenzura which Girdlestone considered inaccurate. This information indicated his behaviour had changed. In his view, all that had changed was that he had reported the misconduct of his supervisors. And, contrary to these notes, he was not seeing Peter Collins professionally. To obtain copies of all documents in his file, Girdlestone ultimately was forced to appeal to the Information and Privacy Commissioner. (Exhibit 11)

Girdlestone continued to pursue his concerns upon returning to work. He felt his career had been ruined and that he was victim of a coverup. From his perspective, the medical file gave additional force to his concerns. Gottschalk thought his transfer related to a domestic dispute and Girdlestone suspected this misinformation was also deliberate.

Complicating his return to work was the fact that he had to complete several SAS assignments. This may have produced conflict with colleagues in his new unit because he was often unavailable. Girdlestone also sought advice from Abbey Mushega, the Human Rights Coordinator for the Board who he claims advised him that he had done everything correctly. On September 29, 1997, the grievor sought an update from Derry through Gottschalk. Derry explained he had been occupied by the Jane Doe trial and advised that Mushega was reviewing the investigation. Mushega told Girdlestone to take his concerns to Deputy Chief Hunter who had now replaced Boyd and Mushega summarized those concerns for Hunter in a memorandum dated October 23, 1997.

In December of 1999 Girdlestone obtained from his medical file a copy of a note dated May 23, 1997 which Derry had sent to Nurse McCormack. It is alleged that the note was inaccurate and defamatory. The note read:

On Thursday night at 4 pm I met with Dave Girdlestone and his lawyer Mr. Gary Clewey at 65 Queen St. W. 1091. The purpose of the interview was to listen to complaints from Dave in company with his lawyer in regards to work place harassment issues. I must be clear that my involvement is at the direction of the Deputy. I was to determine a clear understanding of what harassment Dave had been receiving and then to note that complaint and follow-up with a course of action that is appropriate.

During my conversation with Dave it was quite apparent through his comments that he is very upset and disturbed over comments and actions taken by supervisors within the sexual assault office and their apparent lack of concern over his complaints. Dave admits that his anger about a Detective Sergeant has reached a stage that he can no longer work for him. While taking the complaint from Dave I was noting that his demeanor was not normal in that he would ramble on about other issues when I tried to focus him on the complaint. He was very agitated and as our discussions continued he was unable to really focus on the issues he was trying to illustrate and would go off in my words in a circular fashion. The whiteish foaming around his mouth occurred during the conversation similar to people I have observed before who require some medical treatment.

I don't know Dave very well and can only give you my opinion on what I have observed from him over the past two meetings. He is obsessed with the hate of the Detective Sergeant and is blaming his break up of his marriage in part to comments made by the supervisor. He would recount some issues from several years past that in my opinion at this time have no apparent link to his present behaviour.

Regardless of his complaint I as a supervisor am concerned about his mental

stability and wellness. He admits he is suffering from stress that he is seeing a doctor for which he has a letter stating he requires two more weeks off work, I have not seen such a letter. He states he is seeing Dr. Peter Collins and requested that be in a professional relationship to maintain doctor client relationships, he can't trust anyone and therefore had to secure a lawyer. He admitted that he might be paranoid about a lot of issues but "I" didn't work there and so I won't know all the cover-ups taking place. He doesn't trust internal affairs, other investigators and he is not sure about me.

Once the interview was over I had a talk with his lawyer in private and Mr. Clewey stated, I can't understand why is still allowed his gun and doesn't think he should. He further states that his is trying to calm him down but not sure to what extent he will be able. He states that Dave is attending the law library daily and bringing him photocopies of cases to support himself in his pursuit of the complaint. Mr. Clewey states that he is representing Dave but does have some concerns over his wellness.

The complaint taken by myself is a separate issue and is being dealt with in an expediant and professional manner. The second matter at hand is the wellness of the officer and in my opinion needs to be addressed by your unit in conjunction with other medical experts. I don't think he is a danger to himself other than stress levels or a danger to other officers. I don't think he should be placed into a position of dealing with the public at this time nor be in possession of his handgun until the wellness of Dave can be determined. His stress and anger level in my opinion impair his ability to make sound judgments. He expressed concern over comments made by Dr. Chumack on his last visit that the Doctor expressed concern that the Sexual assault office was using the medical bureau as an inappropriate way of dealing with him, and that the integrity of the office was not going to be abused by people up there.

Dave states that this is another form of harassment in furtherance of the original complaint. I can assure you that this is not the issue but a wellness issue and needs to be addressed.

I assure you that given my contact with Dave over the past two weeks I am quite concerned about his behaviour and his wellness.

Thank you for your comments, Kim.

Girdlestone denied foaming at the mouth. He denied seeing Collins professionally. And he denied being distrustful or angry. Girdlestone provided Mushega with what he referred to as "an internal complaint" consisting of a one hundred and fifty-six page single-spaced chronology of all that had happened from his perspective. He also

filed a complaint with the Ontario Human Rights Commission on November 17, 1997. This latter complaint emphasized Brown's treatment following the Duff incident, his firearm restriction and the transfer following his complaint about Brown together with his new concerns over alleged sexual misconduct in the SAS.

Girdlestone, on December 21, 1997, made other allegations in a ten-page complaint to management against Detective Paul Lopsinger, Wendy Lever and Jane Wilcox concerning their conduct in carrying out an investigation and against Brown for expressing insensitivity towards a victim of a sexual assault. (Exhibit 12) Detective Sergeants Rick Gauthier and Bob Clarke inquired into these complaints and, by a report dated February 19, 1998, found that the allegations were unfounded and, instead, were a product of Girdlestone's inability to work with other officers. (Exhibit 13) The report to Deputy Chief Hunter concluded that Girdlestone's personal feelings and animosity towards other officers had created a situation where the writers had grave concerns about Girdlestone being the officer in charge of any criminal investigation. (Exhibit 32) Girdlestone sought a transfer to 22 Division on September 18, 1998 given what Hunter's officers were writing about him. He said it was an attempt to salvage his career and that he still believed an investigation was going to take place although not under Hunter. Nevertheless, Hunter sent Girdlestone a very conciliatory letter regarding the findings of Gauthier and Clarke. (Exhibit 13) By a seven-page memorandum dated October 10, 1998, Girdlestone withdrew the transfer request after being granted access to his personnel file by Gottschalk. He explained that he did not want the information in his file, particularly the medical information, going to a new Unit Commander.

Girdlestone wrote a twenty page memorandum to Internal Affairs (IA) on April 6, 1998 outlining all his concerns. Derry, he testified, had said IA would be involved and, therefore, he was seeking an update. He never received a response. He also wrote to a Police Services Board member on April 28, 1998 but did not receive a reply. Girdlestone was transferred to the Auto Squad and worked under the supervision of Detective Sergeant Chris Hobson. In January of 1999 he was away from work for five or six days due to a back injury and headaches. On February 2, 1999 he booked off again for the same reasons and was away for one year. He was also concerned about his heart and cholesterol levels. In his view, these were stress-related ailments due to his complaints

being ignored and his reputation being destroyed. Indeed, he believed charges against him were forthcoming concerning alleged improper alcohol consumption and misuse of sick benefits. He then initiated this lawsuit which apparently was reported on in the newspapers on May 26, 1999. His heart rate, he said, increased every time he contemplated returning to work. Ultimately, he felt he was forced to resign and he did so on May 4, 2000. In his view, he had been "written off" by the Board. At the time of the hearing, he was working part-time as a musician. He did not believe he could work elsewhere in policing or security services because of what had happened to him. It was a small community and everyone would view him as a problem – a police officer who went against management.

A key reason for the precise timing of his departure, he admitted on cross-examination, was that his pension would be locked in if he remained employed beyond his forty-fifth birthday i.e. May 8, 2000. As for Brown allegedly asking him to lie in court, he acknowledged that Brown had taken the position that Girdlestone was in control of a file when certain evidence had gone missing notwithstanding that Brown was generally responsible for the case as the senior officer. In other words, Brown was asserting that his subordinate was the day-to-day case manager. Moreover, he did not lodge a specific complaint about this matter at the time. When asked about the apparent inconsistency of Brown speaking to Gray and also interfering with his working relationship with Hammond, he suspected that Brown wanted Gray to encourage him to change partners.

He agreed that Cenzura claimed responsibility for the decision that he train Reggimenti and had said that there was no one better to work with her. She had been briefly working with Lever and Girdlestone acknowledged that he considered Lever to be incompetent. Notwithstanding that view, however, Girdlestone suggested to Cenzura that Lever should train Reggimenti while also testifying to have been indifferent about his partnership with Hammond. Girdlestone did not think it was insulting to ask Brown who was running the office. He acknowledged that SAS was a troubled unit but did not see his comments to Cenzura about Cavanaugh and Brown having drinking problems or his comments to Reggimenti as being the same kind of rumour mongering that he and

Hammond were objecting to. It was not his job to dispel office rumours. It was Brown's job.

Girdlestone agreed that Hammond did not want him to tell Brown what she had told him but denied that he had threatened Brown with the disclosure of this information. He said he was only pretending to know more about the Colony Hotel incident than he actually did. He also believed that Lever had spoken to Brown in an attempt to break up his partnership with Hammond. Indeed, he had told Lever to stop her lies. All of these background events, from Girdlestone's viewpoint, seemed inconsistent with Cenzura making an objective decision to have him train Reggimenti. Girdlestone also claimed to have told Cenzura about a sexual assault which may have occurred at the Colony Hotel some two years earlier in relation to Hammond but stated, on cross-examination, that his primary complaint to Cenzura was about Brown harassing him. Thus, he did not ask Cenzura to investigate the Colony Hotel incident because Hammond did not want him to go any further. He agreed that by April 29, 1997 Cenzura had decided to transfer him. He had told him it was time for a change and that he should go home and think about it. He also agreed that he had not asked Cenzura for a 787 complaint form and never later discussed with him the status of the complaint which he now claims he had made at their meeting of April 10.

Girdlestone acknowledged that he had spoken to Peter Collins on May 4, 1997. Dr. Collins is a psychiatrist who works with the Board. He said it was just a friendly conversation but he wanted the protection of a doctor-patient relationship. This conversation, like so many others, was recorded in his memo book, a copy of which was given to Derry. He agreed Cenzura had observed that he was talking in circles. He also agreed that he told Reggimenti, on his first and only day working with her, that Lever was incompetent; that Brown hated him; that she should not mention Lever in his presence; and that she should not discuss his personal life with Lever. However, he denied telling Reggimenti he was keeping notes on Brown and that he would get him. Nevertheless, he was keeping notes and could not explain how Reggimenti would know that fact.

While he had not marked his e-mail to Boyd as confidential and had shown a copy of it to Hammond, he objected to Boyd talking to Cenzura about his complaint.

Indeed, he agreed that he had regularly briefed Hammond on events and shared his suspicions with her that Cenzura was trying to smear him. However, he denied he was conducting an investigation of his superiors. Instead, he was just taking notes in his service notebook. While he considered Brown's transfer to be different from Duff's because the squad was told why in Duff's case, he thought Brown's transfer in June was at least a step in the right direction. He also accepted that his name may likely have been revealed during any investigation of his concerns even without the squad meeting called by Cenzura in early May.

He agreed that Derry spoke to him on May 22 to better understand his complaint. Girdlestone also agreed in cross-examination that Cenzura had not told or requested him in the face-to-face portion of their meeting on June 4, 1997 to drop his complaint as a condition of an investigative assignment. Girdlestone was absent from May 12 to July 7, 1997 because of situational stress. He also understood that it was the Police Service Board's policy not to investigate a parallel complaint i.e. the complaint he filed with the Ontario Human Rights Commission. He was told on February 10, 1998 that the employer would be seeking an order from the OHRC to defer to the internal processes available under the collective agreement. In response to that application, the Commission exercised its discretion under section 34(1)(a) of the Code, deciding not to deal with the grievor's complaint by decision dated February 14, 2001. However, Girdlestone testified that he would never have filed an OHRC complaint had his concerns been dealt with by the Board. Finally, he acknowledged that he had not sought a promotion, having failed the required examination. Accordingly, his fears about the possible improper use of the contents of his personal file were never tested prior to his departure from the Board in May 2000.

Police officer Barbara Hammond joined the SAS in November 1992. At her request, she transferred to 33 Division in February 1998. She became Girdlestone's partner in the spring or fall of 1996. She learned much from him. She found him honest, "by the book", and intense. He was very supportive. He did not socialize with his fellow workers. It was her impression that Brown was more focused on their partnership than others and he kept them under a tight rein. He made comments concerning their

whereabouts, drew procedures to their attention and asked if she found Girdlestone attractive. She recalled even more conflict with Brown from December 1996.

She was aware of rumours in the workplace that she and Girdlestone were having an affair. There were also rumours that Cavanaugh had something on Brown because he was not assigned to uniform duty when his driving licence was suspended for a drinking offence. During the period in question, Hammond saw no change in Girdlestone except for his reaction to Brown's unfair treatment and even there he dealt with it head on. Hammond felt Girdlestone's treatment by Brown was because of her. She explained that immediately after an incident at the Colony Hotel Brown indicated he would like a personal relationship with her. Hammond also testified that her relationship with Girdlestone in March 1997 was only professional. The Alvin James preliminary hearing started in April 1997. It was at that time she disclosed to Girdlestone the details of the Colony Hotel incident involving Brown. She testified that only kissing had been involved and that nothing was forced on her. She felt responsible and ashamed. She was married and had simply drank too much.

According to Hammond, when she and Girdlestone were advised of the termination of their partnership, they began to think about all the rumours "flying around" and decided to review the decision with Brown. They wanted to clarify the reasons and emphasize the disruption to the many cases they were handling. Brown said their work was fine and appeared defensive. When Girdlestone started to cross-examine him, Brown announced that the decision had been made. It was at that point she was asked to leave and the two men continued on. She was aware Girdlestone was upset over remarks Brown had made to Louise Gray and about what Brown said he had heard about Girdlestone and Hammond. She later gave Brown "heck" for saying such things to the spouses of officers.

Hammond explained that she told Girdlestone about her past history with Brown to enlighten him, not to complain. She had given him and Lever "limited disclosure" about a year earlier in telling them that she knew Brown liked her. At that time, Girdlestone had offered to look for another partner if there was something between her and Brown. However, when she provided details to him on April 10, 1997, Girdlestone felt he had to go to Cenzura with the information. Hammond began taking notes about

this matter from May 8, 1997 because she knew it was very serious and Girdlestone would be addressing the issues. She spoke to Cenzura confidentially on April 30, 1997 to clear up whatever she could. She did not think he would do anything about the Colony Hotel. She was not lodging a complaint. It was Hammond's impression, however, that Cenzura had made up his mind to transfer Girdlestone in light of the Reggimenti incident. From what Cenzura said to her about the symptoms of other officers under stress, she concluded that he thought Girdelstone had been in the field too long. When she inquired about Brown leaving the squad instead, Cenzura said it would not happen. Despite her advocacy on Girdlestone's behalf, his treatment of Reggimenti seemed to be the last straw. Hammond also advised Brown that she had been in to see Cenzura.

On May 8, 1997 Cenzura told her that Girdlestone had sent a letter to Boyd. On May 9, 1997 he advised her that there was going to be a squad meeting outlining what was to happen regarding the letter. Hammond had an assignment elsewhere and could not attend. Cenzura told her there was to be an investigation conducted by Staff Sergeant Dick and Clarke. When she returned to the office after the meeting, the office was "like a morgue". Fellow officers were very upset. She understood that Cenzura had explained the need to investigate Girdlestone's letter to Boyd and that Brown would be transferred as a result of an incident a couple of years ago. She assumed everyone would suspect it involved her due to her absence from the meeting. She complained to Girdlestone and Cenzura because she had spoken to both of them in confidence. She also acknowledged telling Girdlestone that the combination to the gun room had been changed. On May 12, 1997 she complained to Montrose and Brown that Cenzura had no right to tell the office about matters that would affect her family. She testified that she already had a troubled marriage. She believed everyone was angry at Girdlestone for raising all these issues after the SAS had just recovered from the Duff matter. And she so advised Girdlestone.

Hammond testified that she felt Cenzura was responsible for upsetting both her life and the office. She had no one else but Girdlestone to turn to so she called and spoke to him regularly during the month of May. It was her impression that she was more upset than Girdlestone even though access to her gun had not been restricted. Ultimately, Hammond transferred to 33 Division and to uniform duty because she could not take it anymore. While she did not file a grievance, she said she was "counting her days". She

believed she could not transfer elsewhere into Detective Command because "they never forget it if you stand up". She separated from her husband in May of 1998 and began living with Girdlestone a year later.

On cross-examination, she confirmed that Girdlestone was not feeling well as a result of everything. She agreed that it would not be characteristic of Girdlestone to tell a fellow officer that the sight of this person made him "want to puke". She said Detectives Lopsinger and Lever were not pleased with Brown helping Cavanaugh and suspected Cavanaugh had something on Brown. Indeed, as a result of talking to Lopsinger, Hammond had inquired of Cavanaugh about whether "that something" involved her. She agreed the squad was "like a soap opera". Hammond revealed to Girdlestone some information about the Colony Hotel on April 10, 1997 and then more during the Alvin James trial. Girdlestone told her he had complained about his harassment to Cenzura but had not gone into the details about her and Brown. When she spoke to Cenzura, Hammond was embarrassed. She had a husband and daughter and wanted the situation to go away. She acknowledged that she had left the impression with Cenzura that what happened at the Colony Hotel was as much her fault as it was Brown's. However, she could not recall if Brown was in the hotel room lying down on the bed before she joined him and they kissed as Brown had told Cenzura. There was a rumour that Cavanaugh had witnessed the incident.

Hammond acknowledged she was disappointed in being separated from Girdlestone and arranged the meeting with Brown to find out what the reasons were. She said Brown had twice made comments in her presence that Girdlestone could not keep a woman happy. He also told them there were rumours they were having an affair - rumours they were aware of. Hammond did not want an investigation of the Colony Hotel incident in part due to family circumstances. She agreed that Cenzura had a management problem given that incident, the allegation that Brown was harassing Girdlestone and her allegation that Brown had asked whether she found Girdlestone attractive. She also agreed it would be unfair to transfer her. Hammond saw nothing wrong with Cenzura speaking to Brown to obtain his side of the story. However, it was her impression the Cenzura's focus was Girdlestone. As for Brown, Cenzura simply said that it could be "an unusual situation when a supervisor takes a shine to you". But she

also agreed that Cenzura might have wanted to take all the facts into account before ultimately assessing the situation. Hammond further acknowledged that she probably had a copy of Girdlestone's e-mail to Boyd before speaking to Cenzura on May 9, 1997.

Roger Dodson, Chief Steward, confirmed that Girdlestone was complaining of an upset stomach and emotional stress when he attended the MAS in early May. He testified that Dr. Rumack expressed concern about management using his office for work-related problems. Gary Clewley testified. He denied observing any whitish foam around his client's mouth during the interview with Derry. He also denied telling Derry that Girdlestone should have his gun removed. He agreed that he spoke to Derry subsequently and that he made every effort to get Girdlestone back to work. It was his belief that a formal investigation would have interfered with that type of early resolution. Clewley therefore told Derry not to embark on a full scale investigation pending his efforts to resolve the matter. Clewley also confirmed that the focus of Girdlestone's discussion with Derry was Brown. Clewley acknowledged that in subsequent telephone calls he may have told Derry he was still working on an informal resolution. Clewley also acknowledged that Girdlestone's treatment of Reggimenti had complicated matters and that Cenzura was concerned with the atmosphere in the SAS. He had the impression that Girdlestone's return to the SAS at the time was out of the question. Instead, Clewley was trying to "reduce the temperature" and increase the opportunity for rational discussion "in the hope that the parties would kiss and make up". Clewley said he told Girdlestone that to get a deal he would have to drop his complaint against John Brown. He told Girdlestone that this is what Cenzura wanted and testified that the approach was consistent with his own goals of lowering the temperature and smoothing things out.

Marisa Reggimenti has been a police officer since February 3, 1987. She transferred to the SAS in April 1997 and worked with Wendy Lever for the first two weeks. What she heard from Lever about Girdlestone was all negative. His partnership with Hammond had been split up and there were rumours they were having an affair. Cenzura told her, however, that Girdlestone was one of the best investigators in the SAS and he felt she would learn much from working with him. After an early and brief introduction to Girdlestone, she ended up working with him one weekend for a total of

five hours in April 1997. This experience reduced her to tears. She took six pages of notes about their conversation. (Exhibit 16)

Girdlestone hated the SAS office and did not spend time there. He did not want to train Reggimenti because she lacked investigative experience. She was not allowed to mention Lever's name in his presence. He hated Lever. She was a back-stabber and manipulative. Girdlestone said it was necessary "to decontaminate or decode" Reggimenti as he had Hammond. Lever was useless as an investigator. Girdlestone felt Brown had broken up his partnership with Hammond and was not a good Detective Sergeant. He was very bitter over the partnership split and also believed Brown to be the catalyst in his break-up with Louise Gray. Girdlestone told her he was keeping a file on John Brown and that Brown had asked him to perjure himself.

Reggimenti felt she had to come forward and share this information with management. Girdlestone had jeopardized her integrity. She felt very uncomfortable and Girdlestone should have understood the position in which he was placing her. He was causing extreme disaffection. She therefore talked to Lever, Brown and Cenzura. While she felt she was being disloyal to Girdlestone, he had left her no choice. Reggimenti testified she was very concerned with Girdlestone's emotional state. He seemed highly stressed. She was concerned for him. Reggimenti advised Cenzura of this on May 9, 1997. Other officers, including Lopsinger, Ralph and Lever, had expressed similar concerns. Reggimenti spent a year and one-half in the SAS. Ultimately, she came to share Girdlestone's view of Lever and acknowledged that she had advised Hammond she wished she had listened to Girdlestone. While she did not recall Cenzura connecting Brown's transfer to Hammond, Hammond had revealed that she was the reason.

On cross-examination, Reggimenti agreed she did not report Lever's negative comments concerning Girdlestone or that Lever was spreading rumours about him and Hammond. She began with a good opinion of Girdlestone and developed an early view that the SAS office was like a "soap opera". While Girdlestone had a good reputation as an investigator, she found him arrogant and condescending. Indeed, she had never felt more demeaned in her life. She acknowledged telling Hammond she felt used by Cenzura. In her view, a problem existed long before she got there, yet she was the straw that broke the camel's back. She did not, however, contest Cenzura's good faith. She

told Hammond she felt responsible and sad about Girdlestone's transfer. However, she also believed Girdlestone to be the author of his own misfortune. At one time, Reggimenti and Hammond considered complaining about the poisoned atmosphere of the SAS which they believed to have been created by Lever and Lopsinger but she decided against this course of action. When cross-examined minute-by-minute on her interaction with Girdlestone, she recalled that Girdlestone told her about the office when she reported for duty on the Sunday evening. Reggimenti acknowledged that she too would have felt stressed if rumours were being spread that she was betraying her husband.

John Brown has been a police officer since 1973. He had previously worked with Girdlestone before being assigned to the SAS where Girdlestone was already working. There was no bitterness between them prior to the Duff incident and he chose Girdlestone as a team leader. As for the Duff incident, he was not surprised by the criticism of Duff's management style. However, with respect to the alleged sexual touching, he was troubled. Duff had demonstrated on Lever what had happened to a homicide victim and in doing so touched her improperly. Brown was present and afterwards raised the matter with Lever who had no complaint. She believed it was an accident. He did not witness Duff kiss Lever as had been alleged. While Brown was disappointed that on April 4, 1996 the officers went directly to Boyd, he denied saying he would lose his promotion. Indeed, he was not on a promotion list at the time. Brown also denied harassing any of the officers who reported Duff to Boyd including the grievor. He pointed out that he gave Girdlestone a good evaluation in May, 1996. (Exhibit 4a)

It was only in early 1997 that he heard rumours about Girdlestone's break-up with Louise Gray. Brown admitted speaking to Girdlestone and Hammond about coming in late – a situation which related to Hammond's childcare arrangements. He wanted to know where they were. He did not single them out. Previously, Girdlestone had kept Brown apprised of his activities without difficulty. However, as his partnership with Hammond evolved and as he became more involved in the Humber Task Force (i.e. Alvin James), they had less contact. James was in custody by March 1996 and the preliminary hearing was scheduled for the spring of 1997. Girdlestone was the lead investigator and, in Brown's view, had become defensive in response to Brown's suggestions. While Girdlestone was a very good investigator, nobody was perfect.

Brown claimed that he was not aware of causing difficulties between Gray and Girdlestone.

Brown confirmed that Cenzura made the decision to change SAS partnerships in March of 1997 with the arrival of Marisa Reggimenti and Tracy Marshall. Cenzura wanted Girdlestone to train Reggimenti notwithstanding that Brown had suggested someone else. Brown denied that Cavanaugh's treatment was some form of implicit deal. He had heard from someone outside the squad that Hammond and Girdlestone were having an affair but did not believe it. He expected that Hammond and Girdlestone would be upset with the change and warned Cenzura. Brown advised them of the change on March 17, 1997. When they spoke to him on March 20, 1997, Hammond wanted to know if he thought they were not doing their job. He assured her this was not the issue. She was also concerned that the reassignments would interfere with the Alvin James matter but Brown thought that could be managed. Brown was then asked if the transfer was due to rumours of an affair between Girdlestone and Hammond. Brown replied that he was aware of rumours but did not believe them. Girdlestone then said he believed the change was being orchestrated by Louise Gray because she was both jealous and friends with Cenzura. Brown said he did not think so. Rather, Cenzura thought highly of Girdlestone's investigative abilities. Girdlestone then accused Brown of causing him problems by telling Gray he and Hammond were "joined at the hip". Brown said he did not recall the comment but asked if that caused the break-up. Girdlestone replied in the negative and related other events involving Gray's jealousies. Unfortunately, Girdlestone became more and more upset despite Brown's assurances that the change would work out.

Brown acknowledged remarking to Gray, at a police function, how well Hammond and Girdlestone were getting along. He testified that he was only commenting on their professional relationship. He agreed that in February 1997 Lever had told him Hammond and Girdlestone had been together long enough and that Hammond needed a change. Brown denied relaying this to Cenzura who had made the decision. Girdlestone told him the officers were jealous because he and Hammond "looked good together" and Brown replied that it was not a beauty contest. Brown was aware Girdlestone and Lever were not getting along but he was not aware Girdlestone was unpopular or that the office

had become dysfunctional. Girdlestone advised that he had lost weight going through his separation and that Brown had compounded his problems by forcing him to take his 1996 vacation time when he had no money and nowhere to go. This was the first time Girdlestone raised his personal concerns with Brown. Brown also confirmed that on March 27, 1997 Girdlestone told him he could not stand the sight of him; that he made him sick; that Brown should not be a police officer; that he went to Cenzura about him; and that he knew about Hammond and Cavanaugh. Brown told Girdlestone that if this was about the partnership change, what he was saying would not change that.

Brown described the Colony Hotel incident as happening in March of 1995 at a plaque party. The party was in a two-story suite with a bedroom on the upper floor. He was travelling with friends the next day and intended to sleep over in the suite. When he retired for the evening, Cavanaugh and Hammond came up and encouraged him to join the party. He went downstairs and Hammond gave him a strong drink. Brown then returned to the bedroom and to bed. Hammond then came up and laid down on the bed with him. Both were fully clothed and both were married. They began kissing. The door was locked but they heard voices and a knock at the door. They realized the predicament they were in if Hammond left in the full view of the others downstairs. They therefore decided to get some sleep and Hammond left sometime during the night. Neil Stokes later made some comment about the incident and Brown insisted that nothing had happened. However, he knew that several officers were aware that he and Hammond had been in the bedroom together. Brown spoke to Hammond about the incident the following Monday and they agreed it would not affect their working relationship. He denied asking her to enter into an affair.

Brown had never seen Girdlestone so angry as in March of 1997 and it got worse during April. The lines of communication between them simply broke down. Cenzura told Brown that one of Girdlestone's complaints was that Cavanaugh had a drinking problem which had not been dealt with. However, Girdlestone had never raised this issue with Brown. Brown later approached Girdlestone and advised that Cenzura wanted them to "work this out." Girdlestone replied that he did not then have time and would get back to him. It did not happen. Brown also explained about a missing drawing and the disappearance of Girdlestone's notes from the James file. Girdlestone was in a better

position than Brown to describe the standard file control procedures to the court. Brown had seen the drawing but not the notes. While Girdlestone had called him a liar, Brown testified that care and control of the file was the immediate responsibility of Girdlestone. The file had been kept in a car until Brown required it to be stored in a file in the office. Brown testified that he did not direct Girdlestone to lie in court although he had directed Girdlestone to close old files -- a direction which seemed to make Girdlestone angry. Communications got to the point where Brown felt he needed a witness in dealing with Girdlestone. Thus, on April 25, 1997 Tony Warr attended the meeting where Girdlestone refused to proceed.

Brown described his meeting with Reggimenti and Lever on April 27, 1997 and confirmed Reggimenti's testimony. She was crying as she spoke to Cenzura and was permitted to go home. Lever and Brown had concerns for Girdlestone's mental health. Girdlestone's behaviour and treatment of Reggimenti were unacceptable and Brown could no longer work with him. Hammond then met with Brown and advised she had spoken to Cenzura about the Colony Hotel. Brown, therefore, went to Cenzura and described the incident to him as he detailed at this hearing. Cenzura told Brown he would be seeing Boyd. The next day Cenzura advised Brown he was being transferred. The transfer occurred in June, 1997.

In cross-examination, Brown confirmed that Girdlestone had been a very good police officer. Girdlestone had previously experienced changes in partners without complaint. He agreed that the SAS had been adversely affected by the Duff incident, the Campbell inquiry and the Jane Doe case. Brown was very concerned over what had happened with Girdlestone. No one had ever spoke to him like that. He denied being upset with Girdlestone because of the Duff incident. But he was disappointed. He denied being jealous of Girdlestone's partnership with Hammond. Brown agreed that Girdlestone was performing his job properly. In his view, Girdlestone was the case manager on the James file with the responsibility to review incoming information. He accepted that Girdlestone did not, in his memorandum of April 16, 1997 on the topic, call him a liar. Rather, he had called him a liar earlier that day. Instead, in the memorandum he suggested that during the time frame in question it was impossible for him to have had file control. (Exhibit 2, vol. 2, p. 299) Nevertheless, Brown wanted Girdlestone to

testify generally on the treatment of the file and how it was maintained. No one is in total control of any file and he did not want Girdlestone to testify that he was the case manager. Rather, Girdlestone, was the lead investigator and had the best knowledge to describe how the file was kept.

Brown acknowledged that he had not urged Girdlestone to seek the assistance of the Employee Assistance Program (EAP) even after Reggimenti complained. Brown took her to Cenzura because of his awkward position with Girdlestone. Brown gave no thought to removing Girdlestone's gun and did not speak to Cenzura about that. Girdlestone was on holidays from April 28 to May 3, 1997. Montrose was Acting Staff Inspector from May 12 to May 18, 1997 during Cenzura's vacation. Brown accepted that his transfer was a fair management decision. He said he had never been interviewed by Dick, Clarke, Derry or Cenzura. He did not "write up" Girdlestone for his conduct because Cenzura wanted them to work it out and, thereafter, Girdlestone complained about him. The latter event left the situation in the hands of senior management. The Duff incident was not on Brown's record and Tony Warr was promoted. Thus, it was not a problem for either supervisor.

Dr. Eric Rumack was the occupational health physician for the Board from 1993 to 1999. Rumack was called by Cenzura on May 9, 1997 and asked to meet with Girdlestone on May 12, 1997 at 9:00 a.m. Cenzura had described Girdlestone's erratic behaviour. Cenzura had also removed Girdlestone's service revolver and directed him to the MAS. Rumack asked Cenzura to document his concerns and to speak to Girdlestone. Rumack did not know Cenzura and was not in a position to conduct a clinical assessment of Girdlestone on May 12, 1997. When Monday arrived, Girdlestone did not know why he was at the MAS. During the meeting, the officer gave his version of events. To Rumack, there appeared to be a workplace dispute and he made clear that the MAS would not be "used" by either party. Girdlestone's demeanour did not look out of the ordinary. Rumack needed further information as he had not yet received the requested documentation from Cenzura. Rumack advised Girdlestone to follow up with the EAP but the officer said he was booking off sick. Rumack emphasized that he did not conduct a clinical assessment. It was simply a meeting.

Rumack received Cenzura's four page memorandum pertaining to Girdlestone at 10:00 a.m. on May 12, 1997 shortly after Girdlestone had departed from his office. (Exhibit 8A) On May 15, 1997 Rumack advised Cenzura that any further involvement of the MAS required detailed written information from him and any others who had voiced concerns about Girdlestone's erratic behaviour and emotional condition. However, Girdlestone remained off work of his own accord removing much of the urgency (Exhibit 25 and Exhibit 2, vol. 1, Tab 43) Nurse McCormack received Derry's memorandum concerning Girdlestone on May 23 which Dr. Rumack reviewed on May 26, 1997. (exhibit 7) Dr. Rumack had no reason to disbelieve Derry and Girdlestone had been away on sick leave for two weeks. After looking at all the information, he arranged a meeting with Cenzura and Derry for 3:00 p.m. on May 26, 1997. The reported acute change in the grievor's behaviour, the manifestation of obsessive hatred, his attendance with Dr. Peter Collins and his own lawyer's observations were significant to Dr. Rumack. Dr. Rumack was also not prepared to second guess Girdlestone's own family doctor who had approved his absence from work due to situational stress. It was a concern that Girdlestone could not be reached at his home. However, the reported whitish foam was not a medically significant symptom and played no role in Rumack's assessment of the situation.

Dr. Rumack testified that the Board had a very conservative philosophy concerning the wellness of armed police officers in order to protect them, their co-workers and the public. It was therefore agreed that the Unit Commander would advise Girdlestone that his gun was removed and that he should attend the MAS before returning to work. Dr. Rumack issued a restricted duty form to this effect. (Exhibit 2, vol. 1, Tab 43) It was his view, that when in doubt, one should err on the side of caution. Rumack had no quarrel with Cenzura removing Girdlestone's firearm. He also had no objection to the holding of a squad meeting on May 9, 1997. Cenzura knew his officers best. Dr. Rumack opined that there have been hundreds of firearm restrictions with no ill effects on the officers' careers. Dr. Rumack stressed that on May 26, 1997 he did not find Girdlestone unfit for duty. Rather, he affirmed the actions of the Unit Commander. Girdlestone's family doctor, on June 10, 1997, diagnosed that he was suffering from acute situational stress as a result of a delicate problem at work. (Exhibit 2, vol. 1, Tab

39) A further note to this effect was dated July 25, 1997. Dr. Rumack denied that he acted to discredit Girdlestone. He acted out of reasonable concerns over the grievor's fitness to work.

On cross-examination, Dr. Rumack agreed that he was relying on the truthfulness of the persons who had provided him with information. Cenzura had the right to put Girdlestone's fitness for duty in question. A Unit Commander did not need his approval to remove an officer's gun. He explained that the Board is a very challenging workplace in which to practice medicine. Everyone had issues and agendas and, at times, Dr. Rumack felt that the MAS was being used. He weighed everything he had before him after speaking to Cenzura and Derry. He did not speak to Girdlestone because he was absent and under the care of his family doctor. The information revealed a spectrum of anger, obsession, hate and behavioural changes. He did not interview other employees and there was no indication of suicidal/homicidal ideation. In executing the restricted duty form, Dr. Rumack was requiring Girdlestone to be assessed before he returned to work. He underlined that he had acted independently.

Kim Derry is an inspector and a very experienced police officer. During the time in question he was the executive officer to Deputy Chief Boyd. Prior to his involvement, Derry knew Brown and Girdlestone only to say hello. He had known Hammond for several years through her husband. He had worked with Cenzura on the Patti Starr investigation. Boyd showed him Girdlestone's e-mail of May 6, 1997 and he "was asked to see if there was anything there". If there was, he was to bring it forward for a full investigation.

Derry met with Girdlestone on May 8, 1997. It was his impression that something was wrong. Girdlestone had lost 20 to 30 lbs. He was agitated, pacing, and talking in circles. There was a whitish foam around his mouth. He appeared not to be taking care of himself. Girdlestone gave him two very substantial copies of memo books constituting his note-taking on the situation and at the end of the meeting Derry did not have a good idea about what the grievor's concerns were.

Girdlestone told him that Derry probably thought he was paranoid. He referred to the break-up of his marriage, the Duff incident, Brown harassing him, Cavanaugh's involvement, Brown being attracted to Hammond and conspiracies involving Cenzura.

He spoke of having seen lawyers who thought he was crazy and meeting with Peter Collins. He described Brown's supervisory practices as bizarre. Mention was made of sexual contact with Hammond but she did not want to complain. Against this kaleidoscope of concerns bordering on incoherency, Derry concluded Girdlestone needed medical help. Derry assured Girdlestone he would read the memo books. Girdlestone warned Derry that he would read things he would not believe but that he had to protect himself against Cenzura who does not tell the truth. Derry advised he would speak to the Deputy and to the MAS because Girdlestone might need some time off. Girdlestone insisted he was not crazy. Derry denied offering to move anyone out of the SAS and he had no authority to do so.

Derry then spoke to Rockey Cleveland of Internal Affairs about the Duff matter. Cleveland assured him that the matter had been handled properly. At 1:45 p.m. Hammond happened to be walking by and Derry asked if Brown was harassing Girdlestone. She seemed surprised and replied in the negative. Hammond said Girdlestone "had gone too far" when Derry advised that he had said she had been sexually assaulted by Brown. She said nothing had happened and she was not complaining. Brown did his job and Girdlestone was upset that their partnership had been ended. Hammond said the rumours about her and Girdlestone were just gossip.

Derry next spoke to Cenzura. He did not understand that Cenzura was the subject of a harassment complaint filed by the grievor. As for confidentiality, Derry testified that any review needed to involve the key people and these kind of problems could affect an entire squad. Information needed to be shared in order for officers to help each other. Cenzura, too was concerned about Girdlestone's wellness. Cenzura had said Hammond and Girdlestone were close and it was affecting work performance. However, he partnered Girdlestone and Reggimenti because Girdlestone was a good training officer. They discussed the Reggimenti incident and that Cenzura was likely going to transfer Girdlestone. Brown's supervisory practices appeared consistent and he played no role in the change of partnerships. Cenzura was not aware of Brown having threatened Girdlestone for going to Boyd about Duff. Cenzura said it was common knowledge that several officers had approached the Deputy about Duff and it was entirely proper.

They spoke of Girdlestone's marital break-up. They also spoke of Girdlestone's wellness and that he needed to see a doctor. Cenzura wanted to advise the SAS members that Derry may be speaking to them. This was only fair given that they had been through three or four previous investigations. Derry saw nothing wrong with Cenzura immediately speaking to the squad, particularly because he was about to go on holidays. In his view, the nature of the investigation was going to be widely known after Derry spoke to the first person. Therefore, it was better to let the office know. Derry and Cenzura also decided to secure Girdlestone's firearm. Derry was aware that officers can be concerned when this happens but safety had to be the foremost consideration. He did not think that securing an officer's gun created a stigma. Derry spoke to the MAS on Thursday, May 8, 1997 and it wanted everything on paper. Cenzura was to advise the MAS that he was restricting Girdlestone's firearm and he understood that Bob Montrose was replacing Cenzura starting that Saturday. Cenzura gave Derry Girdlestone's gun. He locked it in his office.

Derry also advised Brown that a complaint was coming forward. Therefore, they needed to set up a time to speak. While Brown said he wanted to speak to his lawyer first, they had a brief exchange, discussing the Duff matter, Cavanaugh and Hammond. Brown said he and Hammond had given each other a kiss at a plaque party. They were both drunk and everyone knew that was all it was. He reminded Derry that he and Hammond were married. It was Brown's view that Girdlestone was having a problem accepting the partnership change and losing Louise Gray. He had lost weight and was not well. Brown said Girdlestone was not executing his cases properly and that he and Hammond were too close. Therefore, Cenzura split them up. When asked whether there had been talk about the two officers being "joined at the hip", he agreed that there had been but it was just "squad talk". Also discussed was the Harlow matter where Brown felt Girdlestone had "screwed up" and certain shift changes. He denied spreading rumours that Girdlestone and Hammond were having an affair. He had his suspicions but all he knew was from the office talk. Brown also thought Girdlestone was an excellent investigator. He just had problems right now. Brown brought Tony Warr to a meeting because he was not sure how Girdlestone was going to react based on previous encounters. He denied any comment about Girdlestone's ability to maintain a marriage

or "keep a woman". Brown believed that Girdlestone had to be transferred because most officers would not work with him. He had "burned too many bridges". Derry testified that he was not conducting an investigation. Rather, he was assessing whether an investigation was warranted.

On Friday, May 9, 1997 Girdlestone called Derry and told him that in the future he should speak to his lawyer, Gary Clewley. Cenzura told Derry on the Sunday that Girdlestone had been told to see acting Unit Commander Bob Montrose on the following Monday morning and to report to the MAS. Ultimately, Montrose and Girdlestone met at Derry's office because Girdlestone did not want to go into the SAS office. Girdlestone called Derry at 10:00 a.m. on Monday, May 12, 1997 to advise that he had been to the MAS and, with all the stress, he was feeling sick and was booking off work. Girdlestone said Derry should understand his concerns about the cover-ups. But he expected that Derry would be "jerked around" and would not get the truth. He told him to speak to Clewley. Derry spoke to Clewley on May 13, 1997 by telephone. Clewley said they would arrange a meeting the following week and that Derry should not do anything in the meantime.

Derry met Clewley and Girdlestone at Clewley's office on May 22, 1997. Girdlestone appeared agitated and sick. He rambled on about the same matters he had previously shared. He spoke in terms of cover-ups and plots, mentioning Duff, Brown and Cavanaugh. Clewley acted like a mediator and spoke to Derry privately. Derry testified that Clewley said they needed to get Girdlestone help. He thought Brown and Girdlestone should be moved but Girdlestone needed an acceptable job. Clewley said Girdlestone was bringing him "piles of paper" from the Robart's Library. He was very upset over losing both Louise Gray and Barb Hammond. Girdlestone needed support and medical assistance. Clewley was content with Derry completing a harassment complaint provided that he just kept it in his file pending Clewley's effort to resolve the situation informally. A formal complaint did not appear to be the way to go. Derry then sent his previously reproduced e-mail dated May 23, 1997 to Nurse McCormack.

Derry did not believe the facts involved harassment. Nevertheless, he composed a formal 787 complaint dated May 22, 1997 and put it in his file as directed by Clewley. (Exhibit 29) By this time, Derry had read the two volumes of Girdlestone's memo book.

The complaint was a distillation of that information and the two conversations he had had with Girdlestone. He believed he was to hold the complaint in his file until Clewley resolved the situation or advised that Girdlestone was going forward with it. Clewley never called. The complaint read:

The details of the harassment are set out below. They involve a number of issues which by themselves would not constitute harassment. By analyzing all of the issues the violation of my self respect and dignity have been violated. The harassment commenced in the February 1996 after going to Internal Affairs regarding S/Insp Duff. After my disclosure to Internal Affairs John Brown made a comment to me at his home that "I cost him his promotion" for going above his head.

He started counseling and making comments to me about my partnership and work habits. He also made personal comments to my commonlaw wife Louise Gray. He stated to her that we looked like we were joined at the hip, indicating my partnership with Barb Hammond. This impacted on my relationship with Louise and was maliciously said to cause trouble. John Brown made another comment to Louise which ultimately caused me to leave my relationship with Louise in September 96 just prior to the Dunmore Baseball Tournament. This comment surrounded by attendance at the tournament and the fact that Louise never knew where I was. I don't believe that John Brown knew of the impending break up of my relationship but was certainly party of the problem.

I believe that he was making these comments for the following reasons:

- 1: As a result of reporting of S/Insp. Duff and John's subsequent embarrassment.
- 2: the physical attraction John Brown had for my partner Barb Hammond and his jealousy of her.
- 3: the fact that John had not dealt with S/Insp. Duff matter satisfactorily which would impact on his next promotion
- 4: an incident involving Barb Hammond that in my opinion was a sexual assault committed by John Brown upon Barb Hammond in the fall of 95.

These reasons resulted in the following actions being taken by Detective Sergeant John Brown towards me.

- A: comments made to my common law wife.
- B: John spreading rumours about my having an affair with Barb Hammond (Such as looking good together)
- C: The break-up of my partnership with Barb Hammond in March of 97.

- D: the hate that's demonstrated by John toward me during questions and innuendoes that were said to me and about me. John even had another D/Sgt. in attendance at one of my counseling sessions about this allegation.
- E: the inconsistent management behaviour displayed by John Brown on various dates such as, may changing of shifts, the non disclosure to the S/Insp. of incidents within the office, the request to come in and work while on sick leave and comments made when I came in about not being on the road. Comments about my antisocial behaviour.
- F: the influencing of Ken Cenzura by John Brown to split up the partnerships with Barb Hammond
- G: the inconsistent behaviour of John regarding call backs on investigations. This is directly shown during a recent case called the Harlow matter. I was notified by officers from 53 Division even though I was not on call of that investigation. This was a serious matter and I determined at the time that the person was not my suspect due to the description given by the 53 Division officers although I informed them that this party was likely responsible for other attacks. I then referred that call to Wendy Lever. She refused to go to 53 Division to investigate the matter. Due to the fact on one went I had to apologise on behalf of the squad because of our lack of attendance. This non attendance was due to John's decisions regarding call backs. S/Insp. Cenzura reversed this decision after I informed him of this problem but it was too late. Luckily enough I was able to get samples from this peeping tom suspect which has been submitted from that case. They have since been identified and are now linked to a suspect involved to other cases of mine.
- H: constant remarks to me about my marriages and that I must have a hard time keeping women.
- I: threat of transferring me by S/Insp. Cenzura on May 28th because of my treatment of my new partner Regimenti. This transferring issue is trumped up by Brown and S/Insp. Cenzura because of my reporting of Brown to the Deputy. S/Insp. Cenzura also stated that I defamed John Brown and Wendy Lever in addition to my treatment of my new partner. The word used was devastated.
- J: The cover up by Brown over the investigation of alcohol abuse of P.C. Cavanaugh prior too and surrounding the impaired charges. John was aware through Wendy Lever and Paul Lopsinger of the alcohol abuse and did nothing. When Brown conducted the internal investigation those issues were covered up.
- K: The various cover-ups that have taken place since the Bernardo investigation, the Jim Kelly investigation, the Brian Duff investigation and the Cavanagh investigation. These cover-ups have occurred through Brown and Internal affairs. The inconsistencies of sentencing for them, all the sweetheart deals they all got and the inconsistent management decision about bringing in new people which resulted from there transfers reinforce the management covers.
- L: The disclosure by Barb Hammond to me about a incident involving John

Brown in that in my opinion he sexually assaulted her. Barb also disclosed this incident to S/Insp. Cenzura. This incident was observed by Cavanagh and this is the reason that he got the sweetheart deal and the investigation was a cover-up. He was able to have something on John Brown.

The next area of harassment was the disclosure of these incidents to S/Insp. Ken Cenzura and his non performance in dealing with the complaint. I advised him of the various incidents and he failed to carry out an investigation into these matters.

Subsequently I informed Deputy Boyd through the E Mail system of my complaint. This subsequent disclosure of my complaint was made by S/Insp. Cenzura to the rest of the office. I have been humiliated which has furthered my harassment. S/Insp. Cenzura has breached the confidentiality rule within the harassment guidelines and convened a meeting with the office personnel except Barb and alienated us further. S/Insp. Cenzura appeared to take my complaint seriously but certainly did not which is reflected in the actions he took.

I was ordered to the medical bureau by S/Insp. Cenzura and was advised by Dr. Rumack that using him was an inappropriate way of dealing with this issue another harassment ploy. Dr. Rumack explained that the integrity of his office would not be abused by people up there indicating S/Insp. Cenzura. I feel that this was another incident in the constant harassment of me and Barb. By disclosing confidential information S/Insp. Cenzura has defamed my character and humiliated me in my profession of 21 years. I feel that S/Insp. Cenzura also didn't go forward on this matter due in part to the publicity that would result which also occurred in the Bernardo investigation, the Jim Kelly investigation, the Cavanagh and Brian Duff matters. That is why he gave the sweetheart deals to Cavanagh to hide the real truths.

As a result of this harassment I have had to secure legal counsel Gary Clewley to represent me.

Derry met with Cenzura and Dr. Rumack on May 26, 1997 and it was decided that Girdlestone would be assessed before returning to work. He understood that Clewley was working with Cenzura on Girdlestone's transfer during June and July. Derry was also preparing for the Jane Doe trial and was very busy. He reported back to Boyd on the status of the Girdlestone matter and it was understood that if anything further was necessary it would be handled by Detective Sargeants Jane Dick and Bob Clarke. They would be given the complaint form if it was to go forward.

Girdlestone called Derry on June 1, 1997. Derry told him he had spoken to Cenzura, Clewley and Hammond and that there did not appear to be any harassment.

Girdlestone was upset that he had spoken to them and with Derry's conclusion. His life was ruined. Derry advised him of Brown's transfer to the Holdup Squad. Girdlestone did not think that was punishment. Girdlestone confirmed that Clewley was working on his transfer – possibly to SIS. He thanked Derry for his efforts and indicated things were starting to get better. Derry asked him to keep Cenzura apprised of his medical progress.

In a telephone call with Clewley on July 30, 1997, Derry learned that Girdlestone was happy with the transfer. Everything was calming down. There was no need to make a formal report. Girdlestone was venting, not complaining. Clewley was giving Girdlestone the advice he required. Derry also spoke to Abbey Mushega. He described the status of the investigation and his impressions of the problem. Mushega had helped him with the complaint form. Mushega knew it had remained unsigned and seemed content with Derry's handling of the matter.

On cross-examination, Derry denied his notes were a fiction. He had not maintained a memo book since his assignment to administrative duties. Accordingly, the notes were not complete, neat or well organized. Derry insisted he spoke to Brown and Hammond but possibly not in formal interviews. He had performed a preliminary review and none of Girdlestone's many allegations of plots and conspiracies "panned out." Instead, Derry concluded Girdlestone needed medical help. When Derry spoke to Boyd, it was not a formal report. Boyd left the command in the summer and was replaced by Joe Hunter. Derry believed that Girdlestone was in the good hands of his mother and father while away from work. While he did not consider Girdlestone a threat, the potential was there and, therefore, his gun was temporarily removed. It was not unusual for a Unit Commander to do so without the intervention of the Armament Office. But Derry acknowledged that taking of his gun would bother him.

Cenzura began as a cadet with the Board in 1965. He is now a Superintendent. He was appointed Staff Inspector in 1990. He was Unit Commander for Homicide from 1992 to 1996 and for the SAS from 1996 to 1999. He is very experienced. He viewed Girdlestone as a hardworking detective until the events giving rise to this matter. He had had no previous concerns over Girdlestone's performance and wellness. He had learned of Girdlestone's break-up with Gray in December or January of 1997. There were no problems with his partnership other than it was reported by a member of the Fraud Squad

that the two looked "pretty cozy" at a police function in Buffalo, New York. In March of 1997, Cavanaugh had pleaded guilty to driving while impaired and could not go on call. Community services agreed to take him in exchange for SAS taking Marisa Reggimenti. Cenzura decided to pair her with Girdlestone and Ed Boyd with Tracey Marshall who had been promoted to the squad. Reggimenti had no background in sexual assault. Therefore, Cenzura believed it was essential to assign her to a very experienced detective. He felt Girdlestone was the best person.

Shortly after announcing the partnership changes, Cenzura learned Girdlestone was unhappy. Indeed, he attended on Cenzura in an emotionally charged state. Girdlestone alleged Brown and Lever were running the office and believed he was transferred because of a perceived romantic relationship with Hammond. Cenzura felt he was witnessing something very unusual. When Girdlestone was assured that Cenzura had made the decision, he then spoke about his situation with Louise Gray, alleged that Cavanaugh got a sweetheart deal, and asserted Reggimenti was not qualified. Cenzura described him as very emotional. Cenzura explained Cavanaugh's situation and, whatever he had on Brown, it had nothing to do with his reassignment to Community Services. Thus, Reggimenti's work at the SAS was only temporary. Girdlestone responded angrily by raising the Duff matter and complained that since then Brown had treated him unfairly. Brown questioned his work and made comments to Gray about his partnership with Hammond. Girdlestone also suggested that Brown and Cavanaugh had drinking problems and that Brown had been involved in improper conduct at the Colony Hotel. Cenzura concluded by asking Girdlestone to sit down and work it out with John Brown. He also needed him to mould Reggimenti into an effective investigator.

Shortly after, Cenzura learned that Girdlestone had told Brown that he made him sick and that he did not want to work with him. Brown denied circulating rumours about Girdlestone and Hammond. He told Cenzura that he was only doing his job.

Girdlestone met again with Cenzura on April 10, 1997. He was in the same emotional state. According to Cenzura, he made reference to scandalous behaviour but would not go into details. He said Brown was harassing him and hinted about an incident which had occurred at the Colony Hotel. He apologized for going in circles. Cenzura attributed these allegations and his behaviour to the change in partnership. He appeared

to be trying to implicate Brown in any number of things. Brown had a drinking problem. Brown was attracted to Hammond. Brown was harassing him in many ways. The more Girdlestone carried on, the less credibility Cenzura accorded to what he was saying. Cenzura thought he was very stressed and it was his experience that this can happen in police work. Cenzura therefore suggested that he see Dr. Peter Collins who is an psychiatrist working with the Board. Cenzura did not think Girdlestone was asking him to do anything. The crux of his complaint was that Brown was "picking on him." Cenzura did not judge the harassment policy to be applicable – "it was not even close".

Cenzura later learned that Brown attempted to talk to Girdlestone with Tony Warr present but Girdlestone walked out. Next came the Reggimenti incident. Cenzura had thought time would heal the partnership transfer. But now Girdlestone was acting against what Cenzura had asked him to do. He had no business speaking to Reggimenti as he had and Cenzura told Girdlestone so. His behaviour was becoming increasingly bizarre. Cenzura therefore suggested he consider moving out of the SAS. They would discuss it at another time. Girdlestone, however, continued to insist that Brown was harassing him. To Cenzura, Girdlestone was acting like a totally different person and told him it may be time to move along. He did not consider himself to be the subject of a complaint. Cenzura testified that he did not understand that Girdlestone wanted him to complete a Workplace Harassment Policy complaint form on his behalf. Rather, he thought the grievor was going to speak to Brown.

Cenzura received a call from Girdlestone on April 29, 1997. His voice was no longer animated. Indeed, he said he was embarrassed by the Reggimenti incident. In a very contrite tone, he explained that he was going on holidays the next week and wanted off work for the forthcoming Thursday and Friday. After Cenzura approved this request, Girdlestone then said he may be speaking to his lawyer and might go to Internal Affairs. These latter comments took Cenzura by surprise but he was unclear what this was all about and what precisely Girdlestone was going to do.

Cenzura saw Hammond in the office. He outlined his concerns to her about Girdlestone's wellness. Hammond assured him that Girdlestone would be all right. His annual leave would be good for him. Cenzura called Jan Schier of the EAP to lay the groundwork for getting Girdlestone into a more stable work environment. He also spoke

to McCormack at the MAS. Hammond came to see him the next day, April 30, 1997, and they went for a coffee. She asked him to keep Girdlestone at SAS because he was a great partner. Cenzura replied that he was considering his transfer. Hammond said she needed to explain the references to the Colony Hotel so he would know what Girdlestone was referring to. She said she had gone up into a bedroom and met Brown. There was some sexual contact but she was not complaining. Both of them had had a lot to drink and both were very embarrassed. Cenzura testified that he got the impression there had been some "necking and petting". She asked him not to say anything to Brown and he agreed.

On May 5, 1997, Cenzura spoke to the Deputy who had been away. The Unit Commander now saw a problem with Brown's conduct at the Colony Hotel given Girdlestone's perception of Brown's attraction to Hammond. He had concluded Brown could no longer supervise effectively in the SAS. Boyd agreed. Cenzura told Hammond that Brown was to be transferred and he then told Brown. Brown explained to Cenzura that he had retired to a bedroom and Hammond came and got him. When he went back to the bedroom to sleep, she again came back into the room. There was kissing and petting but no sexual intercourse. Brown was very embarrassed. He told Cenzura that the Unit Commander Ed Ludlow had been aware of the situation and did not feel any action was required.

On May 7, 1997 Cenzura met with Boyd who was now in receipt of Girdlestone's e-mail. The subject matter of the e-mail was unclear. Cenzura denied receiving any factual information that would support the e-mail suggestions. Boyd advised that Girdlestone would be contacted. The reference to "alcohol abuse, sexual harassment and misconduct" may have been a reference to the Colony Hotel but Cenzura did not understand that Girdlestone was complaining about him. If Girdlestone was going to IA, it was about Brown and the Colony Hotel. On May 8, 1997 Cenzura met with Derry twice. Initially he gave him an overview and advised he was concerned with Girdlestone's wellness. This was on a Thursday and Girdlestone was returning to work on the Monday. While Cenzura was going on annual leave, Dr. Rumack would be at the MAS to see Girdlestone. In the second discussion with Derry, Cenzura decided to secure Girdlestone's gun pending the MAS declaring him fit to return to work. Cenzura turned

over Girdlestone's gun to Derry that afternoon. Cenzura did not want anyone in the office to know.

Cenzura denied telling Derry he split up Hammond and Girdlestone because of partnership issues. He did tell him he would be speaking to the squad about a future investigation but not about Girdlestone's wellness. Cenzura thought Dick and Clarke would be handling the investigation. Cenzura felt he had to speak to the squad on May 9, 1997 because he was going to be away the next week. He believed the squad had a right to know about the investigation and that his credibility would suffer if he remained silent. They also had to know Brown was being transferred. He did not intend to link Brown's transfer to Hammond and he denied having done so. Cenzura testified that there had to be common sense exercised in securing Girdlestone's gun. He was answerable to the Chief of Police and there was no concern over how he had handled the situation. The matter involved a health and safety issue and he needed to make his decisions quickly. Cenzura also spoke with Hammond on the morning of May 8th to confirm that there had been no sexual intercourse. She said definitely not.

The squad meeting was called Friday, May 9, 1997 at 9:00 a.m. Hammond asked to be excused and Brown was not present. Cenzura told the members of the SAS that the Deputy had received correspondence from Girdlestone and the matter was going to be investigated, probably later the following week by Dick and Clarke. He also notified the squad of Brown's transfer. Cenzura testified that a number of those in attendance commented on Girdlestone's recent erratic behaviour and raised the issue of the storage of his gun. The suggestion was made from the floor to change the combination to the gun locker and Cenzura agreed. Cenzura did not want the squad members to know he had already seized Girdlestone's gun. Cenzura saw the problem as Brown and Girdlestone being at loggerheads, not the engagement of the Board's Workplace Harassment policy.

Cenzura testified that he spoke to Dr. Rumack in anticipation of Girdlestone's attendance at the MAS and undertook to provide him with a memorandum outlining his concerns. Unfortunately, this correspondence did not arrive before the Monday meeting. He directed Girdlestone to report to Montrose who would then advise him of the need to go the MAS. Cenzura did not want Girdlestone to be worrying all weekend. Cenzura

also briefed Montrose. The first page of Cenzura's memorandum to the MAS read (Exhibit 8A):

I spoke to Dr. Rumack on Friday May 9, 1997 and he requested that I provide some documentation about this matter is possible. As you will probably recall I spoke to you about this officer on May 29th.

The matter continues to be of concern and I have decided to order Detective Girdlestone to see you at the Medical Bureau.

I feel his actions for the last few weeks are very disturbing, irrational at times and that he is full of anger towards Det Sgt. Brown and also Det Leaver. As I mentioned to you earlier I have some concerns about his emotional state, personal safety and that of the members of the Squad.

Det Girdlestone has been off since April 30, 97 on Leave and is expected back to work on Monday May 12, 97. During his off time he has apparently been speaking with various lawyers and that he wants to go to internal affairs with information about harassment, scandals and misconduct in the Sexual Assault Squad.

He also sent an e-mail message during his annual leave to Deputy Boyd outlining the above information. Detective Sergeant Kim Derry, Executive officer for Deputy Boyd has been assigned to speak with Girdlestone on Monday about his complaints. (808-7483)

I recently found out that his ex-partner Barb Hammond had been at a party with Det Serg John Brown about 2 ½ years ago and that they were in a bedroom and involved in some kissing and necking. I feel that this incident may be what he was referring to earlier when he was talking about "Things that happened in the Squad before I was the Unit Commander". (Det Sgt Brown will likely be transferred from the Squad because of this incident)

ON Friday May 9, 97 I advised the members of the Sexual Assault Squad of the pending investigation as a result of the correspondence from Girdlestone to Deputy Boyd. The members all voiced concern about Detective Girdlestone due to his erratic behaviour and emotional condition during the past few weeks in the office. The Squad members were concerned about where his firearm was. I advised them that it was in his gun locker but I would remove it and secure it elsewhere.

Unfortunately, I will be on Holidays for one week starting Monday and Det Sgt Robert Montrose will be the Acting Staff Inspector for the Squad

(808-7475)

Cenzura returned from vacation on May 20, 1997. On May 22, 1997 he learned that Derry was going to be preparing a Workplace Harassment complaint mentioning Cenzura and Brown. On May 23, Cenzura, Boyd and Derry met and decided that a meeting should be arranged with the MAS. Cenzura testified that Girdlestone was difficult to contact during his absence. He could not explain in his testimony why Ex. 30 described events to June 21 whereas Ex. 8A went only to April 29 other than they were prepared at different times. On May 26, 1997 Cenzura, Derry, McCormack and Rumack met. Rumack wanted to know if the situation only involved a management issue and Cenzura described the observed changes in Girdlestone's behaviour. It was decided that he would be assessed on his return to work. Girdlestone's gun had been restored to his locker when Cenzura returned from vacation. Accordingly, Cenzura seized it once again and stored it in his own locker. If the gun required long term storage, it would be sent to the Armaments Office. If Dr. Rumack found Girdlestone to be fit for duty, the gun would be immediately returned to him. There was no formal recording of the status of Girdlestone's gun other than Dr. Rumack executed the Restricted Duty form dated May 26, 1997.

Cenzura understood that Derry would need to have Girdlestone sign the Workplace Harassment complaint and Cenzura required Girdlestone to sign a medical consent form to release information from his family doctor. These signatures would have to be obtained through Clewley. However, Clewley requested to meet with Cenzura and advised Girdlestone not to sign the complaint. Rather, he wanted to get his client back to work and wished to review the available options with Cenzura. Cenzura agreed to meet but by this time had decided to transfer Girdlestone. This decision was based on the Reggimenti incident, Cenzura's discussion with Schier of the EAP, and the type of work performed by members of the SAS. Clewley told Cenzura that a transfer to a division would be viewed by Girdlestone as a demotion. Cenzura said he was prepared to consider his transfer within the command and volunteered to speak to Boyd. Clewley was pleased. Cenzura spoke to Boyd and Boyd was supportive of keeping Girdlestone within the command

In respect of the June 4, 1997 meeting with Girdlestone and Clewley, Cenzura testified that he spoke to Girdlestone about coming back to work but at the SIS. Girdlestone again mentioned Hammond, the harassment by Brown and speculation about things going on in the SAS. However, Clewley gave Cenzura the impression that Girdlestone would agree to return to work at the SIS. He later learned that Girdlestone's transfer had taken place and that he was back to work. Then he was notified Girdlestone was grieving his transfer and labour relations asked Cenzura to prepare an outline of events (Exhibit 5). Cenzura denied that Girdlestone's treatment was in any way related to the Jane Doe trial. The Jane Doe matter occurred before the SAS was set up. SAS was established in response to the infamous Bernardo crimes.

On cross-examination, Cenzura agreed that Girdlestone's allegations if established might have had some effect on the Jane Doe trial and that Derry and Boyd's wife were involved in that trial. He denied that he completed Exhibit 5 first and Exhibit 30 long after. Rather his Exhibit 8A notes existed as of May 9 and Exhibit 8A was a product of Exhibit 30. Exhibit 5 was his latest documentation. The summary page of Exhibit 8A was prepared on Friday May 9, 1997 after speaking to Dr. Rumack. He disagreed that Hammond considered herself a sexual assault victim or that the incident involving her and Brown was potentially serious misconduct. He had spoken to Brown and Hammond. Their versions were similar. Each had had a lot to drink. Each was embarrassed. Cenzura acknowledged that no one had previously complained about Girdlestone's work performance. (i.e. between April 10 and 28, 1997) However, he denied that Rule 4.3.8 of the policy concerning confidentiality applied to Girdlestone's situation. If a person is acting unusual, a supervisor has an obligation to discuss it with others. Cenzura testified that Hammond did not say Girdlestone was fine after he made his observations about the grievor to her. Rather, she said the annual leave would do him good. Therefore, in Cenzura's view, she knew Girdlestone's conduct was unusual.

Cenzura denied Derry told him what Girdlestone had said. They were only concerned about his wellness. Derry spoke to Girdlestone on May 8, 1997, but there was to be a more formal interview on Monday May 12, 1997. Cenzura denied attempting to discredit Girdlestone and pointed out that Boyd agreed with the squad meeting. Cenzura said he was concerned about the grievor's wellness long before he knew Girdlestone was

objecting to his conduct. Nevertheless, Cenzura agreed that he took no steps to send Girdlestone to the MAS until May 8, 1997. Cenzura did not try to seize Girdlestone's personal gun because it was not practical. There were, as well, no complaints from either Hammond or from Girdlestone's family. Moreover, he was not certain how Girdlestone would have reacted. Cenzura, on the other hand, could more easily secure the grievor's service revolver. In Cenzura's view, the complaint form completed by Derry was not pursued because Clewley advised Girdlestone to put the matter behind him. Accordingly, it was never signed. Cenzura denied saying Girdlestone had to discontinue his complaint to return to the detective command. Finally, he agreed Girdlestone did not tell him he was seeing Peter Collins professionally.

Staff Inspector Stephen Grant is head of the Employment Unit. He testified that the promotion process is objective. It involves a self-assessment, an examination and then an interview by a panel of officers. Rumours were not relevant to a selection. Those making the selection are not likely to know of a previous fire-arm restriction and reference checks relate only to competencies. The interview panel does not have the applicant's personal file before it. On cross-examination, however, he accepted that an individual's mental stability and gun related issues could be factors if they affected competence. He also agreed that unit commanders played a role in determining the suitability of a candidate for a promotion.

Michael Boyd has substantial experience in sexual assault and sexual harassment issues. He is also known for his expertise in the ethics of policing. His wife, Margo Boyd, was one of the first sexual assault coordinators with the Board and instrumental in the establishing of the SAS. Margo Boyd has not been criticized for her involvement in the Jane Doe matter or the SAS. Boyd testified that he met with the squad in the Duff complaints just as Cenzura did on May 9, 1997. He selected Cenzura to replace Duff because he is an outstanding police leader and Boyd wanted to "raise the bar." He first learned of problems with Girdlestone in connection with the Reggimenti matter. Boyd was concerned about possible psychological problems and asked Cenzura if his gun had been secured. Whether Girdlestone could discharge his duties was in issue and Boyd had these concerns before receiving his May 6, 1997 e-mail. He had also asked Cenzura to seek the assistance of the MAS.

As soon as he learned of the Colony Hotel incident, Boyd was of the view that Brown had to be transferred. He could no longer lead. He understood that the contact between Brown and Hammond was consensual and that she did not want to complain. Boyd could not tell what Girdlestone was complaining about from his May 6, 1997 e-mail and he did not understand it to be a formal complaint against Cenzura. This was not like the Duff matter because of an earlier complaint against Girdlestone involving Reggimenti. Therefore, Boyd decided to first insert Derry to review the situation and see where it took him. Cenzura was leaving on vacation and, in Boyd's opinion, the squad needed to be advised. Boyd spoke to Clewley on June 5, 1997. Clewley wanted to get Girdlestone back to work. Girdlestone was absent due to sickness and, according to Clewley, needed help. Clewley made no connection to the Duff matter. Girdlestone returned to work at the SIS in July and Boyd left the command September 7, 1997.

On cross-examination, Boyd accepted that an officer who knows of an incident of sexual harassment has a duty to report it. There is the possibility of the officer being charged if he or she fails to report the matter. Boyd testified that there was no hard and fast rule as to confidentiality in those circumstances. When Boyd first spoke to Cenzura about the Reggimenti matter, he may not have known about Girdlestone's allegations against Brown or about the Colony Hotel incident. He recalled Derry commenting on the vast amounts of notes Girdlestone had been recording. In his view, the Duff complaints were quite different because they could have been criminal in nature; there were many complainants; office morale was in issue; and, therefore, he needed to get out in front of the problem. In Girdlestone's situation, the grievor was already the subject of criticism. He said Derry had the authority to initiate a formal investigation if he felt it was necessary. There was nothing in Girdlestone's e-mail indicating he was a victim of harassment. Boyd denied that it was decided to "turn the tables" on Girdlestone to stop the investigation of his concerns.

Abbey Mushega has been the Board's Human Rights Coordinator since 1993. He has responsibility for the Board's Workplace Harassment policy. It was his opinion that the policy did not cover the situation where one white male was feeling badgered by another white male. Girdlestone requested to meet with Mushega on June 13, 1997 at College Park. Girdlestone, who was accompanied by Hammond, told Mushega that

Brown was not happy with him because of the Duff incident and that, as a result, he was harassing him and his partner. He also said that Hammond woke up at the Colony Hotel "to find Brown on top of her". Girdlestone advised of his e-mail to Boyd and the fact that it was going to be investigated was shared with all the members of the SAS. He also indicated that he was being transferred because of a trainee's complaint. Because Girdlestone was determined to file a complaint with the Ontario Human Rights Commission, Mushega advised him that, in that event, it was the Board's policy not to conduct a parallel complaint.

Mushega testified that, in the circumstances, it was his opinion that any claimed harassment policy violation was problematic. Hammond did not wish to pursue a complaint against Brown. She was clear about this. Girdlestone had no direct knowledge of what had happened at the Colony Hotel and there was the risk of victimizing Hammond whatever the details of that incident really were. The reprisal claim in respect of the Duff matter was equally challenging. Mushega inquired whether any of the other officers who had complained to Boyd was being treated unfairly. If not, and that appeared to be the case, it was difficult to appreciate why Girdlestone was being singled out for complaining. Secondly, even if Girdlestone was being singled out for his conduct relating to Duff, Girdlestone's complaint would not fall under the policy if his treatment by Brown was because he had failed to honour the chain of command.

On June 17, 1997, in a telephone call with Mushega, Girdlestone advised he would be seeing his lawyer and inquired about the availability of ADR if he did not pursue the OHRC complaint. By e-mail dated September 9, 1997, Girdlestone reported that he was going to ask Derry for a progress report and asked Mushega to keep his confidentiality. Girdlestone provided Mushega with a memorandum dated September 17, 1997 and an attached report consisting of all the circumstances he considered relevant. The report consisted of two hundred and eight single-space typed pages with a table of contents and seventeen appendices. However, he asked the matter to be kept confidential and that Mushega notify him prior to any action he deemed necessary. This report was not a complaint. Mushega explained that to convert it into one he would need to extract the relevant allegations. Those relevant allegations would then be recorded on a 787

complaint form and signed by the complainant. A copy would then be given to the person against whom the complaint was being made.

On September 29, 1997 Mushega volunteered to speak to Derry on Girdlestone's behalf and he did this on October 9, 1997. Derry advised Mushega of the following matters: 1) Girdlestone was complaining that Brown's conduct was influenced by his attraction to Hammond and the Duff incident; 2) Derry believed that Girdlestone needed medical help because he was talking in circles and had lost weight; 3) Girdlestone had been sent to the MAS; 4) Girdlestone's own lawyer thought he needed help and that he was not being harassed; 5) Rocky Cleveland had advised that the Duff matter had been properly handled; 6) Hammond did not want to complain about Brown; and 7) Girdlestone's lawyer had reported that his client was content with his transfer. In light of this last observation, it was Derry's view that the matter had been closed. However, Mushega advised Derry that Girdlestone's extensive confidential report to him did not accord with all of Derry's conclusions. In Mushega's opinion, there were a number of issues raised in Girdlestone's report which may not have been thoroughly canvassed. Mushega, therefore, highlighted them in a 649 report to Deputy Chief Joe Hunter dated October 23, 1997. The report stated:

Further to our discussion of last week, the following is a summary of the main issues raised by the above-noted member in his detailed complaint report to me. As I indicated to you before, many of the issues contained in his report do not fall under the provisions of the Workplace Harassment policy. They may be better dealt with as general management issues.

The Issues Identified:

1. That S/Sgt Brown was upset that he and other members of the squad had gone and met with Deputy Boyd without his knowledge. That he was told by S/Sgt Brown that, 'You cost me my promotion and I will never forget this David'. The complainant believes that the treatment he received from S/Sgt. Brown thereafter was influenced by the above incident.
2. The complainant also believes that S/Sgt Brown was jealous of his relationship with his professional partner, P.C. Hammond because S/Sgt. Brown had a sexual interest in her. The complainant provides several instances which he according to him, prove that the S/Sgt was sexually

- attracted to his partner. (Details are in the report).
3. The complainant alleges that in April 1997, he brought to the attention of S/Inspector Ken Cenzura information of an incident between S/Sgt Brown and P.C. Hammond which he deemed to constitute inappropriate behaviour. The alleged conduct involved contact of a sexual nature between the S/Sgt and P.C. Hammond at a hotel where both were attending an official function. (P.C. Hammond did not make it an issue)
 4. The complainant is concerned that at a unit meeting on May 9, 1997, the S/Inspector disclosed to the whole unit that there was to be an investigation because of the letter he (complainant) had sent to the Deputy Chief. He believes that this was a breach of confidentiality. He also believes that since S/Inspector Cenzura had become a subject of his complaint to the Deputy Chief, he should not have been involved in the matter.
 5. Detective Girdlestone further alleges that the same meeting where the Unit Commander made the above disclosure, S/Inspector Cenzura informed the unit that because of an incident that happened at a social function involving S/Sgt. Brown, he was being transferred out of the squad. This is the incident the complainant had reported to the S/Inspector before.
 6. Detective Girdlestone further complains that his firearm was taken away, and was also sent to the Medical Advisory Services unit for assessment, measures he considers very serious, under the guise that he had a mental problem. He believes that this was done to discredit him and was a form of retaliation for pursuing the matters he'd raised with the S/Inspector and the Deputy Chief.
 7. The complainant adds that the matters including sexual harassment which he had reported to S/Inspector Cenzura were not investigated. He sent an e-mail to Deputy Chief Mike Boyd expressing his concerns.
 8. The complainant wants to know what D/Sgt Kim Derry has done with the complaint he was given to investigate. He's also concerned about D/Sgt. Derry's objectivity since it was him who ordered him to go to the Medical Advisory Services for assessment.
- I have a copy of the complaint report submitted to me by Detective Girdlestone and I will pass it on to whomever you choose to look into this matter.

Mushega testified that this document did not constitute a 787 complaint and that Girdlestone had not yet authorized him to proceed with such a complaint. In November, 1997, he received a copy of Girdlestone's complaint to the OHRC. By telephone, he reminded Girdlestone that he had to choose between an OHRC investigation or an internal complaint (Exhibit 46). Girdlestone said he would speak to his lawyer and get back to Mushega. Mushega testified he was never authorized to proceed with an internal

complaint. The only authority Girdlestone gave him was to speak to Derry. He also felt he had Girdlestone's tacit consent to speak to Hunter. Therefore, Girdlestone never asked him to draft a Workplace Harassment policy complaint.

On cross-examination, Mushega denied that Girdlestone's e-mail to Boyd constituted a Workplace Harassment policy complaint or that Girdlestone had told him he had filed such a complaint. In his view, Girdlestone's reference to his "formal harassment complaint" in Ex. 2, Vol. 2, p. 302 was clearly not a reference to a signed 787 complaint form which had been served on the subject of the complaint. Mushega acknowledged that he did not report to Girdlestone that Derry considered the matter now closed. Thus, Girdlestone provoked Gottschalk, his supervisor at the SIS, to write to Derry for an update. Mushega denied that a 787 complaint could be constructed from Girdlestone's May 6, 1997 e-mail to Boyd. There were insufficient particulars and a failure to identify the victim and the accused. Mushega testified that Hunter appointed Detective Sergeant Federico to meet with him and review the Girdlestone file. They discussed the possibility of meeting with Girdlestone in order to complete a 787 complaint form. However, when Federico attempted to meet with Girdlestone, he was requested by the Association's counsel Harry Black not to conduct an interview at that time. Black was to indicate the appropriate time for such an interview. However, Federico received no further guidance from Girdlestone or his counsel and the matter was not pursued.

John Relph testified. He was one of the Duff complainants along with Girdlestone. Thereafter, he found Brown to be a good supervisor. There was no evidence that Brown treated him differently because he had complained. Brown, however, continued to supervise him and had no hesitation in pointing out issues where he disagreed with Relph's approach or actions. Brown had told Relph he was disappointed that he had gone directly to Boyd but did not threaten him. Relph said he never witnessed Brown holding the Duff incident against any of the other complainants including Girdlestone. Relph testified it was "fairly common knowledge" that Brown and Hammond, after consuming a lot of alcohol, had been together on a bed at the Colony Hotel. It was Relph's opinion that Girdlestone changed upon being split up from Hammond. Thereafter, "he hated everyone and the world", and particularly Brown.

Relph was also aware that Girdlestone's gun had been secured. While he did not agree that there would have been any long term effect on Girdlestone's career, Relph admitted that a previous gun seizure could affect an investigation.

Chris Hobson gave Girdlestone a very positive evaluation dated April 28, 1998. Thomas Imrie did not. Imrie's evaluation dated May 20, 1999 noted that Girdlestone had been absent due to sickness for 107 days; refused to meet with Imrie except through his counsel; and was not reporting his absence from or remaining in his home. He observed that Girdlestone had not met with or spoken to the officers handling his cases – a failure he considered to be unprofessional (Exhibit 2, vol. 1, Tab 21) However, on cross-examination, he acknowledged that Hobson had actually supervised Girdlestone. Girdlestone was absent from work during the entire period Imrie was assigned to the SIS (i.e. from February 1999).

Barbara Hammond was the only witness called in reply. She denied meeting with Derry on May 8, 1997. Hammond reported for work on May 7, 1997 at 6:35 a.m. and requested to go off duty at 8:45 a.m. on May 8, 1997. It was her recollection that at 1:45 p.m. she would have been home sleeping after having worked three continuous shifts. She testified that she would have cooperated with any investigation into the Colony Hotel incident and that Cenzura did not ask her if she had had intercourse with Brown. On cross-examination, Hammond had difficulty explaining why her personal notes (Exhibit 2, vol. 1, Tab 32) appear to have been recorded out of order. (i.e. the May 12 record begins on the back of a page relating to April 30, 1997) No specific time was recorded for the conversation with Cenzura on May 8th, 1997 and she could not explain the marking (12). Hammond agreed she did not report a sexual assault to Cenzura and that they may have "talked around" the subject of sexual intercourse. She admitted she told him that the contact with Brown had been consensual. She did not feel that she had told Girdlestone about a sexual assault. Indeed, she agreed that she had told Girdlestone that what had happened at the Colony Hotel had been consensual. Accordingly, any suggestion by Girdlestone that she was sexually assaulted by Brown would be inconsistent with the information she had provided to him. She was upset during this time frame, particularly on May 9 and 10, 1997 after the SAS meeting on the morning of May 9, 1997. She was not certain why or when the meeting with Girdlestone on May 10,

1997 was recorded as it was. Hammond's life was beginning to be seriously affected by this point in time and these concerns were ultimately recorded in a note to Hunter dated March 31, 1998. (Exhibit 2, vol. 1, Tab 32) However, while she was upset with Cenzura for disclosing information she had shared with him in confidence, she denied wanting to "pay him back.

Overview of Argument

On Behalf of the Grievor/Plaintiff

Mr. Sherkin submitted that Cenzura, Derry and Boyd had conspired to make Girdlestone "appear crazy" in order to save the reputation of the SAS and protect the Jane Doe trial. Boyd's wife and Derry were key participants in the Jane Doe trial and Boyd had brought Cenzura into the SAS as the Unit Commander "to raise the bar". The negative publicity associated with Girdlestone's allegations would have been linked by the media to the trial and brought into question the SAS's sensitivity to sexual assaults. Mr. Sherkin emphasized Girdlestone's previously unblemished work record; various features of the notes of the Board's witnesses (such as the phrase "talking in circles") which were alleged to have been copied from Girdlestone's notes; and the way in which Cenzura handled Girdlestone's concerns. In this latter regard, Mr. Sherkin contrasted Cenzura's initial inaction with his decision to expose to the SAS Girdlestone's e-mail complaint to Boyd.

Mr. Sherkin submitted that Derry's testimony was largely a fabrication and tainted the entirety of the Board's case. His reference to Girdlestone foaming at the mouth was a lie as was his claim to have interviewed Brown and Hammond and the assertion that Clewley said Girdlestone needed help. Cenzura's notes were characterized as unprecedented and, therefore, questionable. It was submitted that Cenzura and Boyd had no real concern for Girdlestone's wellness or safety in the workplace given that all his guns were not secured earlier. Counsel pointed out that no one had anything adverse to say about Girdlestone's work performance at the time.

The Reggimenti incident, Mr. Sherkin argued, was seized upon to remove Girdlestone from the SAS. In contrast, Brown was not going to be transferred even though Cenzura was aware of his indiscretion. This changed only when Boyd became involved as a result of Girdlestone's e-mail. Both Brown and Lever disliked Girdlestone to the knowledge of Cenzura. Therefore, instead of simply calming the inexperienced Reggimenti, the situation was used by Brown and Cenzura to get at Girdlestone.

Mr. Sherkin contended that the investigation into Girdlestone's complaint was not genuine. There was no credible explanation why Derry was conscripted to undertake it instead of either IA or Detective Sargeants Dick and Clarke. The focus was on Girdlestone's mental health, not on his complaints. Hammond and Brown were not interviewed. The securing of Girdlestone's gun by Derry never happened. The references to Girdlestone's condition were all untrue. The confidentiality of the complaint process was breached. No one in the squad was really concerned about their safety or Girdlestone's behaviour. On the other hand, the timing of the investigation was harmful and if Girdlestone was mentally unstable, the Board need do nothing. The handling of Girdlestone's complaint was contrasted with the way in which Boyd responded to the Duff complaints.

Mr. Sherkin pointed out that Dr. Rumack was concerned that the MAS was being used by the Board. Rumack, counsel contended, was not a conspirator – he was lied to. The Board's reliance on Clewley was contrived and designed to move Dr. Rumack to require Girdlestone's assessment. The memoranda from Cenzura and Derry to the MAS were defamatory. A true indication of the Board's concern for his health was the fact that Girdlestone was assessed by only a nurse on his return to work in July. Mr. Sherkin observed that it should not be surprising that Girdlestone became ill and upset with no one listening to his complaints. It was also submitted to be untrue that Girdlestone's lawyer had requested his client's complaint to be put on hold. Finally, counsel submitted that Girdlestone had been constructively dismissed due to the improper transfer, the improper gun restriction, the dissemination of false information about him, the failure to investigate his complaints and the harassment of Brown. Girdlestone was an honourable police officer who had always worked by "the book". In this poisoned work environment, however, his decision to resign was completely understandable.

With respect to the law of defamation and damages, Mr. Sherkin relied on R.E. Brown, *The Law of Defamation* (2d ed); *Gatley on Libel Slander* (9th ed – 1998); J. Porter and D.A. Potts, *Canadian Libel Practice* (2001); *Jenner v. Sun Oil Company Limited et al.* [1952] O.R. 240 (OSC); *Sim v. Stretch*, [1936] 2 All Eng. Law Reports 1237 (H.L.); *Symons v. Toronto Dominion Bank*, [1997] 9 W.W.R. 132 (SQB); *Vander Zalm v. Times Publishers et al* (1980), 109 D.L.R.(3d) 531 (BCCA); *Slack v. Ad-Rite Associates Ltd.*, [1998] O.J. No. 5446 (OCJ – Fedak J.); *Berkoff v. Burchell*, [1996] E.W.J. No. 265 (C.A.); *O'Malley v. O'Callaghan et al.* (1992), 89 D.R.R. (4th) 577 (AQB); *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130; *Communications, Energy and Paperworkers Union of Canada, Local 434 v. ABT Building Products Canada Ltd., Canexel Hardboard Division* (Stratford Grievance) (2000), 90 L.A.C. (4th) 1 (Christie); *Porter v. Tsewalteun Police Service Board*, [2000] B.C.J. No. 1360 (B.C.S.C.); *Hodgson v. Canadian Newspapers Co.* (2000), 49 O.R. (3d) 161 (OCA); *Horrocks v. Lowe*, [1974] A.C. 135 (H.L.); and *MacArthur v. Meurser*, [1997] O.J. No. 1377 (OCJ – Adams J.)

On the issue of constructive dismissal, Mr. Sherkin made reference to *Lindsay v. Toronto Transit Commission*, [1996] O.J. No. 4313 (OCJ – Howden J.), [1998] O.J. No. 4747 (OCA); and *Schumacher v. Toronto Dominion Bank*, [1999] O.J. No. 1772 (OCA). With respect to the legal framework applying to police service employment matters, Mr. Sherkin relied on *RE A Reference Under the Constitutional Questions Act*, [1957] O.R. 28 (OCA); and *Praskey v. Toronto (Metropolitan Services Board)*, [1997] O.J. No. 52. Authority for counsel's submissions on the law of conspiracy to injure included *Carswell CED*, February 2001, pp. 1-8 and *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd.*, [1983] 1 S.C.R. 452.

On Behalf of the Board/Defendants

Mr. Hines submitted that Girdlestone's misunderstanding of the events lead him to draw a series of false conclusions about the motives and actions of others. The Duff

incident was not comparable to his allegations. In Duff there were a number of complainants. The allegations were particularized. Duff's conduct was potentially criminal. Girdlestone's concerns were not particularized. Indeed, he admitted to having "talked in circles". He was himself the subject of criticism due to his treatment of Reggimenti and his own objectionable comments to Brown. No other complainant in the Duff matter had been singled out and Brown had subsequently given him a very positive evaluation. Girdlestone did not report the threat he alleges Brown made at the time it was alleged to have occurred. And there was simply nothing in the Duff incident that could reasonably explain Girdlestone's obsessive note taking about work place matters other than his own hatred of Brown.

Mr. Hines argued it was Brown's job to manage Girdlestone. There was no credible evidence he was paying more attention to Girdlestone. The allegation that Brown wanted Girdlestone to lie in court was more reasonably construed as a difference of opinion over who, between them, could best testify in respect of the care and control of the Alvin Jones file – Girdlestone as lead investigator or Brown as case manager. Girdlestone's assertion to the contrary was described as slanderous of Brown. Brown denied any intention of interfering with Girdlestone's marriage and being jealous over Girdlestone's partnership with Hammond. Indeed, it would appear he placed the two partners together. Nevertheless, submitted Mr. Hines, Girdlestone came to hate Brown. He associated Brown with the break up of his marriage. Brown had also criticized him for his handling of a "V-class" report. He wrongly assumed that Brown had broken up his partnership with Hammond. It was counsel's submission that all these events overwhelmed Girdlestone and lead to his obsessive note-taking (i.e. 50 pages before April 10, 1997) having nothing to do with sexual harassment, his treatment of Reggimenti, and his perception that everyone was conspiring against him.

Mr. Hines submitted it was clear Brown had not accused Girdlestone and Hammond of having an affair. This was an example of Girdlestone's attempt to get at Brown by falsehood. Instead, Hammond and Relph confirmed that rumours to this effect were widespread in the workplace. It was contended that Girdlestone's alleged concerns for confidentiality and his own reputation were incredulous in light of his personal attacks on the reputations of Cavanaugh, Brown and Lever. His allegations to others of

alcoholism, incompetence and extortion concerning these other people put the lie to the standard of conduct he claimed other officers should meet in respect to statements about him.

Mr. Hines contended that no one could have understood what he was saying to Cenzura on March 27 and April 10, 1997. He raised as many as six or seven different matters, all in a very indirect manner – “a little here, a little there”. And no one would have thought Girdlestone was in control of himself, particularly after he told Brown what he thought of him despite Cenzura asking him to work things out. It was also submitted that Girdlestone wrongly threatened Brown with the disclosure of the Colony Hotel incident and wrongly threatened to harass him generally when he stated he would be Brown’s worst nightmare. Mr. Hines asked me to just imagine the tirade from Girdlestone that Cenzura witnessed.

It was argued against this background that Cenzura’s perception and his handling of the situation were reasonable and appropriate. He submitted that the evidence clearly established that Girdlestone’s behaviour and character had changed. The testimony of Hammond, Relph, Cenzura and Derry were relied on in support of this assertion. Cenzura reasonably thought Girdlestone’s absence from the office in April to work on the Alvin James matter might have a cooling effect. However, Girdlestone’s relentless and slanderous raising of the Colony Hotel incident went to his wellness as did his obvious hatred of Brown. The Colony Hotel incident was two years old; was well known in the workplace; and clearly involved an indiscretion occurring between two consenting adults. Girdlestone was aware of these facts. Girdlestone presented to Cenzura, an experienced supervisor of police officers, as being unwell and Cenzura told Hammond of this view before he understood Girdlestone was complaining about him. Further confirmation that this was Cenzura’s *bona fides* belief was his immediate advice to Girdlestone to see psychiatrist Dr. Peter Collins and his contact of the EAP.

Mr. Hines submitted that Girdlestone did not ask Cenzura to do anything. Rather, he appeared to be satisfying a perceived obligation to report to his supervisor. After providing Cenzura with a mass of information which was “all over the place”, it was more reasonable for Cenzura to tell him to see Peter Collins than to pull out a 787 form for him to sign. Mr. Hines submitted that Girdlestone’s criticism of Cenzura was all after

the fact and his alleged expectation that he had made a 787 complaint was false. Girdlestone was reasonably seen by others, including his own lawyer, to be venting – not complaining.

Mr. Hines argued that Girdlestone's treatment of Reggimenti properly sealed his fate. Reggimenti was a police officer with ten years experience. By the time of the hearing, she had been promoted to the rank of Sergeant. It was Girdlestone's job to train her and to maintain an appropriate training environment. The things he told her, in the short time they were together, were said to be scandalous. He defamed Brown and Lever and told Reggimenti he was keeping a file on Brown. Therefore, by April 28, 1997 Girdlestone was not performing his job properly. He put Reggimenti in an untenable position. Mr. Hines submitted that Relph's evidence corroborated Reggimenti's testimony and that neither witness had any motive to lie. Reggimenti's reaction was said to be consistent with the other descriptions of Girdlestone as an angry and irrational person who would cause anyone to have reasonable concerns for their safety. In this context, transferring Girdlestone and securing his gun were appropriate responses.

Mr. Hines contended that Girdlestone's attack on Cenzura was a response to the Reggimenti incident and the belief that Cenzura thought he was unwell and should be transferred. The sexual harassment allegation was to put his supervisors on the defensive, given the history of the unit, and not out of any genuine concern. Boyd responded reasonably to Girdlestone's e-mail in the circumstances, particularly given that it was coming from an officer already in trouble with his supervisor. Counsel pointed to the 1:42 a.m. time of sending the e-mail as further evidence of Girdlestone's troubled behaviour. Mr. Hines submitted that Boyd and Cenzura acted in a principled manner. Brown was immediately transferred because the Colony Hotel incident had compromised his ability to lead. It had become an issue. However, there was no material difference in stories told by Hammond and Brown. Accordingly, there was no justification for taking any further steps. There was nothing left to investigate in that respect. According to Mr. Hines, it was also clear that Cenzura had decided on Brown's transfer before speaking to Boyd. Brown's evidence was said to make this clear.

Counsel contended that it was not the practice for supervisors to take notes. Their informal and at times incomplete notes were therefore understandable. However, it was

also highly unusual for subordinates to be recording notes against their supervisors. Therefore, Girdlestone's excessive note-taking was evidence of his psychological difficulties and, because of his obvious self-interest, these notes were reliable. It was also submitted that Boyd did not ignore Girdlestone's e-mail. Derry was instructed to review his concerns and follow up with the appropriate course of action. Derry did just that until called off by Girdlestone's lawyer who saw an appropriate transfer as in his client's best interests. It was argued that Derry had no conceivable motive to lie. He worked for Boyd who had a well deserved reputation for getting at the truth and for being concerned with police service ethics.

On the issue of whether Derry spoke to Hammond, it was pointed out that his evidence "sounded right" and that, in any event, it was a collateral issue. In contrast, Hammond's notes were "all over the place". She was vulnerable, she had been briefed by Girdlestone since the beginning, and she now lives with the grievor. She was angry with Cenzura and, in testifying, had responded to leading questions. Mr. Hines asked me to prefer Derry's evidence. Derry agreed he had not formally interviewed Brown and this was consistent with the mandate he had been given. It was submitted that Derry spoke to Girdlestone on May 8, 1997 and immediately expressed concern to Boyd for Girdlestone's wellness. Anyone, it was submitted, would have concluded Girdlestone had problems. Derry, like Cenzura and Boyd, had supervisory responsibilities and would have been criticized had he kept his concern for safety to himself. The involvement of the MAS was completely appropriate in the circumstances.

Mr. Hines submitted that there was no easy way to deal with the issues Girdlestone was raising and Hammond was disclosing. Brown had to be transferred. Once this was done, members of the SAS would want to know why and could well become upset. The SAS was to be subjected to an investigation and these are police officers. It could not be done discretely and it was not unreasonable for Cenzura to decide they had a right to know generally what was to happen. Cenzura was going on vacation and Mr. Hines contended that the Unit Commander was very careful in the way he spoke to the squad on May 9, 1997. He did not mention Hammond and it was the squad members who raised concerns over Girdlestone's recent change in behaviour. Cenzura did not reveal he had secured Girdlestone's gun. Finally, Girdlestone's

allegations, Mr. Hines submitted, did not fall under the Board's Workplace Harassment policy and its confidentiality provisions.

Mr. Hines pointed out that very few persons were aware that Girdlestone was being sent to the MAS on May 12, 1997 and that Cenzura gave a reasonable explanation for why Girdlestone was not told until that date. He also explained why his note to Dr. Rumack arrived moments late. It was submitted that the securing of an officer's gun in these circumstances could not be a defamatory act. There was also no compelling evidence establishing a gun restriction would have interfered with Girdlestone's career and sight could not be lost of the fact that Girdlestone's own physician certified him unfit for duty from May 9 to July 7, 1997.

Mr. Hines submitted that Derry's conduct was not reasonably in issue. He pursued Boyd's instructions despite Girdlestone being absent from the workplace. He filled out a 787 form but delayed having Girdlestone sign it at the request of Clewley. Clewley clearly wanted to solve his client's problem and not involve him in an emotionally draining investigation. Clewley took the same approach with Cenzura and Boyd. Clewley did not deny discussing Girdlestone's wellness and requesting Derry not to take any further formal steps. Girdlestone's family doctor certified him to be fit for duty on July 7, 1997. It was not unusual for the workplace assessment on his return to be conducted by a nurse. Gottschalk was unaware of Girdlestone's previous gun restriction. He was not promoted because he failed an examination, not because of the securing of his gun. On the other occasion when he attacked the competence of his colleagues, Girdlestone's own conduct was censured. However, Hunter was very sensitive in reporting these findings to him.

At all times, Mushega made Girdlestone aware of the Board's policy not to conduct a parallel investigation in the face of an OHRC complaint. Mr. Hines argued that any additional delay was also attributed to Girdlestone in light of Mushega's testimony that Clewley told him to delay and Girdlestone never asked him to file a 787. Instead, Girdlestone proceeded before the OHRC until February 14, 2001. Hunter and Federico had the same experience when Harry Black asked them to do nothing before hearing from him. Mr. Hines submitted there was no evidence of injury to Girdlestone's reputation. Hobson gave him a fine evaluation well after the circumstances giving rise to

his complaints. Instead, Girdlestone created his own problems by suing the Board and various officials, recording his situation in a public process that attracted the media's attention. He then quit his employment to avoid the freezing of his pension funds and for no other reason.

Relying on the same authorities provided by Mr. Sherkin, Mr. Hines submitted there had been no improper transfer, no defamation, no conspiracy to injury and no constructive dismissal. He also questioned whether constructive dismissal even applied in a police workplace and collective bargaining environment. In any event, there was not the two-way loss of trust evident in *Lindsay v. Toronto Transition Commission*, [1996] O.J. No. 4313. There had also been no fundamental repudiation of the employment contract by the Board within the meaning of *Rubel Bronze & Metal Co. v. Vos*, [1918] 1 K.B. 315 at pp. 321-322.

With respect to defamation, the correspondence to the MAS complained of had to be considered from the point of view of a medical officer receiving it i.e. the class of persons whose reaction to the publication is the test. Similarly, Mr. Hines relied on *Sim v. Stretch*, [1936] 2 All. Eng. Law Rep. 1237 (H.L.) at p. 1240. In respect of his submissions on the class of persons who would have access to the restricted duty order signed by Dr. Rumack, Mr. Hines submitted that, in this context, the statements complained of could not be reasonably capable of a defamatory meaning. Mr. Hines further submitted that the words complained of amounted to fair comment as held in *Vander Zalm v. Times Publishers et al.* (1980), 109 D.L.R. (3d) 531 (BCCA). The matter was one of public interest (i.e. workplace wellness and safety) and the words constituted an honest expression of the real views of the persons making the comments.

Mr. Hines pointed out that mere words of abuse which injure a plaintiff's feelings, insult his or her pride or cause annoyance or embarrassment are not actionable as held in *Slack v. Ad-Rite Associates Ltd.* [1998] O.J. No. 5446 (OCJ – Fedak J.) Hence, Girdlestone's feelings and anger were irrelevant. Similarly, relying on *O'Malley v. O'Callaghan et al.* (1992), 89 D.L.R. (4th) 577 at p. 580, it was submitted that the "essential to be asked is how a reasonable person would construe the words used; the plaintiff's subjective interpretation of the statements is irrelevant." Mr. Hines pointed out that in *Communications, Energy and Paperworkers Union of Canada, Local 434 v. ABT*

Building Products Canada Ltd., Cassexel Hardborad Division (Shatford Grievance) (2000), 90 L.A.C. (4th) 1 the arbitrator was guided by what the reaction of right minded persons in a substantial segment of the community would have been. It was asserted that in the facts at hand there was no evidence that anyone else in the employment community had seen the words complained about. Indeed, the grievor had to make a *Freedom of Information* request to obtain the contents of his medical/employment file. Cenzura's notes were also protected by the grievance process. It was therefore submitted that publication at large had not been established in contrast to the grievor's own actions of circulating information about himself. In any event, John Relph did not agree that the grievor's reputation and career had been damaged by the securing of his gun. It was submitted that Derry, Cenzura and Dr. Rumack had a duty to communicate in the manner they did and, therefore, their words were made on occasions of qualified privilege. This being so, the grievor shouldered a very heavy onus to prove malice. Mr. Hines submitted that there was no evidence of malice or ill will. Similarly, there was no evidence of a conspiracy to injure the grievor.

Finally, it was submitted that my jurisdiction was constrained by paragraph 2 of the parties "Minutes of Settlement" dated November 18, 1999.

Reasons

Before the events giving rise to this litigation, the grievor had been an excellent police officer. He had also been one of three complainants in the Duff matter. Subsequently, his partnership with Hammond was ended against his wishes. His marriage also came to an end. He was then transferred out of the SAS against his wishes. Ultimately, he felt it necessary to sever his relationship with the Board under protest. Girdlestone's departure from policing was a loss both for him and for the Board that had trained him.

The grievor takes the position that many of these events occurred because he put the reputation of the SAS in issue by complaining about Brown's harassment of him. It is his theory that Cenzura, Derry and Boyd could not accept yet another investigation into the SAS, particularly at the time of the Jane Doe trial. They, therefore, decided to

characterize him as mentally unstable. To carry out this plan, these senior officers enlisted Dr. Rumack's unwitting assistance by misleading him about their concerns for the grievor's wellness and what his lawyer had allegedly said. They defamed him. They conspired to injure him. They wrongly transferred him. These acts also led to his constructive dismissal. Brown, Hunter and Rumack played supporting roles along with the Board.

The Board responds that the grievor's personal circumstances had deteriorated in 1997 to the point where his conduct gave cause for his supervisors to be concerned about his wellness. His hostile reaction to their genuine concerns was a further indication of his distress. His partnership with Hammond was ended for *bona fides* reasons. His transfer from SAS was because he could no longer interact appropriately with colleagues and supervision in the SAS. His resignation from the Board was only in order to achieve immediate access to his pension funds. Brown, Cenzura, Derry, Boyd, Hunter and Rumack all had public duties and responsibilities to the Board to act as they did. The grievor and his lawyers were entirely responsible for any alleged delays in investigating his groundless complaints.

The grievor's longstanding common law relationship with Louise Gray ended in the fall of 1996, leaving him upset and unhappy. The evidence reveals he had lost weight and was living with his parents. This was a stressful time for him as it would be for anyone in similar circumstances. At least in part, Girdlestone blamed Brown for his marriage problems and there appears to be at least some justification for this view. Brown admitted to commenting to Gray on how well Girdlestone's partnership with Hammond was progressing. Brown was aware of rumours in the workplace that Hammond and Girdlestone were having an affair. In this context, Brown's observation to Gray would only alarm her and not contribute to a harmonious marriage. Brown should have expected this reaction. Other personal comments to Girdlestone and Hammond were also inappropriate. Nevertheless, not even Girdlestone fixes Brown with the entire responsibility for the failing of his marriage. The incident, however, does explain why Girdlestone could reasonably dislike Brown.

Girdlestone also points to Brown's comments to Gray as evidence of Brown's dislike for him – a dislike he attributed to his earlier involvement in the Duff matter and

to Brown's attraction to Hammond. Hammond appears to have reinforced his concerns about Brown by partially sharing details of her experience with Brown at the Colony Hotel and thereafter. This background caused both Hammond and Girdlestone to suspect that they were being separated for reasons of jealousy and as an act of harassment. Their suspicions were magnified by workplace rumours about them and a related belief that colleagues such as Lever were jealously calling for their separation because they "looked good together".

However, the difficulty with these explanations for the termination of their partnership is that, after many days of hearing, they remain founded only on suspicion. The evidence before me is not supportive or is to the contrary. Indeed, on this evidence, I must accept all of Mr. Hines' comprehensive submissions save for his argument as to my jurisdiction which I reject.

The grievor's partnership with Hammond was ended as a result of at least two new persons coming into the SAS and Cenzura's decision to partner Reggimenti with one of his most experienced officers – Girdlestone. There is no reliable evidence that Brown was behind the change. Indeed, he appears to have recommended that Reggimenti be trained by someone else. It was not established that Lever caused their break-up. Cenzura testified that Derry and Brown were wrong if they believed Hammond and Girdlestone were separated because they were perceived as getting too friendly. With the grievor's reaction to the partnership change and all the workplace rumours concerning the situation, Derry and Brown might have surmised the reason for the change related to the grievor and Hammond being "too close". However, I accept Cenzura's testimony. Partnership changes are a regular and healthy feature of police work. Reggimenti required an experienced officer. Neither Derry nor Brown was pressed on this issue sufficiently to prefer their understanding, which included the need to train Reggimenti, over Cenzura's unequivocal denial.

The many suspicions of Girdlestone and Hammond, including that Cavanaugh "had something" on Brown, that the change in partnership was a product of Brown's attraction to Hammond and that the change was also due to Lever's intervention, appear to have arisen out of the gossip of the workplace and produced a belief in the grievor that everyone was against him. However, not only is there an absence of evidence to support

these various speculations, his accusations are in many respects inconsistent and confusing. For example, if Cavanaugh "had something on Brown", Brown would not be participating in the partnership changes to harass Girdlestone. Similarly, if Lever had counseled Brown or Cenzura to end the partnership because it was her judgment this would be best for Hammond, the allegations of Brown's intent to harass Girdlestone and his interest in Hammond loses force. One is left with the impression of a distressed employee looking for any reason to challenge his partnership reassignment. Indeed, this was Cenzura's initial reaction.

The Duff incident is simply not relevant on the evidence adduced. The grievor was one of several complainants in that case. There is no evidence that any of these other officers was harassed or discriminated against by either Brown or Warr. The Duff matter did not, on the evidence, adversely affect Brown's career. Warr was eventually promoted and Brown was not eligible for a promotion at the time Girdlestone is alleged to have been threatened by Brown. Brown threatened no one else and Girdlestone did not report the threat at the time it is alleged to have been made. Soon after the incident, Brown gave Girdlestone a very positive evaluation.

Other than Brown's several inappropriate comments, there is also no evidence of Girdlestone being harassed by Brown. Brown was his supervisor and, on the evidence, supervised him no differently than Relph, for example. The serious accusation that Girdlestone was asked by Brown to lie in court is not made out on the evidence and did little to enhance the grievor's credibility in these proceedings. That issue was about who had effective control of the file and who could testify more forcefully in court. An experienced and objective police officer would know this to be the case and the grievor did not complain at the time. The inappropriate comments of Brown, standing alone, do not support the grievor's allegations of discriminatory transfer, defamation, conspiracy to injure and constructive dismissal.

The grievor's twin allegations that Brown was animated against him because of the Duff matter and because of his interest in Hammond were again confusing. If the latter theory is instead pursued, the initial partnering of Hammond with Girdlestone by Brown seems out of tune with the allegation. The Colony Hotel incident was in the relatively distant past and both Hammond and Brown, each of whom had been under the

influence of alcohol, were embarrassed. Whether or not Brown expressed an interest in Hammond the next day, Hammond was not interested and both were married. The workplace also appears to have been aware of the incident and a supervisor had previously concluded they could continue to work in proximity with each other. Moreover, Hammond did not complain about any inappropriate conduct by Brown towards her. Unfortunately, Hammond did think it necessary to share delicate information about her and Brown with Girdlestone who then proceeded to use it in a threatening manner and in a way that could only bring harm to her and her family situation. But no matter which theory is pursued, on these facts, one can understand why Mushega had difficulty understanding how the Workplace Harassment policy would apply.

I appreciate the grievor's concern over the unfairness of workplace rumours that he and Hammond were having an affair. Both persons testified that they were not romantically involved at the time and that they did not begin living together until much later. Therefore, the rumours were likely to have been very harmful to their then existing marriages. I also accept that management has a responsibility to deter such harmful gossip but so do all employees. Everyone, including the grievor and Hammond, might have done more to contribute to a better work environment. There was evidence that the SAS was a "soap opera" and gossip about Girdlestone and Hammond appears to have been part of it. But the existence of such gossip cannot repair the shortcomings in the direct or circumstantial evidence required to support the grievor's serious allegations concerning Brown, Cenzura, Derry, Boyd, Rumack, Hunter and the Board. Furthermore, Girdlestone's own participation in the dissemination of harmful gossip about Cavanaugh, Brown and Lever in conversations with Cenzura and Reggimenti detract from any theory which purports to tie the relevance of gossip about him and Hammond to the motive of any particular person. If the gossip about Hammond and Girdlestone is somehow evidence supporting the allegations against Brown, Girdlestone's harmful statements about Brown's alleged drinking and manipulation by Cavanaugh can be equally argued to be evidence of Girdlestone's ill-will against Brown.

Turning to the grievor's allegations against Cenzura, Derry, Boyd, Hunter and Dr. Rumack, it is argued that the grievor's complaints against Brown and Cenzura were not

genuinely inquired into. Instead, his mental stability was put in issue in order to protect the reputation of the SAS, particularly in light of the Jane Doe trial. In support of this allegation, it is contended that Cenzura initially did nothing after the April 10, 1997 meeting with Girdlestone. It is also argued that Derry's description of Girdlestone "foaming at the mouth" was an obvious fabrication aimed at harming him. The use of the phrase "talking in circles" by both Derry and Cenzura is said to show they were relying on Girdlestone's notes, not their own recollections. Derry's alleged interview of Hammond and Brown are also argued to be blatant fabrications and Cenzura's alleged offer to Girdlestone of a transfer within the command for his silence is evidence of the Unit Commander's ill-will. Boyd is argued to have been only concerned about protecting the SAS given his selection of Cenzura to lead that unit and the involvement of his wife and Derry in the Jane Doe trial. The written correspondence to the MAS and Dr. Rumack's execution of the restricted duty form of May 26, 1997 are submitted to be defamatory. The absence of a formal investigation was contended to be a hallmark of this conspiracy.

The Duff incident may have hurt the morale of the SAS. But the approach taken to that matter is also evidence of Boyd's willingness to explore and pursue allegations no matter how harmful they may be to the reputations of senior officers or the Board. It also underlines why Cenzura, described by Boyd as a police leader, was selected as the new Unit Commander. There is nothing in the background of these two senior officers which would suggest they would simply turn on a complainant such as Girdlestone – a person they considered to be an excellent investigator. The alleged links to the Bernardo investigation, Justice Campbell's inquiry and the Jane Doe trial, while argued, are not made out on the evidence. These matters appear to have pre-dated Girdlestone's allegations and concrete evidence of any actual link is simply absent. Indeed, notwithstanding Cenzura's admission to the contrary, it is difficult to appreciate how any of Girdlestone's allegations would actually interfere with or be relevant to the Jane Doe trial. It might make the newspapers but relevance in a major criminal trial is an entirely different matter. The reliance on the fact that Boyd's wife and Derry were involved in the Jane Doe trial is no more useful than the rumours that Girdlestone and Hammond were having an affair. The involvements of Derry and Margo Boyd in the Jane Doe trial

cannot be a basis, circumstantial or otherwise, for a finding that Cenzura, Derry and Boyd were all motivated to injure him. More evidence is required.

While Girdlestone alleges that his wellness was just a pretext for not investigating his complaints, the objective evidence is to the contrary. Girdlestone had recently separated from Gray. This would not appear to have been his choice. He was living with his parents and had lost weight. His interchanges with Brown about what had happened to him understandably paint the picture of a very unhappy person. His reaction to the break-up of his partnership with Hammond was very emotional. It was not what one would expect of such a seasoned police officer no matter what he suspected. Before Cenzura understood that he too was the subject of the grievor's complaints, this experienced supervisor was reasonably concerned for Girdlestone's wellness. By April 10, 1997, the grievor's note-taking was clearly excessive, if not obsessive. He admits to having talked in circles - a phrase that is just as likely to have been used by Cenzura as the grievor. And his interchanges with Cenzura were so broad and elliptical as to border on incoherence. When asked by Cenzura to reconcile with his supervisor, Girdlestone engaged in a rant against Brown to his face which was emotional, irrational and threatening. His treatment of Reggimenti was neither normal nor acceptable conduct. Just as Girdlestone was subsequently concerned with his own safety in respect of Brown who was armed, it was entirely reasonable for Cenzura, Derry, Boyd and other officers in the SAS to be concerned about the whereabouts of his gun until his wellness was properly examined. The evidence before me establishes that Girdlestone's own actions reasonably put his wellness in issue with others.

I accept Boyd's evidence that Girdlestone's complaints were quite different than those involved in the Duff matter. Girdlestone was already the subject of censure by Cenzura for the Reggimenti matter. He was also unhappy with a partnership change that, on the facts, must be found to have been benign. Nevertheless, Derry was designated to review his concerns and take the necessary steps. It was reasonable for Boyd to take this approach before involving the IA or others. Derry then saw what Cenzura was already concerned about - a person emotionally distraught who was putting in issue a broad and confusing range of matters. The amount of note-taking the grievor had engaged in about his own personal circumstances - notes given to Derry - would have reasonably caused

anyone to be concerned about his wellness. These were notes about his supervisors recorded in a police officer's memo book as if he was conducting a police investigation. Derry's reference to saliva or whitish foam around the grievor's mouth, while medically irrelevant, could reasonably have been significant to the lay observer. This condition might have been noticed by Derry and just as reasonably ignored by someone else such as Girdlestone's lawyer. The evidence does not establish that this observation was a fabrication. Moreover, the grievor was off work due to stress during this period of time. Similarly, the evidence does not support the serious allegation that Derry fabricated the conversations with Brown and Hammond. The content of his notes, both in form and substance, support the occurrence of these conversations. They have the ring of truth. The meetings were not intended as formal interviews and, therefore, may have been forgotten or misunderstood by both officers. Brown and Hammond would have had much on their minds at the time. It is also difficult to understand why Derry would fabricate both of these collateral events and particularly the meeting with Brown.

The evidence does not support that Cenzura sought the grievor's silence. Cenzura denied it. The grievor admitted that Cenzura did not speak these words to him. And Clewley did not claim that Cenzura sought to make such a bargain with him. Clewley obviously saw an informal resolution of the grievor's situation to be in his best interests. How he would explain the available transfer to his client and how this explanation might be interpreted by Girdlestone are matters of considerable professional and situational complexity. The evidence in this respect is more supportive of a misunderstanding by the grievor of what his lawyer was telling him than a request by Cenzura for his silence. Indeed, his silence at this point would have been of little value. He had already complained to Boyd. Brown had been transferred. Derry had been appointed to review his situation. In short, everyone seemed to know.

As for the allegation that his complaint was never investigated, the evidence is to the contrary. Cenzura transferred Brown. Boyd spoke to Cenzura and appointed Derry. Derry spoke to Girdlestone and several others. Derry filled out a detailed 787 complaint even though it appeared the allegations did not engage the Workplace Harassment policy. On the evidence, the fact that his complaint was not further investigated is explained by his own actions and the actions of his lawyers. Clewley admits to having asked Derry to

delay any formal response to the situation. Clewley's goal was to get his client back to work and avoid a formal proceeding which might be entirely counter-productive for both Girdlestone and Hammond. This being his goal, an empathetic approach to Derry and Cenzura was capable of being misconstrued. Accordingly, on the evidence before me, I also cannot find that Derry and Cenzura intentionally misrepresented what Clewley told them. What they heard in those settlement discussions could have widely diverged from what Clewley may have actually meant or believed. Clewley was trying to get them to do what he thought was in the best interests of his client. On the evidence before me, the grievor has not established that Derry and Cenzura misrepresented what they honestly understood Clewley had said to them.

Derry could reasonably have thought the matter was closed in July 1997. Mushega, who is responsible for the Workplace Harassment policy and who the grievor obviously trusted, had no objection to the way Derry had proceeded. When Hunter sought to inquire into the complaint with Mushega's assistance some time later, the Deputy Chief's designate was again met by a request from Girdlestone's lawyer that the matter be deferred until later notice – a notice that never came. Finally, the grievor himself initiated a complaint with the OHRC in November of 1997 knowing from Mushega that the Board's policy was not to conduct a parallel investigation. There is no evidence the Board ignored or refused to inquire into his complaint. Instead, given Mushega's evidence, it is difficult to understand how the grievor could have reasonably believed he had filed a formal harassment complaint. Nevertheless, the concerns he raised were inquired into until the grievor or his lawyers directed otherwise.

The Board, like Gary Clewley, was always interested in an amicable resolution of the grievor's situation. There was also the delicate reality that Hammond (and Brown) could be seriously hurt by a public examination into the embarrassing incident Girdlestone persisted in raising. On the evidence before me, it was not made out that Girdlestone's complaint in this regard was the reason for any treatment he received. Hammond told him the situation with Brown had been consensual. She did not want to complain and made this clear to Cenzura and Girdlestone. Moreover, on the evidence of Brown and Hammond, there was no basis for Girdlestone to refer to the incident as one of sexual harassment. Brown and Hammond were embarrassed. When the incident was

judged to have compromised Brown's ability to supervise, he was quickly moved. But there is no evidence that Girdlestone was transferred because he raised the incident. If anything, the evidence is more consistent with Girdlestone wrongly using an embarrassing incident not involving sexual harassment to threaten Brown and to pressure the Board into continuing his partnership with Hammond. Girdlestone was transferred because of Reggimenti matter, coming as it did after his insubordinate and insulting treatment of Brown. The transfer, on this evidence, was reasonable in the circumstances and not discriminatory. Accordingly, I find that there was no violation of the collective agreement, *the Police Services Act*, *the Charter of Rights and Freedoms* and *the Ontario Human Rights Act*. The following findings also support these conclusions.

Having found that Cenzura and Derry had *bona fides* concerns over the wellness of Girdlestone and reasonably secured his gun, I also find that their communications with the MAS were products of these same concerns. On the evidence, what they wrote and said arose from their honest beliefs. I also find that what was written to health professionals about the grievor, in its plain and ordinary meaning, was not defamatory. While I find that what was written was substantially correct, a health professional would not reasonably understand the correspondence in a defamatory sense in any event. Because the recordings in issue were what senior officers had observed and honestly conveyed, I cannot find, on the evidence adduced, that Dr. Rumack was lied to. The reactions of Cenzura and Derry to the grievor's rambling concerns were independent and spontaneous. The evidence of Relph and Hammond is corroborative. Even the grievor had concerns about Brown bearing arms when he did not want to meet Montrose at the SAS on May 12, 1997.

The words used were also subject to a qualified privilege. They were discretely recorded for medical advisors by supervisors who did so pursuant to a duty to protect employees and the general public. Dr. Rumack's writings and execution of a form were subject to the same important duty. Police officers, almost uniquely, carry fire arms in the normal course of their employment. They are in close contact with their colleagues and the public. In this context, the actions of Cenzura, Derry, Boyd and Dr. Rumack were privileged. While the privilege is qualified and can be lost if the words complained

of are the product of malice, the case of malice is not made out on the evidence before me. I have no hesitation in making this unequivocal finding.

I also find that the harm the grievor complained of was not established. Policing is a dangerous and stressful job. There was no expert or other reliable evidence that the securing of an officer's gun is highly unusual or career ending. It is not sufficient for the grievor and Hammond to simply allude to a "rubber gun squad". Objective evidence is required -- not more gossip. A senior officer responsible for human resources testified to the contrary as did other senior officers involved in the case. Having a gun removed can reasonably concern a police officer. But it is not, of itself, career ending in a modern police environment on the evidence before me. Accordingly, I find the contents of Girdlestone's file would not have harmed his career. Indeed, the evidence indicates that such information would not be available and relevant to the promotion process in the ordinary course of events. The grievor's fears were also not tested by a promotion interview. While I do understand his personal concerns, a case was not proven that the Board and senior officers would be anything other than supportive. Save for Brown's comments, the grievor appears to have been treated with consideration and respect by all his supervisors during and after the events giving rise to this matter.

Being pictured as "crazy" to the public can obviously undermine an individual's reputation and career, particularly a highly trained professional. However, Girdlestone's supervisors did not so characterize him either privately or before his fellow employees. Cenzura's decision to speak to the SAS on May 9, 1997 was not to address them on Girdlestone's wellness. That topic arose from the floor and Cenzura was discreet. He did not advise those in attendance that he had already secured Girdlestone's gun. Girdlestone's own family doctor had diagnosed his condition as being the product of undue stress. The decision to conduct the meeting was reasonably explained. The Workplace Harassment policy did not likely apply and, in my view, would not preclude the particular meeting in question having regard to all of the circumstances.

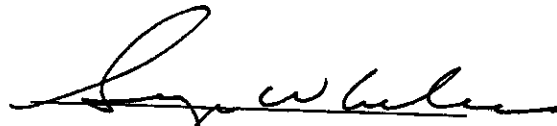
Finally, the evidence, for all of the above reasons, does not support that the grievor was constructively dismissed. Rather, he voluntarily resigned and the timing was motivated by pension considerations. There is no reliable evidence to support the allegation that his terms and conditions of employment were wrongly altered or

manipulated to cause a *de facto* termination. In the circumstances, Brown's objectionable comments cannot, standing alone, support a finding of constructive dismissal.

For all these reasons, I find that the grievor's claims of improper transfer, defamation, conspiracy to injure and constructive dismissal have not been proven. I also find that the grievor did not suffer harm or injury to his reputation.

Accordingly, the grievor's complaints, in their entirety, are dismissed.

Dated at Toronto this 1st day of November, 2001.



Hon. George W. Adams, Q.C.