

**JURISDICTION** : EQUAL OPPORTUNITY TRIBUNAL OF  
WESTERN AUSTRALIA

**LOCATION** : PERTH

**CORAM** : Deputy President: MR G DONALDSON  
Deputy Member: PROFESSOR C MULVEY  
Deputy Member: MS T ACKLAND

**HEARD** : 16-12 December 2002, 12-15 February 2003

**DELIVERED** :

**FILE NO/S** : ET/2002-000002

**BETWEEN** : MARY WILLIAMS  
Complainant

and

CITY OF PERTH  
Respondent

***Catchwords:***

Sexual discrimination - Impairment discrimination - Victimisation

***Legislation:***

*Equal Opportunity Act 1984 (WA)* s 11, s 66B, s 67, s 105, s 161, s 127

**Result:**

Some complaints substantiated; others dismissed

**Representation:**

***Counsel:***

Applicant : Mr A Kane  
Respondent : Mr A Power

**Case(s) referred to in judgment(s):**

*Duvuro Pty Ltd v Wilkins* [2003] HCA 51  
*Horne and Anor v Press Clough Joint Venture* [1994] EOC 92-591  
*Kwa v Secretary for Local Government* [1987] EOC 92-213  
*Smith and Anor v Sandlewood Motel Pty Ltd* [1994] EOC 92-577

**Cases(s) also cited:**

Nil

## DECISION OF THE TRIBUNAL

### **This decision**

1           This decision of the Tribunal, and these reasons, are the decision and reasons in which two only of the members of this Tribunal concur; Deputy President Donaldson and Deputy Member Mulvey. By reason of s 105(2) of the *Equal Opportunity Act 1984* ("the Act"), this decision is then the decision of the Tribunal. In these reasons, where reference is made to the Tribunal, it is to be read and understood as being a reference to the two members of the Tribunal only.

### **The complaints**

2           Ms Williams has made various complaints against her former employer, the City of Perth. Ms Williams alleges various contraventions of s 11(2) of the Act - discrimination on the grounds of her sex - relating to aspects of her employment and her treatment whilst an employee of the City of Perth.

3           Ms Williams also complains of contravention of s 66B(1) - discrimination on the grounds of an impairment alleged by Ms Williams - alleging that the City of Perth discriminated against her in respect of arrangements made for the purpose of determining whether she would be offered employment with the City of Perth. The impairment of Ms Williams was a back injury. To avoid possible confusion, it might be noted at this point that this complaint arose out of application for employment with the City of Perth by Ms Williams after the expiration of a fixed term of employment.

4           Further to these complaints, Ms Williams complains that she was victimized, within the meaning and understanding of s 67 of the Act, after she made a complaint under the Act.

5           These various complaints arose out of a tortuous series of events and circumstances in respect of which the Tribunal heard and read a great volume of evidence. Virtually all of the material events and circumstances were the subject of wildly contradictory evidence and testimony.

6           In dealing with and resolving these complaints it is essential to deal with this evidence in detail and make specific findings in respect of many incidents. In respect of a small number of other matters this has been

avoided. Of course, the Tribunal has not dealt with all issues of fact that arose in the course of evidence, nor referred in these reasons to the evidence of all witnesses. It has not been necessary to do so for this Tribunal to exercise its jurisdiction under the Act.

7 As will come to be seen, it has been impossible to come to conclusions in respect of many matters without making findings as to the credit of various witnesses; in respect of particular instances and in some cases more generally. Of course, in certain instances, general findings of credit have informed more specific findings.

8 The Tribunal has avoided resolving any issue by resort to the unsatisfactory device of imposing an onus of proof. Though it has been determined in this Tribunal that "it is a complainant who bears the onus of proof of proving her case and must do so on the balance of probabilities"<sup>1</sup>, it is undesirable that the factual issues that lay at the heart of these complaints be resolved by resort to what is often referred to as an onus of proof. Indeed, it is undesirable that this Tribunal, exercising the jurisdiction that it does, and dealing with the intensely factual issues that arise in virtually all matters that come before it, resolve factual issues by imposing burdens of proof. No doubt one of the reasons why this Tribunal as constituted under the Act comprises members who are not legal practitioners is so that difficult questions of fact can be determined without the delicacy often attributed to legal practitioners in considering such matters.

9 The particular allegations made by Ms Williams will be described in the course of dealing with the morass of evidence presented to the Tribunal.

10 Some essential background facts need to be outlined so that immediately relevant facts and the complaints can come to be considered in their appropriate context.

### **The City of Perth Parking Unit**

11 The City of Perth is the municipal council established pursuant to the *Local Government Act 1985* responsible for the City area, and areas in

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<sup>1</sup> See *Alone v State Housing Commission* (1992) EOC 92-392 @ 78,788. Cited in *Phillips v Minister for Education* (Unreported) Matter ET/2002-000016, decision of the Equal Opportunity Tribunal of Western Australia, 22 July 2003. Without deciding the matter, it might be thought that such decisions have not paid sufficient regard to the reasoning in cases exemplified by the well known decision in *McDonald v Director-General of Social Security* (1984) 1 FCR 354 as to the limitations of "burdens of proof". In this general respect, see the recent discussion of Williams, "Burden and Standards in Civil Litigation" (2003) 25 Syd. L Rev. 165.

Northbridge, East Perth and West Perth. An aspect of its operation is parking regulation.

12 The City employs, in its contemporary nomenclature, "Parking and Information Officers". Ms Williams commenced employment with the City as a Parking and Information Officer on or around 28 April 2000.

13 Commencing in around 1998 the City embarked upon a deliberate strategy of seeking to alter the skills of the members of the Parking Unit. This strategy derived from an alteration to the role of parking officers. At around this same time, and, it seems from the evidence, as part of or allied to the same overall strategy, the City set about to change the work atmosphere and environment within the Parking Unit.

14 In around 1998 the City commenced a process of enhancing the skills of existing parking officers, and recruit new officers skilled in what might be referred to as the "public relations" or information aspect of the job of parking officers. The City sought to emphasise the role to be played by parking officers in providing advice, information and assistance to visitors to the City and its environs. Prior to this time, the City apprehended that the public perception of its parking officers was solely that of, in essence, parking law enforcement officers with their role involving nothing more than the issuing of parking infringements. Hence sobriquets of "grey ghosts" and the like which have been commonly used to describe parking officers in Perth over many years.

15 Senior employees of the City gave evidence before the Tribunal as to the working environment within the Parking Unit prior to 1998. Evidence in this respect was led principally from Mr William Strong, who was at times material to these complaints the Operations Co-ordinator for the Compliance Service Unit of the City and Ms Charlotte Stockwell, who was for part of the time material to this Inquiry, the Manager of Compliance Services in the City with managerial responsibility for the Parking Unit. Both described the atmosphere within and tenor of the Parking Unit in these times as, *inter alia* but tellingly, "militaristic", "formalised" and "ritualistic". Ms Stockwell described the atmosphere amongst members of the Parking unit *inter se* and with senior employees as distrustful; an environment replete with allegations of victimisation, favouritism and bullying and in which teasing and swearing among members were common.

16 The evidence is also clear that up to 1998 the large majority of parking officers were men.

17 Commencing in or around 1998 a number of inter-related changes were implemented. The title of parking officers changed to "Parking and Information Officer"; the uniforms of Parking and Information Officers were altered, moving away from a pseudo military style; nomenclature elsewhere changed - for instance the morning information session for officers was no longer referred to as the "muster". Most relevantly, in the recruitment of new officers regard was to be had to the capability of recruits to fulfil the public information aspect of the new role of Parking and Information Officers. Indeed, from around 1998, and in furtherance of this goal, the City of Perth engaged human resource consultants to assist with the recruitment of new officers.

18 Pursuant to this recruitment strategy was Ms Williams employed.

19 It can be well understood that these changes and others were calculated to comprise part of the strategy or strategies outlined above - to enhance the information service provided to the public by the City's Parking and Information employees, and to alter the atmosphere and work environment within the Parking Unit.

20 A matter of central importance to the determination of Ms Williams' complaints needs to be noted at this point, though it will be the subject of detailed consideration further in these reasons. The changes, briefly outlined above - to alter the roles, skills and profile of Parking and Information Officers and to change the work environment of officers - were implemented over time and were greeted by different Parking and Information Officers with varying degrees of enthusiasm. This is of no surprise. Indeed, Mr Strong gave evidence to the effect that this process of "cultural change" within the parking unit took a long period of time.

21 It was into this work environment, undergoing a process of cultural change, that Ms Williams was thrust.

### **The recruitment of Ms Williams**

22 Ms Williams was employed as a Parking and Information Officer by the City on a one year fixed term contract. Employment of Parking and Information Officers on such contracts was unusual. Most were engaged as permanent employees. At the time of Ms Williams' employment, two short-term vacancies had arisen and were filled by employees on fixed term of whom Ms Williams was one. Of itself, nothing turns on this matter, other than the consequence that in or around April 2001

Ms Williams' term of employment came to an end and she re-applied for employment.

23 The intake of two officers in 2000 was also one of the early intakes pursuant to the strategy of employing Parking Information Officers with enhanced public relations skills.

24 Opinions were expressed during the course of evidence by witnesses called by the City that in the recruitment of some officers too great an emphasis was placed on the "public relations" aspect of the new recruitment strategy. For instance, Mr Steven Baird, who was involved in the initial training of Ms Williams and dealt with her throughout her time with the City, expressed opinions to the effect that at the time of the recruitment of Ms Williams there was too great an emphasis on public relations skills. He expressed the view that this was the case with Ms Williams. His overall assessment can be neatly encapsulated as being that the result of the recruitment policy was the employment of "a lot of PR people ... [who] could not actually do the other side of the job".<sup>2</sup>

### **Ms Williams training**

25 Parking and Information Officer recruits of Ms Williams' vintage underwent a standard four weeks of training. The first two weeks involved intensive tuition in the relevant laws and by-laws to be enforced. These laws were referred to by officers of the City of Perth as the "Local Law". In addition, new employees received training on use of the machine carried by all Parking and Information Officers when on duty which physically generates infringement notices; "the Autocite". The Autocite required for its operation the input by Parking and Information Officers of certain basic information. Once the information was programmed or typed into the machine, the infringement notice or ticket would be generated. Also during this two-week period, new Parking and Information Officers were provided with details of the shifts that were worked, the various areas in which officers operated and other training necessary for employees to do their job.

26 After this initial two-week training period, new officers were then taken out "on the job" for a further two weeks of training with more senior officers.

27 At the end of this four-week training period officers were then expected to operate as Parking and Information Officers.

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<sup>2</sup> T73 of 14 February 2003.

28 The duration of Ms Williams training was a matter of some controversy in the evidence. The Tribunal was provided by the parties with a Statement of Agreed Facts in which the parties agreed that:

*"In accordance with the respondent's standard procedure, when the complainant commenced working at the respondent she underwent a four week induction process and training programme."*

29 Counsel for the City opened before the Tribunal to the effect that Ms Williams in fact underwent five weeks training, the fifth week being added due, in essence, to concerns as to Ms Williams' comprehension of certain key elements of the job. Evidence was led as to these matters by Mr Baird who was involved in the training of Ms Williams and who appears to have made the decision (in consultation with others) to add the extra week to Ms Williams training.

30 It did not emerge clearly from the evidence that Ms Williams understood that she had undergone an extra weeks training. It was apparent from Ms Williams' evidence, however, that she experienced some difficulty during the training period.

### **The organisation of the Parking Unit**

31 At the time of Ms Williams' recruitment and at all times material to these complaints the Parking Unit at the City was organised into two teams. The City was, for the purpose of allocating work to Parking and Information Officers, geographically divided into two; east and west of Barrack Street. In consecutive periods the respective teams were allotted the east or west zone.

32 At the times relevant to these complaints, each team comprised around sixteen members. Each team had a permanent leader, and once a person was allocated to a team, generally, they stayed in that team.

33 Ms Williams was allocated to the team headed by Mr Sadak Hamid. The other team leader was Mr Peter Keogh. Within each team and for every shift, officers were allocated a geographical area that was to be patrolled or within which the officer worked in the sense of assisting people and infringing vehicles parked illegally. These areas were referred to as an officer's "beat" and each officer's beat varied from shift to shift and time to time. In addition to these beats, officers worked different shifts, including a night shift.

34 On night shift officers worked in pairs. On all other shifts officers worked singularly and worked a beat alone; that is, during the day shifts, each officer would work alone on a single beat and only one officer would be on that beat.

## Sex discrimination complaints

### Ms Williams initial work - the first motor vehicle accident

35 As noted earlier, Ms Williams commenced her employment on or about 28 April 2000. Ms Williams underwent a period of four or five weeks training, and so commenced work proper on or about 5 June 2000.

36 On 14 June 2000 Ms Williams was involved in a motor vehicle accident whilst on duty. A deal of conflicting evidence was led as to what occurred after the accident.

37 Ms Williams' evidence in respect of this matter was to the effect that when the accident occurred she returned to the City office. Her team leader Mr Hamid was not there at that time, though when he arrived he took Ms Williams for a coffee. Ms Williams then alleged that at this time he did not advise or instruct her to seek medical advice or treatment but that later, on the same day, Ms Williams saw Mr Baird. Ms Williams' evidence was that Mr Baird said to her that she should have had a medical check up and that Mr Hamid ought to have insisted upon this. Further, Ms Williams gave evidence that Mr Baird said to her in this conversation that:

*"...if you're not feeling well in the morning [by this it was taken to mean the next morning] I want to hear about it because they're not going to look after you. You know what they are like."<sup>3</sup>*

38 This evidence was never put squarely to Mr Baird. His evidence was that, although not specifically remembering what he had said to Ms Williams he was sure that he would have advised her to see a doctor.<sup>4</sup> The statement ascribed to Mr Baird by Ms Williams, pregnant with the connotation of victimisation of Ms Williams, is totally inconsistent with the totality of Mr Baird's evidence.

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<sup>3</sup> T71 of 16 December 2002.

<sup>4</sup> T71 of 14 February 2003.



39 Mr Hamid's evidence as to this first conversation after the accident on 14 June 2000 can be summarised as being to the effect that as soon as he became aware of the matter he asked Ms Williams about how she felt and sought to sympathise with her.

40 Shortly after the accident Mr Hamid was away from work on leave for a period of some weeks.

41 Ms Williams gave evidence that during this time, she had a deal of time off work due to injuries suffered in the accident and that when she returned to work she was on light duties.

42 Certain matters that occurred during Mr Hamid's absence on leave will be detailed below. For immediate purposes, Ms Williams gave evidence that soon after Mr Hamid's return from leave he inquired of Ms Williams how her recovery was progressing. Ms Williams recounted in evidence that in this conversation Mr Hamid stated to her that:

*"Well I can't guarantee that this won't happen again. Maybe you should be looking down a different path for a different career."*<sup>5</sup>

43 Mr Hamid denied saying this.<sup>6</sup>

44 The conduct of Mr Hamid in responding to Ms Williams' accident is the subject of a specific allegation of contravention of s 11(2)(b) of the Act, see Particular (c) of par 12 of the Amended Points of Claim.

45 In respect of this matter, Ms Williams gave evidence that on the date of the alleged conversation she made a contemporaneous note of her conversation with Mr Hamid in a notebook that she carried.

46 The entries in this notebook are a matter of importance. If they are, as contended, contemporaneous notes of occurrences and responses relevant to this inquiry, they have obvious relevance. The circumstances in which this notebook came to be compiled are important. There are relatively few entries in the notebook. There are many incidents that were the subject of detailed evidence in this matter, involving things that were alleged to have been said and done to Ms Williams, that are, and presumably were at the time they occurred, of the utmost importance to Ms Williams, that are not the subject of entry in the notebook<sup>7</sup>. Clearly

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<sup>5</sup> T73 of 16 December 2002.

<sup>6</sup> T127 of 12 February 2003 and T21 of 14 February 2003.

<sup>7</sup> These are catalogued commencing at T177 of 17 December 2002.

the notebook was not systematically maintained. There are entries in respect of events months apart that are contiguous in the notebook. Entries in some instances are lengthy. There are other jottings in the notebook that are very brief indeed.

47 It was squarely put to Ms Williams that the notebook was a concoction<sup>8</sup>. The Tribunal has concluded that the notebook is in essence a self serving contrivance. In respect, for instance, of the entry relating to this meeting with Mr Hamid it is recorded:

*"19<sup>th</sup> July. Sadak Hamid met me in loading dock. Sadak asked me how I was feeling. I told him of my situation and health matters. Sadak asked how long would this take to get better. I said I had no idea 5 days, 1 day, 6 months whatever it takes. Sadak then said well maybe down the track I may have to take on another career path. My concern and question:*

1. *what did he mean by this.*
2. *As I am on contract I felt pressured.*
3. *I have had to return to work and do my best.*
4. *I felt that at this early stage the comments were totally unwarranted instead of other comments as I cant guarantee that you will not be assaulted or in another accident, negative comments is playing a part in my returning 100%.*
5. *I then applied for overtime to make my point I was doing the very best that I could to return.*
6. *Compo pay to be questioned."*

48 The Tribunal's conclusion that the notebook is unreliable is based upon the following factors. First, it is inherently implausible that detailed notes of some incidents would be contemporaneously made by Ms Williams, while other incidents that Ms Williams described in evidence as more serious are not noted at all. Second, as Ms Williams work relations deteriorated (as will come to be detailed) it is inconceivable that she would not keep contemporaneous notes, when she had earlier done so. This has the effect of casting doubt upon the authenticity of the entries said to have been earlier made. Third,

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<sup>8</sup> T183 of 17 December 2002.

Ms Williams' evidence in relation to the notebook entries was extremely unconvincing. Some evidence was given in relation to an earlier entry purportedly recording a comment of Mr Gibson, about whom a deal will be heard later in these reasons. When examined about this entry, Ms Williams' evidence became simply incoherent<sup>9</sup>. Her evidence in respect of the entry noted above, bearing the date 19 July, was likewise difficult to follow. It was unclear what Ms Williams' evidence was as to precisely when this entry was written<sup>10</sup>. Likewise, Ms Williams gave evidence which suggested that immediately after Mr Hamid made these comments she arranged and had a meeting with Mr Strong, a Mr Geere and Mr Hamid concerning Mr Hamid's comments. There is no reference to this in the notebook. Obviously, an entry in respect of such a meeting would be expected if it took place prior to the entry that records the earlier conversation with Mr Hamid. Even if this meeting took place after making the entry, it would be expected that it would be noted somewhere in the notebook.

49           When the Respondent put to Ms Williams that the notebook was a contrivance, Ms Williams denied it. Her denial was unconvincing. As with much of Ms Williams' evidence, her denial was extremely verbose. In many places in her evidence Ms Williams confronted facts and matters put against her with a blaze of diffuse words. Generally, Ms Williams presented as an unconvincing witness. She refused to answer simple questions with short and simple answers. She seemed to avoid directly responding to difficult questions. In many instances her answers to questions seemed calculated rather than instinctive or spontaneous.

50           The conclusion that the notebook was not, as asserted, a collection of contemporaneous notes of events has a consequence more significant than simply negating the probative force of the contents of the notebook. The concoction of this evidence reflects upon the credit of Ms Williams. It is important, however, to observe that this finding has not resulted in the rejection of the whole of Ms Williams' evidence or impacted on her credit for all purposes in this Inquiry. As will be seen later in these reasons, there are some matters in respect of which Ms Williams' evidence is accepted. Clearly, however, the conclusion which we have reached as to the circumstances of the creation of the notebook reflects upon Ms Williams' credit.

51           Again, as will come to be seen, there are other incidents and other respects in which the evidence of Ms Williams has been disbelieved. All

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<sup>9</sup> T64 of 16 December 2002.

<sup>10</sup> See T79 of 16 December 2002.

of these incidents together have required to Tribunal to treat Ms Williams' evidence with great caution.

52 The Tribunal has borne conscientiously in mind the observations of Kirby J in the recent decision of *Duvuro Pty Ltd v Wilkins* [2003] HCA 51, at par 119 and par 120, which, although in the context of civil trials at Law, are none-the-less applicable:

*"119. Lies and civil proceedings: Some judges in the past regarded untruthful evidence - even about peripheral or irrelevant matters - as fatal to a litigant. Most judges today understand that the evaluation of evidence involves a more complex function, requiring a more sophisticated analysis. Courts, after all, are not venues for the trial of the parties' morality or credibility, as such. As judges often explain to juries in criminal trials, people sometimes tell lies in court and elsewhere for extraneous and irrelevant reasons, having nothing to do with the legal issues in the trial. If this is true in criminal trials, it is equally true in civil trials. What is important is not the proof of untruthfulness, as such, but the significance (if any) of any demonstrated falsehoods for the issues at trial. That significance can only be judged when measured against the entirety of the relevant testimony. By its logical force, that testimony may well require that falsehoods be ignored as irrelevant or immaterial to the decision-maker's ultimate conclusion. In particular cases, it may require the decision-maker, within the pleadings, to consider and decide a case different from - or even contrary to - that advanced by the party, because such is the legal entitlement of the person concerned.*

120. *Obligations of this kind recognise the ultimate duty of the decision-maker in an Australian court to decide a case according to law and the substantial justice of the matter proved in the evidence, not as some kind of sport or contest wholly reliant on the way the case was presented by a party. Litigants are represented in our courts by advocates of differing skills. Litigants are sometimes people of limited knowledge and perception. Occasionally, they mistakenly attach excessive importance to considerations of no real importance. In consequence, they may sometimes tell lies, or withhold*

*the entire truth, out of a feeling that they need to do so or that the matter is unimportant or of no business to the court. This is not to condone such conduct. It is simply to insist that, where it is found to have occurred, it should not deflect the decision-maker from the substance of the function assigned to a court by law."*

53 The Tribunal concludes that, in respect of the complaint of contravention of s 11(2)(b) of the Act stated in Particular (c) of par 12 of the Amended Points of Claim, the conversation alleged did not occur. This conclusion is based upon the following considerations. First, for the reasons outlined above, Ms Williams' credibility in respect of this conversation, and matters that are the subject of entry in the notebook, is dubious. There is no basis not to accept the evidence of Mr Hamid in respect of this matter. He presented as a witness of credit and his evidence is to be preferred in respect of this matter.

54 This complaint is dismissed.

**Ms. Williams initial work – the period after training while Mr Hamid was on leave and upon his return**

55 As noted above, shortly after completion of Ms Williams' training, and resumption of the full duties of a Parking and Information Officer after her accident, Mr Hamid was absent on leave for a period of some weeks. During this period Mr Alec Gibson and Mr Carl Jamieson acted as team leaders. The acting team leader was referred to as a "shadow" team leader.

56 Mr Hamid's evidence was to the effect that he thought that each of Messrs Gibson and Jamieson were competent shadow team leaders.

57 It appears that during this period Ms Williams had no difficulty with Mr Jamieson and Mr Jamieson's evidence was to the effect that in the period up to around August 2000 his relations with Ms Williams were friendly<sup>11</sup>. This included the period during which Mr Jamieson acted as shadow team leader.

58 Mr Jamieson gave evidence that when Mr Hamid returned from leave he asked for an assessment of Ms Williams' performance. Mr Jamieson did not feel capable of expressing an opinion as he had not

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<sup>11</sup> T7 of 13 February 2003.

worked with Ms Williams and did not feel as though he had a basis upon which to express a view.<sup>12</sup>

59 There is no reason to doubt Mr Jamieson's evidence in this respect. Indeed, it did not appear controversial as both Ms Williams and Mr Jamieson both identified a period in August 2000, when they worked together on a night shift, as the genesis of the difficulties that they had with each other.

60 As to Mr Gibson, Ms Williams gave evidence that she undertook part of her practical training with Mr Gibson and that during this period she got along with him reasonably well.<sup>13</sup>

61 Conflicting evidence was led by Ms Williams and Mr Gibson as to an incident alleged to have occurred during the time that Mr Hamid was on leave and Mr Gibson was the acting team leader. Mr Gibson gave evidence to the effect that at a time during this period, and while acting in this capacity, he sought to speak with Ms Williams about a complaint that had been received by the City from a member of the public<sup>14</sup>. Ms Williams sought to fob Mr Gibson off to the point that after seeking to speak with Ms Williams twice he was forced to raise his voice to attract her attention. During the course of then speaking with Ms Williams, Mr Gibson stated that she paid little attention to what he had to say. Mr Gibson gave evidence to the effect that after this incident he felt that his relations with Ms Williams deteriorated and that thereafter there was "friction" between them.<sup>15</sup>

62 Ms Williams denied that these events occurred.<sup>16</sup>

63 Again, however, Ms Williams' denial of these matters was somewhat vague and confusing. Mr Gibson's evidence in this respect was concise. Although little turns on this matter ultimately, the Tribunal finds that this incident did occur and that it was a cause of the deterioration of the relationship between Ms Williams and Mr Gibson.

### **Early incidents allegedly involving Mr Gibson**

64 The Tribunal received a deal of evidence from Ms Williams relating to incidents that were said to have occurred involving Mr Gibson. A deal

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<sup>12</sup> T4 of 13 February 2003.

<sup>13</sup> T245 of 17 December 2002.

<sup>14</sup> See generally T531-535 of 20 December 2002.

<sup>15</sup> T535 of 20 December 2002.

<sup>16</sup> T245-247 of 17 December 2002.

of this evidence was vague, and although certain of these incidents are contended to constitute specific contraventions of the Act, the Amended Points of Claim, at par 8, do not detail them with particular specificity.

65 The essential contentions are that:

- (a) In or around April 2000 Mr Gibson stated to Ms Williams words to the effect that "women should not be in this job", see Amended Points of Claim par 8 Particular (a).<sup>17</sup>
- (b) During or immediately after the training period Ms Williams was with Mr Gibson on a beat and refused to issue and infringement in circumstances where Mr Gibson thought that she ought to have done so. Ms Williams alleges that Mr Gibson then became aggressive toward her.<sup>18</sup>
- (c) During the very early stages of her work at the City Mr Gibson stated to Ms. Williams or to others in the presence of Ms Williams that the Parking unit was "turning into a pansy place", connoting that it was becoming "too feminine".<sup>19</sup> Although the Amended Points of Claim at par 8 Particular (b) records that this occurred in or around August 2000, the evidence appeared to suggest that may have been earlier.
- (d) During the very early stages of her work at the City Mr Gibson yelled aggressively at a tourist from a vehicle in which he was travelling with Ms Williams, see Amended Points of Claim par 8 Particular (c).<sup>20</sup>
- (e) During the early stages of her work at the City, while travelling in a car with Mr Gibson he leaned across her and answered her radio.<sup>21</sup>

66 Each of these specific incidents was denied in turn by Mr Gibson.

67 These specific matters gave rise to this essential contention or complaint; Ms Williams entered a work place in which certain male members, prominently but not only Mr Gibson, had and displayed sexist attitudes. Further, that this sexist attitude was manifest in (first) overtly macho behaviour, calculated to and having the effect of excluding and intimidating the women members of the Parking Unit workforce, and in addition, the expression to and in the presence of other officers of

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<sup>17</sup> T195 of 17 December 2002 (XXN).

<sup>18</sup> T63 of 16 December 2002.

<sup>19</sup> T67 of 16 December 2002.

<sup>20</sup> T63 of 16 December 2002.

<sup>21</sup> T69 of 16 December 2002.

derogatory remarks about women and the capacities of women to adequately perform the job of a Parking and Information Officer.

68 It is crucial to the determination of these complaints to determine whether this underlying contention is made out. It is crucial because such a finding is basal to the determination of many of the specific allegations made.

69 Likewise, it is necessary to determine whether the events outlined above allegedly involving Mr Gibson took place. It is important to observe, however, that Mr Gibson was not alleged to be the only male member of the Parking Unit to have held or manifest these attitudes. The evidence led by Ms Williams in this Inquiry was, however, directed principally at Mr Gibson and Mr Jamieson.

70 As the contention was directed centrally at Mr Jamieson, along with Mr Gibson, before determining the basal issue and making findings in respect of the specific allegations levelled at Mr Gibson, the specific allegations made in respect of the early conduct of Mr Jamieson ought be outlined.

### **Early incidents allegedly involving Mr Jamieson**

71 As noted above, both Mr Jamieson and Ms Williams appear to have accepted that their relationship was cordial until around August 2000. The genesis of their conflict was a series of events alleged to have taken place during a week of night shift when they worked together. Again, these events are alleged to constitute specific contraventions of the Act, and were particularised in the Amended Points of Claim. These events as outlined were:

- (a) An allegation that at the commencement of a shift in August 2000, while Mr Gibson was handing over to Mr Jamieson, and while working with Ms Williams Mr Jamieson stated aggressively to Ms Williams that she was to:

*"Just get in the bloody car woman where you belong."  
Particular (d) of Paragraph 8 of the Amended Points of Claim.*

- (b) Mr. Gibson was present and stated:

*"That's the way, you tell her."*

Particular (e) of par 8 of the Amended Points of Claim.



- (c) The following evening Mr. Jamieson left Ms. Williams unaccompanied at night and compromised her safety. Paragraph 10(b) of the Amended Points of Claim.
- (d) During this week of night shift Mr. Jamieson, while driving with Ms Williams, drove in a deliberately unsafe manner, laughed hysterically and stated things such as, "We are all going to die". Particulars (a) and (b) of par 11 of the Amended Points of Claim.
- (e) Mr Jamieson called Ms Williams a "bitch" in the workplace and made other offensive remarks relating to Ms Williams appearance. Particulars (g) and (h) of par 11 of the Amended Points of Claim.

### **The basal determination – the Parking Unit in 2000**

72 As noted above, the Tribunal received a deal of wildly conflicting evidence as to the "culture" in the Parking Unit when Ms Williams arrived. A deal of the evidence led by the Respondent was calculated, so it seemed to the Tribunal, to conceal an obvious truth; that the changes commenced in 1998 - to alter the roles, skills and profile of Parking and Information Officers and to change the work environment of officers - were implemented over time and the process of "cultural change" within the Parking Unit took time and had not concluded by 2000 and 2001.

73 It has reflected adversely on the Respondent's contentions in this Inquiry that this obvious truth was not acknowledged openly. It was only as a result of examination by the Tribunal that Mr Strong, the most senior officer of the Respondent to give evidence, conceded that the process of change started in 1998 was not complete by 2000 and that, indeed, the rate of change had slowed in 1999 with a change in senior management at the Parking Unit.

74 Clearly, in 2000 there were elements within the Parking Unit, by which is meant individual officers and cabals of officers, wedded to and still displaying the ways of an era that ought to have been bygone; "militaristic", "formalised", "ritualistic", "distrustful", "bullying".

75 Again it needs to be understood that not all such allegations were directed at male officers or necessarily at groups of officers of which Mr Gibson or Mr Jamieson were part.

76 Evidence was led at the Inquiry that a group of officers, of whom Ms Williams was a part, were exclusive and intimidatory. Indeed, some evidence was led to the effect that a group of which Ms Williams was a member had particular influence with the union which covered Parking

and Information Officers and that those outside this group were intimidated by union officials and members of this group.

77 The Tribunal accepts that in times material to these complaints Mr Gibson held and displayed attitudes toward women that were sexist. The Tribunal further finds that this sexist attitude was pervasive in the Parking Unit and that the attitude was manifest in different ways by officers who held such attitude.

78 This finding in respect of Mr Gibson is made in spite of his denial. These conclusions are based upon the following. First, Mr Gibson on a number of occasions during his evidence described women using terms that expressed such an attitude. For instance, he described one of his fellow Parking and Information officers as a "young girl"<sup>22</sup>. Ms Stockwell gave evidence that Mr Gibson referred to her as "lass"<sup>23</sup>, even though she was a senior manager of the City. Second, Mr Gibson admitted using derogatory nomenclature for women officers in the Parking Unit, referring to one as "the Ugly Sister", prefacing the surname of another with the alliterative "Luscious"<sup>24</sup>. It might also be added that Mr Gibson expressed some wonder at why the person whom he referred to as "the Ugly Sister" had a problem with him; seemingly oblivious to a speculative but obvious explanation - that this person may have resented the name which he called her. Third, Mr Strong confirmed that he was aware that this name was "commonly" used by officers and was not confined to Mr Gibson<sup>25</sup>. Fourth, Mr Gibson admitted that some 14 years ago he held the view that women were incapable of performing the job of Parking and Information Officers, but that this attitude had changed. It seems to the Tribunal that although Mr Gibson's perception is that his attitude has changed, in fact it has not changed or not changed enough. This is re-enforced by a fifth factor. Mr Gibson gave evidence that he had ceased using the terms "the Ugly Sister" and "Luscious" four or so years ago and had done so, not because he realised that such behaviour was inappropriate or boorish, but because he sensed that continuation could result in disciplinary action<sup>26</sup>. This does not connote a change of attitude, rather simply an appreciation of self interest and self protection. A sixth consideration will be considered below.

79 The Tribunal heard evidence from a number of women Parking and Information Officers that is inconsistent with this conclusion as regards at

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<sup>22</sup> T539 of 20 December 2002.

<sup>23</sup> T69 of 12 February 2003.

<sup>24</sup> T570 of 20 December 2002.

<sup>25</sup> T99 of 14 February 2003.

<sup>26</sup> T572-573 of 20 December 2002.

least Mr Gibson. In particular evidence was led from Ms Tess Milner to the effect that Mr Gibson's conduct toward her was always helpful and polite<sup>27</sup>. Ms Milner commenced work as a Parking and Information Officer in June 2001<sup>28</sup>, that is after the dispute involving Ms Williams arose. Mr Gibson gave evidence that when aware of the implications of his attitudes and actions he was capable of "minding his p's and q's". Accordingly, the absence of derogatory comments directed at her is of little relevance.

80 Evidence was led from another woman officer, Ms Hoekzema, to the effect that she had no difficulty with either Mr Gibson or Mr Jamieson. As will come to be discussed, Ms Hoekzema was a most impressive witness and the Tribunal has accepted her evidence unreservedly. Quite simply, the fact that Ms Hoekzema's did not observe or experience the behaviour described is not proof that it did not occur.

81 The evidence of Ms Hoekzema suggests, however, that the attitudes of Mr Gibson were to a degree latent or underlying, and manifest themselves on certain occasions and in respect of certain women.

82 As regards Mr Jamieson, the Tribunal is again convinced that at material times he held and was loosely part of a group within the Parking Unit that displayed a generally sexist attitude. This conclusion is based upon one principal factor.

83 As noted above, one of the specific allegations made against Mr Jamieson by Ms Williams is that in August 2000, at the commencement of a shift Mr Jamieson stated aggressively to Ms Williams:

*"Just get in the bloody car woman where you belong."*

Particular (d) of par 8 of the Amended Points of Claim.

84 This is of course a statement incontrovertibly manifesting a sexist attitude. Mr Jamieson denied that this occurred.<sup>29</sup> Mr Gibson, however, gave evidence that he remembered an incident in August 2000, when he was handing over to Mr Jamieson when Mr Jamieson made a statement to Ms Williams that upset her. Although Mr Gibson's evidence was to the effect that he did not overhear the words used, clearly he recalls an incident when words spoken by Mr Jamieson to Ms Williams greatly

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<sup>27</sup> T100-101 of 12 February 2003.

<sup>28</sup> T94 of 12 February 2003.

<sup>29</sup> T48 of 13 February 2003.

upset her.<sup>30</sup> Of course, Mr Gibson's recollection of an incident but inability to recall or hear the words spoken by Mr Jamieson can not establish that certain words were spoken. His recollection of an incident is, however, rather at odds with the evidence given in this respect by Mr Jamieson, which although not entirely satisfactory, suggested that no such incident occurred.

85 In this respect, the Tribunal does not believe Mr Jamieson. For reasons that will be explained in greater detail below, the Tribunal finds that this event occurred. This finding of itself is enough to base the conclusion that Mr Jamieson displayed a generally sexist attitude. Of course his denial of the incident re-enforces this conclusion.

86 The conclusion in respect of the pervasive nature of this attitude of sexism in the Parking Unit is based on the evidence of Mr Strong and Ms Stockwell. In the period during which Ms Williams was employed as a Parking and Information Officer there existed within the Parking Unit a pervasive sexist attitude on the part of some male officers. Although there has been a focus on Messrs Gibson and Jamieson, it is evident that they were not the only officers who held this attitude.

87 Mr Strong eventually accepted this much in his evidence. His evidence can generally be understood by his agreement that the effort to stamp out these sexist attitudes in the Parking Unit became "concerted" and were brought into "sharper focus" only in 2001<sup>31</sup>. What is more, Mr Strong's evidence was to the effect that large strides were made early, that is from 1998, with the appointment of Ms Stockwell, but that with her promotion out of the Parking Unit in 1998 this rate of cultural change plateaued. Although some attempt was made to explain this plateau or stagnation as relative to the rate of early change, a "shortening of step" conforms to Ms Stockwell's evidence to the effect that after her departure she had been approached by a number of officers who had, in effect, complained of regression within the Parking Unit.<sup>32</sup> The importance of this evidence is that it was evident to the Tribunal that senior officers of the City were aware in 2000 that the old and unsatisfactory attitudes in the Parking Unit had not been stamped out.

88 What is more, the Tribunal accepts that with the appointment of Ms Stockwell in 1998 and the commendable efforts that she undertook, these attitudes were changing rapidly. Accordingly the City was aware at

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<sup>30</sup> T565-566 of 20 December 2002.

<sup>31</sup> T86 of 14 February 2003.

<sup>32</sup> T45-49 of 12 February 2003.

all times that a concentration on these matters reaped significant, immediate and acute results. Equally they were aware that attitudes regressed with Ms Stockwell's movement out of the Parking Unit management in 1999.

89 The sharpening of the focus on these issues again in 2001 was after the making of Ms Williams' complaints and after Ms Williams had been subjected to this pervasive and oppressive atmosphere of sexism in the work place. The fact that a sharpening was required in 2001 is ineluctable evidence of the existence of an unsatisfactory environment in 2000.

### **Specific allegations made**

#### **Early incidents allegedly involving Mr Gibson**

##### **"women should not in this job"**

90 It is to be recalled that the allegation is that in or around April 2000 Mr Gibson stated to Ms Williams words to the effect that "women should not be in this job", see Amended Points of Claim par 8 Particular (a).<sup>33</sup>

91 Although the making of such a statement is consistent with what the Tribunal has concluded to be the general attitude of Mr Gibson, there are factors which cast serious doubt upon whether this occurred. First, Ms Williams gave evidence to the effect that she noted this comment in her notebook. For the reasons outlined earlier, the fact that a matter found its way into the notebook is not greatly probative. Second, it is difficult to comprehend how this incident could have occurred in "April 2000", when it is likely that Ms Williams employment commenced in May. Of course, this matter would have been explicable as an error, but this explanation was not given. Third, Ms Williams seems never to have complained of this comment before the making of this complaint, when there were many prior obvious opportunities for her to have complained.

92 Ms Williams' evidence in respect of this matter was unconvincing. Her evidence was evasive and extremely vague.

93 The Tribunal is of the view that this incident did not occur. Accordingly, the Tribunal need not consider further whether this matter, of itself constitutes a contravention of s 11(2) of the Act as contended. This complaint is dismissed.

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<sup>33</sup> T195 of 17 December 2002 (XXN).

### Mr Gibson being aggressive toward Ms Williams during training

94 It is to be recalled that Ms Williams alleges that during or immediately after the training period she worked with Mr Gibson on a beat and refused to issue and infringement in circumstances where Mr Gibson thought that she ought to have done so. Ms Williams alleges that Mr Gibson then became aggressive toward her.<sup>34</sup>

95 This incident highlights an important matter that lies at the heart of many of Ms Williams' specific complaints. Ms Williams attributes many of the incidents which she found unpleasant and upsetting whilst she was employed in the Parking Unit (in the terms of s 8 of the Act; her "treatment") to her sex. In essence Ms Williams contends that particular officers treated her in particular ways because of her gender.

96 There is a different possible explanation for many instances of her treatment, even if it is accepted that such incidents occurred. The alternate explanation is that Ms Williams was treated in the way that she was because she was incompetent or personally annoying for one reason or another, but not by reason of her sex. The evidence of Ms Hoekzema exemplifies this explanation. As noted above, Ms Hoekzema was a most impressive witness. Her evidence was forthright, clear and given in a manner which suggested complete detachment, even though she was at material times and remains an employee of the Respondent. Ms Hoekzema's evidence, which the Tribunal accepts, was to the effect that after several months on the job, and that is by August 2000, Ms Williams was unable to identify the infringement codes for the Autocite, was unable to competently operate the Autocite, did not know the parameters of her beat, did not know street locations and was unable to absorb or comprehend information<sup>35</sup>. This resulted in Ms Williams continually calling Ms Hoekzema for assistance, to a point where Ms Hoekzema became "fed up" and told Ms Williams not to contact her further<sup>36</sup>. In this respect, Ms Hoekzema treated Ms Williams in the way that she did not because of (*ex hypothesi*) Ms Williams' sex, but because Ms Hoekzema considered Ms Williams incompetent in the job.

97 It is necessary to point out that this assessment of Ms Williams, both as a person and as a Parking and Information Officer, was not universal. A number of witnesses called by Ms Williams gave evidence to the

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<sup>34</sup> T63 of 16 December 2002.

<sup>35</sup> T83-85 of 12 February 2003.

<sup>36</sup> T85 of 12 February 2003.

opposite effect. The relevant point is, however, that at least some officers, Ms Hoekzema being one, did consider Ms Williams incompetent.

98 There is a further alternative explanation for aspects of Ms Williams treatment by certain officers; overly refined sensitivity on Ms Williams part. The Tribunal heard a deal of evidence to the effect that, for instance, Mr Gibson was in his dealings with all people rather direct and blunt. This was confirmed by aspects of his evidence; for instance referring to certain officers as "lazy sods". Accordingly, behaviour that appeared to Ms Williams as rude may have been explicable simply on the basis of Mr Gibson's bluntness. Of course, Mr Gibson could have treated people of all gender equally bluntly in which event the provisions of the Act are not attracted, even if to a person of refined sensibility his behaviour was offensive. The concentration of the Act is differential or less favourable treatment not ill treatment *per se*.<sup>37</sup>

99 Even though the Tribunal has concluded that Mr Gibson held at material times sexist attitudes, and that this attitude is relevant, it is evident to the Tribunal that the explanation for his behaviour in respect of certain incidents involving Ms Williams, may not have been sexism.

100 The Tribunal formed the view that Ms Williams had a too refined sensibility. The reasons for this are detailed below.

101 In respect of this specific complaint, of aggressive behaviour by Mr Gibson, the Tribunal is not convinced that it occurred. It is inconsistent with Ms Williams' evidence at T245 on 17 December 2002 that she initially got on reasonably well with Mr Gibson. As with the complaint of Mr Gibson stating that "women should not be in this job", the Tribunal concludes that this matter has simply been concocted by Ms Williams. Again, the fact that this matter was not raised by Ms Williams until the making of this complaint smacks of materially recent invention.

102 In light of this finding that this incident did not occur the Tribunal need not consider further whether this matter, of itself is capable of constituting a contravention of s 11(2) of the Act as is contended. This complaint is dismissed.

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<sup>37</sup> In observing thus, the Tribunal is of course, cognizant of the terms of s.5 of the Act.

**Mr Gibson stating that the Parking Unit was "turning into a pansy place"**

103        It will be recalled that Ms Williams alleges that during the very early stages of her work at the City Mr Gibson stated to Ms Williams or to others in the presence of Ms Williams that the Parking unit was "turning into a pansy place", connoting that it was becoming "too feminine".<sup>38</sup>

104        Mr Gibson denied saying anything of the sort.<sup>39</sup>

105        Importantly, Mr Strong, confirmed hearing this expression used by male officers when women started to be employed as Parking and Information Officers and that it likely persisted to 2000<sup>40</sup>.

106        In spite of Mr Gibson's denial, the Tribunal finds that Mr Gibson made such comments. It is consistent with the evidence of Mr Strong. Mr Gibson's denial was simply unconvincing.

107        In light of this finding it is necessary to deal squarely with the Complainant's contention that the making of this comment by Mr Gibson constitutes a contravention by the City of s 11(2)(a) and (d) of the Act.

108        Section 11(2) of the Act is in the following terms:

*"It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex, marital status or pregnancy —*

*(a) in the terms or conditions of employment that the employer affords the employee;*

...

*(d) by subjecting the employee to any other detriment.*

109        The precise terms of this complaint were not adequately explicated. It can, however, be supposed that the contention is that Ms Williams was subjected to a detriment by the City, contrary to s 11(2)(d) of the Act, in requiring her to work in an environment in which comments of the nature of that found to have been made by Mr Gibson were able to be made. The contention would then continue; that in so subjecting Ms Williams to this environment the City treated Ms Williams less favourably than in materially undifferentiated circumstances it would have treated a man.

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<sup>38</sup> T67 of 16 December 2002.

<sup>39</sup> T543 and T547 of 20 December 2002.

<sup>40</sup> T102 of 15 February 2003.



110           Alternatively, or perhaps additionally, the contention might be supposed to be that requiring Ms Williams to work in an environment in which comments of the nature of that found to have been made by Mr Gibson were able to be made was discriminatory treatment of Ms Williams as regards the terms and conditions of employment afforded her by the City, contrary to s 11(2)(a) of the Act.

111           Another way of viewing the matter, which appears to have been put by the Complainant, would be to seek to invoke s 161 of the Act. This appears so from par 47 of the Amended Points of Claim.

112           As to the former formulation, the contention is similar to that advanced in cases such as *Kwa v Secretary for Local Government* [1987] EOC 92-213, *Smith and Anor v Sandwood Motel Pty Ltd* [1994] EOC 92-577 and *Horne and Anor v Press Clough Joint Venture* [1994] EOC 92-591.

113           In this respect, as regards s 11(2)(d) of the Act, three essential questions arise:

- (a) Was the fact that Ms Williams worked in an environment in which comments of the nature of that found to have been made by Mr Gibson were able to be made a detriment?
- (b) If so, was Ms Williams subjected to this detriment by the City?
- (c) If so, in so subjecting Ms Williams to such detriment was the City treating her less favourably than in materially undifferentiated circumstances the City would have treated a man?

114           The "interplay" of substantive provisions of the Act, in the sense of contravention creating sections (such as s 11(2)), and those provisions which define relevant discrimination (such as s 8(1)), is in some respects complex.

115           Provisions of the Act, such as s 8(1), operate on a premise of differential treatment in similar circumstance and often in a hypothetical similar circumstance, i.e. "would treat".

116           As the making of sexist and sexually derogatory comments is, practically, a work related detriment to which women are uniquely subjected, it is difficult to conceive the similar or hypothetically similar circumstance in which to postulate the criterion of differential treatment.

117           Be these matters as they may, the Tribunal concludes that in requiring Ms Williams to work in an environment in which comments of

the nature of that found to have been made by Mr Gibson were made and were customarily made was subjecting her to a detriment within the meaning of s 11(2)(d) of the Act. Requiring a woman to work in an environment in which sexually derogatory comments, such as that the presence of women has turned the work place into a "pansy place", is to subject a woman to a detriment; one that is very real and tangible. Such comments degrade. The making of such comments is no less detrimental than requiring a woman employee to be exposed to explicit pornographic images of women in the work place, as was the case in *Horne and Anor v Press Clough Joint Venture* [1994] EOC 92-591. Quite simply, employers are required by the Act to provide work places and work environments free from habitual sexually derogatory comments by fellow workers.

118 Following from this, the issue that next arises is whether the City subjected Ms Williams to this detriment. It is to be remembered that this complaint is against the City, not Mr Gibson<sup>41</sup>. The question of *subjection to detriment* by the City can be postulated as; was the City aware of such matters? *Ex hypothesi* if an employer is completely unaware of an incident, it might be contended that, even though a detriment, an employee has not been *subjected to it* by the employer. However interesting this question might be, it does not arise in this Inquiry. The evidence of Mr Strong was clear. He was aware that in 1998 conduct of the nature of that found to have been engaged in by Mr Gibson was part of the work place culture in the Parking Unit, and that although improvements had been made, the uttering of such comments likely persisted to 2000. The bringing of these attitudes in this work place to a "sharper focus" in 2001 was too late. However hard the City might have thought it was working to eradicate this sort of behaviour was not hard enough. It should not have been expected that it could have occurred in 2000.

119 Relevant to this question is evidence that was led as to equal opportunity training provided to employees and documented equal opportunity policies of the City. Without outlining it all in these reasons, it is sufficient to note this. The Tribunal is satisfied that the City prepared written policies in respect of equal opportunity. The Tribunal is not at all satisfied on the basis of the evidence led that the City in 2000 made a genuine attempt to eradicate sexist behaviour and attitudes amongst the members of the Parking Unit. Mr Strong's evidence, outlined above, was in this respect compelling.

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<sup>41</sup> The alternative, relying upon s.161 of the Act is considered below.

120 Next, the Tribunal has concluded that in subjecting Ms Williams to this detriment, the City treated her differently than it would otherwise have treated a man. Quite simply no male employee was, on the evidence led, required, or could it be conceived, could or would have been required, to work in an environment in which sexually derogatory comments were made and directed at him.

121 Accordingly, this complaint is substantiated.

### **Mr Gibson yelling at a tourist whilst with Ms Williams**

122 It will be recalled that Ms Williams alleges that during the very early stages of her work at the City Mr Gibson yelled aggressively at a tourist from a vehicle in which he was travelling with Ms Williams, see Amended Points of Claim par 8 Particular (c).<sup>42</sup>

123 Mr Gibson denied that this incident occurred.<sup>43</sup>

124 A deal of conflicting evidence was led as to Mr Gibson's manner whilst on the job. He was variously described as aggressive, loud, unsubtle, "extremely polite", "not aggressive", "rigid", "nice". Mr Gibson described himself as "very firm" and as taking a "hard line" on illegal parking.<sup>44</sup>

125 By reason of Mr Gibson's appreciation of his own manner and the general descriptions given it by a number of witnesses the Tribunal finds that it is likely that during the course of working with Ms Williams Mr Gibson spoke to people in a way that Ms Williams found offensive and broadly in the manner described by her.

126 This finding does not constitute the subjection of Ms Williams to detriment within the meaning of s 11(2)(d) of the Act, or the affording her of sexually discriminatory terms or conditions of employment, within the meaning of s 11(2)(a).

127 Clearly Mr Gibson and Ms Williams had different styles of doing the job of a Parking and Information Officer and the complaint made is explicable wholly on this basis. As noted above, Ms Williams had a far too finely honed sensitivity to aggressive behaviour. Although this action of Mr Gibson may have appeared loud and aggressive it does not contravene the Act. This was a trivial matter. At worst this sort of

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<sup>42</sup> T63 of 16 December 2002.

<sup>43</sup> T552 of 20 December 2002.

<sup>44</sup> T549 of 20 December 2002.

behaviour is little more than one would customarily observe and hear in a suburban shopping centre car park on a typical Saturday morning. This complaint is dismissed.

### **Mr Gibson leaning across Ms Williams to answer her radio**

128 It will be recalled that Ms Williams alleges that during the early stages of her work at the City, while travelling in a car with Mr Gibson, he leaned across her and answered her radio.<sup>45</sup>

129 Mr Gibson denied that this incident occurred.<sup>46</sup>

130 Ms Williams evidence in respect of this matter was vague and her manner during the course of giving the evidence evasive<sup>47</sup>. The matter was not the subject of comment or complaint at the time that it was alleged to have occurred.

131 In light of these matters and the general wariness that the Tribunal has in respect of the evidence of Ms Williams we find that this incident did not occur.

132 It might be added that even if this incident did occur, it would in the opinion of this Tribunal be an entirely trivial matter. Only a person of Ms Williams' overweening sensitivity would have considered it of significance. If this incident had occurred, the Tribunal does not consider that it would have constituted the subjection of Ms Williams to detriment within the meaning of s.11(2)(d) of the Act, or the affording her of sexually discriminatory terms or conditions of employment, within the meaning of s 11(2)(a). Accordingly, this complaint is dismissed.

133 This disposes of the early incidents alleged to have involved Mr Gibson with the exception of the complaint that after Mr Jamieson allegedly told Ms Williams to "just get in the bloody car woman where you belong" Mr Gibson stated "That's the way, you tell her", see Particular (e) of par 8 of the Amended Points of Claim. This incident will be considered in its totality when considering the allegations against Mr Jamieson.

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<sup>45</sup> T69 of 16 December 2002.

<sup>46</sup> T522 of 20 December 2002.

<sup>47</sup> T69 of 16 December 2002.

## Early incidents allegedly involving Mr Jamieson

### Mr Jamieson saying to Ms Williams to "just get in the bloody car woman where you belong"

134 It will be recalled that Ms Williams alleges that at the commencement of a shift in August 2000, while Mr Gibson was handing over to Mr Jamieson, and while working with Ms Williams, Mr Jamieson stated aggressively to Ms Williams that she was to:

*"Just get in the bloody car woman where you belong."*

Particular (d) of par 8 of the Amended Points of Claim.

135 Mr Jamieson in effect denied saying this.<sup>48</sup> This matter has been considered above. In respect of this matter the Tribunal concludes that Mr Jamieson spoke the words alleged. We also conclude that Mr Gibson immediately thereafter spoke the words attributed to him. This conclusion is based upon inference from Mr Gibson's general sexist attitude the basis for which conclusion has been explained earlier in these reasons.

136 In this respect the Tribunal concludes that in requiring Ms Williams to work in an environment in which comments of the nature of that found to have been made by Mr Jamieson and Mr Gibson were able to be made was subjecting her to a detriment within the meaning of s 11(2)(d) of the Act. Requiring a woman employee to work in an environment in which sexually derogatory comments such as these is to subject a woman to a detriment.

137 Again, based on the evidence of Mr Strong, the City was aware that the uttering of such comments likely persisted to 2000. Again, the Tribunal has concluded that in subjecting Ms Williams to this detriment the City treated her differently than it would otherwise have treated a man. Again, no male employee was on the evidence led required or could it be conceived could or would have been required to work in an environment in which sexually derogatory comments were made and directed at him.

138 Accordingly, this complaint is substantiated.

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<sup>48</sup> T48 of 13 February 2003.

**Mr. Jamieson leaving Ms. Williams unaccompanied at night and compromising her safety**

139 Ms Williams alleges that on the evening following the making of the statements described above Mr Jamieson left Ms Williams unaccompanied at night and compromised her safety. Paragraph 10(b) of the Amended Points of Claim.

140 Mr Jamieson gave evidence to the effect that this did not occur.<sup>49</sup>

141 In this respect, there was uncontradicted evidence that the policy of the City was that officers working together at night were to stay within visual contact. The reasons for this are obvious. It is likewise obvious that on occasions this policy will not be followed. Common sense suggests inadvertence as an obvious explanation. Evidence was also led from Ms Milner to the effect that she had no great concern about being out of visual contact for short periods during the night shift<sup>50</sup>.

142 The Tribunal does not accept Ms Williams' evidence that this event occurred. It was alleged to have occurred during a time of great tension between Ms Williams and Mr Jamieson, being the week of night shift that they partnered each other. This was a time when Ms Williams' already acute sensitivity was piercing.

143 Again, even if this incident occurred, it would in the opinion of this Tribunal be a somewhat trivial matter. It would not have constituted the subjection of Ms Williams to detriment within the meaning of s 11(2)(d) of the Act, or the affording her of sexually discriminatory terms or conditions of employment, within the meaning of s 11(2)(a).

144 This complaint is dismissed.

**Erratic and dangerous driving by Mr Jamieson**

145 Ms Williams alleges that during this week of night shift Mr Jamieson drove in a deliberately unsafe manner, laughed hysterically and made statements such as, "We are all going to die". Particulars (a) and (b) of par 11 of the Amended Points of Claim.

146 Again, these matters were denied by Mr Jamieson.<sup>51</sup>

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<sup>49</sup> T58 of 13 February 2003.

<sup>50</sup> T98 of 12 December 2002.

<sup>51</sup> T50 of 13 February 2003.

**Mr. Jamieson leaving Ms. Williams unaccompanied at night and compromising her safety**

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<sup>49</sup> T58 of 13 February 2003.

<sup>50</sup> T98 of 12 December 2002.

<sup>51</sup> T50 of 13 February 2003.

147 Mr Woods, a Parking and Information Officer, gave evidence to the effect that he too had similar strange experiences while driving with Mr Jamieson. There is no basis not to accept Mr Woods' evidence in this respect, particularly as the evidence was elicited in answer to a question from a member of the Tribunal at the conclusion of Mr Woods' evidence<sup>52</sup>.

148 Mr Jamieson presented as a witness for whom giving evidence and recounting these incidents was an ordeal. Mr Jamieson became very upset at different points of his evidence and clearly the events involving Ms Williams and other officers of the City have had a marked and dreadful effect upon him. He was extremely tense while giving his evidence. He was subjected to various attacks on his credit and inferences were urged to be drawn from matters that were not thoroughly canvassed before the Tribunal, in particular the circumstances of his dismissal from the City.

149 Corroborated as it is by the evidence of Mr Woods, the Tribunal finds that during the week in August while Ms Williams and Mr Jamieson were on night shift together, Mr Jamieson drove their vehicle in a deliberately unsafe manner, laughed hysterically and made statements such as, "We are all going to die".

150 Even if, however, requiring Ms Williams to endure such conditions constituted a detriment within the meaning of s 11(2)(d) of the Act (which is likely) and even if Ms Williams was *subjected* to this detriment by the City (which is doubtful) such subjection to detriment could not constitute differential treatment of Ms Williams by reason of her sex. This is because Mr Woods endured similar. Accordingly, this complaint is dismissed.

**Mr Jamieson calling Ms Williams a "bitch" in the workplace and making other sexist remarks relating to Ms Williams appearance**

151 It will be recalled that it is alleged that on diverse Mr Jamieson called Ms Williams a "bitch" in the workplace and made other sexist remarks relating to Ms Williams appearance<sup>53</sup>.

152 Mr Jamieson denied these matters.

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<sup>52</sup> T405 of 18 December 2002.

<sup>53</sup> Particulars (g) and (h) of Paragraph 11 of the Amended Points of Claim.



153 With difficulty the Tribunal has concluded that such events occurred, and that Mr Jamieson did refer to Ms Williams using offensive and derogatory terms relating to her gender. This conclusion is based upon inference from the fact which has been found; that Mr Jamieson held attitudes consistent with the making of such comments, and that he uttered other sexually derogatory comments as noted above. Further, and again for reasons outlined, Mr Jamieson did not present as a witness whose denials attracted great weight.

154 It follows from these findings that in requiring Ms Williams to work in an environment in which such comments were able to be made was subjecting her to a detriment within the meaning of s 11(2)(d) of the Act. Requiring a woman employee to work in an environment in which sexually derogatory comments such as these is to subject a woman to a detriment. Quite simply, no woman ought be expected to tolerate a work place in which she is referred to as a "bitch" or in which comments relating to her appearance are made.

155 Again, based on the evidence of Mr Strong, the City was aware that the uttering of sexist comments occurred in this work place up to 2000. In subjecting Ms Williams to this detriment, the City treated her differently than it would otherwise have treated a man. Again, no male employee was on the evidence led required or could it be conceived could or would have been required to work in an environment in which abusive, sexually derogatory comments were made and directed at him. Accordingly, this complaint is substantiated.

156 This then disposes of the allegations involving the early conduct of Mr Gibson and Mr Jamieson.

157 The findings that have been made make it unnecessary to consider whether the City is liable pursuant to s 161 of the Act.

### **Further allegations against Mr Hamid**

158 Ms Williams asserts at par 12 of the Amended Points of Claim that various contraventions of the Act occurred by reason of the conduct of Mr Hamid. In particular it is alleged that various provisions of s 11(2) of the Act were contravened in the following respects:

- (a) By Mr Hamid imposing informal performance assessment of Ms Williams and having other officers scrutinise her, Particulars (a) and (b) of par 12 of the Amended Points of Claim.

- (b) By Mr Hamid raising trivial issues at Ms Williams regularly scheduled performance review, Particular (d) of par 12 of the Amended Points of Claim.
- (c) By Mr Hamid directing Ms Williams to remain at work on the street during extremely hot weather and thereby placing her health at risk, Particulars (e) and (f) of par 12 of the Amended Points of Claim.
- (d) By refusing to deal with complaints made by Ms Williams about Mr Jamieson on 16 November 2000, par 13 of the Amended Points of Claim.

159           These various incidents were alleged to have taken place at various times between about October and December 2000. They post date the matters that have been dealt with earlier in these reasons. Each matter will be considered in turn.

#### **Mr Hamid informally assessing the performance of Ms Williams**

160           Mr Hamid denied that he asked or directed other officers to spy on Ms Williams<sup>54</sup>. There was no credible evidence led by the complainant to support this contention. The Tribunal concludes that it did not occur.

161           In dealing with the contention that Mr Hamid personally scrutinised Ms Williams' performance more rigorously or differently than other officers, it is necessary to deal more broadly with issues of Ms Williams' performance in the job in the period from August through to December 2000.

162           A great deal of evidence was led as to Ms Williams shortcomings as a Parking and Information Officer. Indeed, Mr Kane who appeared for Ms Williams at the Inquiry conceded that throughout her period with the City Ms Williams had problems with one of the basic requirements of the job, familiarity with locations and street names of her beat.

163           In addition to this matter, there was a veritable deluge of evidence led by the Respondent as to Ms Williams' difficulties in the job. These ranged from problems operating the Autocite, refusal to remain on her beat working, too regular taking of breaks, ignorance of the basic traffic regulations being enforced (i.e. the Local Law). This evidence was led by a number of witnesses the evidence of whom the Tribunal accepts unreservedly. This is the case with Ms Hoekzema and Mr Baird.

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<sup>54</sup> T17 of 14 February 2003.

164 It was obvious to the Tribunal from the evidence led that for the whole of the time that Ms Williams was employed by the City she was essentially incapable of performing all aspects of the job of a Parking and Information Officer, indeed incapable of properly performing the non-public relations aspect of the job. It was further obvious to the Tribunal from the evidence led that Mr Hamid and those superior to him in the Parking Unit were aware of this from an early period and further obvious to the Tribunal that Ms Williams refused to accept her own shortcomings in this regard.

165 There is little doubt that Mr Hamid spent more time assessing the performance of Ms Williams than other officers. This is because Ms Williams struggled with the job. It would be expected that Mr Hamid as Ms Williams' supervisor would spend more time supervising her performance than other officers who were not experiencing difficulties.

166 Accordingly, to the extent that Ms Williams was subjected to greater scrutiny than other officers by Mr Hamid, the Tribunal is satisfied that the sole reason for this was Mr Hamid's perception that Ms Williams' performance in the job was poor and for this reason required greater scrutiny. The Tribunal finds that it was no part of Mr Hamid's reason or motivation in so acting that Ms Williams was a woman or that in so acting he treated her any differently than he treated or would have treated a male officer experiencing the same difficulties or with the same shortcomings.

167 Accordingly, this complaint is dismissed.

#### **Mr Hamid raising trivial issues at Ms Williams performance review**

168 Quite simply there was no evidence led as to this contention. In none of the evidence led was there any basis for a contention that Mr Hamid raised trivial matters with Ms Williams. Accordingly, this complaint is dismissed.

#### **Mr Hamid directing Ms Williams to remain at work on the street during extremely hot weather**

169 The evidence in respect of this matter is largely uncontentious and can be appropriately summarised as follows. During the latter part of 2000 Mr Hamid instructed Ms Williams that she was to remain at work on the street on her beat. This was as a result of the conclusion reached by Mr Hamid that Ms Williams spent too much of her time whilst at work socialising with other officers and not working on her allocated beat.

170 On a particularly hot day Mr Woods, a fellow Parking and Information Officer, invited Ms Williams to leave her beat to have a drink and cool down. Ms Williams refused to leave her beat and responded that had been instructed by Mr Hamid that she was not to leave the beat without speaking with him before hand.

171 Shortly after this Mr Woods and another officer, Ms Lutz, confronted Mr Hamid about this and told him what Ms Williams had said and was doing.

172 Immediately thereafter Mr Hamid and Mr Keogh, the other supervisor, drove to the beat that Ms Williams was supposed to be working to try and locate her and explain to her that she could leave the street for refreshment on hot days such as that one.

173 This incident occurred in December 2000. By this time, the relations between Mr Hamid and Ms Williams were hostile. Common sense would suggest that the most obvious explanation of how such a course of events could have come about is that Ms Williams either misconstrued what she had been told by Mr Hamid, or Mr Hamid's explanation was insufficiently precise. Either way, the evidence is clear that once Mr Hamid became aware that Ms Williams laboured under this misapprehension, he sought immediately to correct it.

174 This uncontradicted evidence makes it clear that the contention that in directing Ms Williams to remain on the beat in hot weather Mr Hamid treated her differently than he would have treated a male officer is misconceived. This complaint is dismissed.

#### **The circumstances surrounding Mr Jamieson's complaint against Ms Williams**

175 On 15 November 2000 Mr Jamieson wrote to Mr Hamid outlining what he described as harassment arising from things that were being said about him by Ms Williams, *inter alia*, that he was a "hard booker" and that Ms Williams refused to work with Mr Jamieson.

176 The Tribunal understood from the evidence that the notion of a "hard booker" connoted an officer who was inflexible and issued a large number of parking infringements.

177 On 16 November 2000 Mr Hamid met with Ms Williams and showed her a copy of Mr Jamieson's letter. Mr Hamid took a copy of the

letter and met with Ms Williams during the day while she was on duty on a beat.

178 Ms Williams alleges a contravention of the Act in that in the course of this conversation she mentioned to Mr Hamid that she was being harassed by Mr Jamieson, that she wanted this to cease to which Mr Hamid replied:

*"put in writing. I don't have time for this",*

Paragraph 13 of the Amended Points of Claim.

179 It is contended that this conduct constituted a contravention of s 11(2)(a) of the Act. It is to be supposed that there are in fact two aspects to this allegation; first the direction to put any complaint in writing and second the statement that Mr Hamid did not have time to deal with Ms Williams' complaint.

180 As to the former, Mr Hamid stated in his evidence that he did not solicit or speak with Mr Jamieson about this letter prior to receiving it<sup>55</sup>. Mr Jamieson's evidence was rather different. He stated that he had a discussion with Mr Hamid about his concerns, but that after they could not be resolved informally, or without a written 'complaint', Mr Hamid stated that for the matter to progress Mr Jamieson would need to put the complaint in writing<sup>56</sup>.

181 Little turns on this different recollection of relevant events, although Mr Hamid was rather vague in this respect in his evidence, and Mr Jamieson's evidence is rather at odds with evidence given by Mr Hamid that he did not encourage officers to make formal written complaints. In any event, even if it were the case that Mr Hamid's stated to Ms Williams to put her complaint in writing, he did not treat Ms Williams differently than he did or would have treated a male officer. It would appear that this is the precise advice that he had earlier given to Mr Jamieson in respect of his complaint.

182 As to the allegation that Mr Hamid stated to Ms Williams on 16 November that he did not have time to deal with her complaint, and thereby less favourably treated her, Mr Hamid denied that he had said this<sup>57</sup>. In respect of this matter, the Tribunal prefers the evidence of Mr Hamid. Mr Hamid's evidence is generally preferred to that of

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<sup>55</sup> T89 of 13 February 2003.

<sup>56</sup> T9-10 of 13 February 2003.

<sup>57</sup> T91 of 13 February 2003.

Ms Williams. Further, Mr Hamid presented as a person of great patience and careful consideration. In light of this, it is improbable that he would have dealt with Ms Williams in the manner contended. It might also be added that the contention is inconsistent with the unquestioned fact that Mr Hamid took the effort to take the letter to Ms Williams out on the street and speak with her about.

183 One further matter of significance arises from this incident. Mr Hamid gave evidence to the effect that during the course of this conversation Ms Williams stated to him that she considered the matters raised by Mr Jamieson to be trivial and that, contrary to the advice offered by Mr Hamid to arrange for a mediator to intervene in the controversy between Ms Williams and Mr Jamieson, Ms Williams considered that the matters could be resolved by Ms Williams and Mr Jamieson simply as between themselves<sup>58</sup>. Ms Williams' recollection of events is a little different. She denied using the term "trivial"<sup>59</sup>. However, in what was later a formal complaint made against Mr Jamieson on 30 November 2000, Ms Williams described this meeting with Mr Hamid in the following terms:

*"Sadak [i.e. Mr Hamid] did suggest a mediator. I declined as I felt that the matter was childish and on hearsay, and that we were two grown ups there was no need for this meeting [i.e. mediation]."*<sup>60</sup>

184 Ms Williams confirmed in her evidence that she used the term childish in this conversation and that she wished to meet alone with Mr Jamieson to sort issues out.<sup>61</sup>

185 The significance of this matter is that it suggests that at this time, 16 November 2000 - which was of course after the August incidents involving Mr Jamieson - Ms Williams considered the matters that were between them as "childish", even if not trivial, and that she was wanting to meet alone with Mr Jamieson to seek to resolve them. It follows from this that at this time Ms Williams was clearly not greatly traumatised by the events of August 2000 and was willing to meet alone with Mr Jamieson.

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<sup>58</sup> T90-91 of 13 February 2003.

<sup>59</sup> T279-281 of 18 December 2002.

<sup>60</sup> See T280 of 18 December 2002.

<sup>61</sup> T280-281 of 18 December 2002.

### **The events of 30 November 2000**

186 Three events of significance occurred on 30 November 2000. Although the complainant sought to treat the latter of these events as unrelated, this was patently not so.

187 The first of these events concerned Ms Williams assisting a member of the public in parking his car in a car bay that was difficult to access. Ms Williams actually parked the vehicle for a member of the public.

188 The second incident was a meeting or confrontation between Ms Williams and Mr Jamieson following the parking incident.

189 The third event was the making by Ms Williams of a written complaint concerning conduct of Messrs Gibson and Jamieson to the Chief Executive of the City, Mr Hunt.

### **Ms Williams parking the car of a member of the public**

190 Certain essential facts in respect of this matter were uncontroversial. Ms Williams in the course of her duties came upon a member of the public who was having difficulty parking his vehicle. After seeking to assist, Ms Williams actually got in the vehicle and parked it.

191 Although it can readily be understood that such a practice is not one that the City would encourage, no harm was done and, it would reasonably have been expected that in the ordinary course such an incident would have been considered of little relevance.

192 The factually controversial aspect of this incident is Ms Williams' allegation that Mr Jamieson came upon Ms Williams parking the car, did nothing to assist and indeed, appeared to be surreptitiously avoiding being seen in the vicinity.

193 Mr Jamieson accepted that he was in the vicinity and observed what had occurred. He accepted that he did not actively assist Ms Williams, but stated that he was not asked to assist and that once Ms Williams had parked the car and he was satisfied that all was well he simply moved on.<sup>62</sup>

194 As with many of the matters raised in this Inquiry, a great deal of time was spent in evidence on a matter that was simply of supreme triviality.

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<sup>62</sup> T14 of 13 February 2003.

195 It matters not whether Ms Williams version of the incident, corroborated in material respects as it was by the evidence of Mr Goulden, or that of Mr Jamieson is "correct". Indeed, this incident is illustrative of a phenomenon that confronts Courts and Tribunals often – observers of an incident often have different, but equally "accurate", observations, impressions and perceptions.

196 The reason why in any event it matters not which of the perceptions of this incident is "correct" is because of what transpired thereafter. After the incident Ms Williams spoke with Mr Hamid. Ms Williams' evidence is that in this conversation Mr Hamid, "...made no comment ... as far as I can recall or offer of any assistance".<sup>63</sup> Ms Williams' recollection of this conversation was vague. Mr Hamid on the other hand stated in his evidence that; Ms Williams explained the incident to him, emphasising that Mr Jamieson did not help her; he accepted what she said; thought Mr Jamieson's conduct odd and unsatisfactory<sup>64</sup>. Mr Hamid's evidence was that although he did not recall saying so he was confident that that he would have stated to Ms Williams that he would raise the matter with Mr Jamieson; but that Ms Williams insisted that she would speak with Mr Jamieson about the incident and that she would do so on her own. Mr Hamid's evidence was that he then stated that if this was to occur he ought also attend as he was aware that Mr Jamieson would not meet Ms Williams without a third party present, but that Ms Williams insisted on speaking with Mr Jamieson on her own.<sup>65</sup>

197 Mr Hamid's evidence in this respect, although vague, is plausible and believable. The Tribunal prefers his evidence in this respect to that of Ms Williams, because Ms Williams evidence was in so many respects unsatisfactory and for reasons that have been expressed earlier in these reasons and as will come to be discussed, the Tribunal has a deal of difficulty accepting Ms Williams evidence where it conflicts with evidence of an otherwise credible witness. In this respect, Mr Hamid was a credible witness.

198 It follows from this finding that nothing in the conduct of Mr Hamid on 30 November could be construed in any way as treatment of Ms Williams less favourable than that which Mr Hamid would have meted out to a male officer. It matters not whether Mr Hamid's response was optimal or wise.

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<sup>63</sup> T123 of 16 December 2002.

<sup>64</sup> T100-102 of 13 February 2003.

<sup>65</sup> T101 of 13 February 2003.



199 Likewise, it follows from the finding of fact that exposing Ms Williams to the conduct alleged against Mr Jamieson was not the subjection of Ms Williams to a detriment by the City. Once Mr Hamid was made aware of it, he stated that the conduct was unacceptable and stated that he would speak with Mr Jamieson about it.

200 Accordingly, this complaint is dismissed.

### **Ms Williams confrontation with Mr Jamieson and Mr Hamid's response**

201 It is uncontroversial that some time after speaking with Mr Hamid, Ms Williams approached Mr Jamieson while he was on duty on a beat. All aspects of what followed were the subject of contradictory testimony. Put simply, Ms Williams' evidence was that she civilly approached Mr Jamieson expressing a desire to "bury the hatchet"<sup>66</sup> but that Mr Jamieson refused to speak with her other than with a mediator present.

202 Mr Jamieson's evidence of this conversation was that Ms Williams approached him aggressively and threateningly. She threatened that unless matters were resolved there and then she would make a formal complaint against him. Mr Jamieson stated in his evidence that he was upset by Ms Williams' tone and manner and felt threatened by it.<sup>67</sup> Mr Jamieson confirmed that he stated to Ms Williams that he would speak with her with a mediator present.<sup>68</sup>

203 It is to be noted that in par 20 of the Amended Points of Claim, it is contended that:

*"Mr. Jamieson refused to resolve the issues with the Complainant either directly or with the assistance of a mediator."*

204 This contention does not accord with the evidence.

205 The direct relevance of this factual dispute is that it is contended that Mr Hamid, aware as he was of the conflict between Mr Jamieson and Ms Williams, did not on 30 November or thereafter explain to Ms Williams the options available to her under the City's various grievance procedures. It is contended that thereby s 11(2)(a) of the Act was contravened, see Amended Points of Claim par 21.

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<sup>66</sup> T120 of 16 December 2002.

<sup>67</sup> T15-16 of 13 February 2003.

<sup>68</sup> T15 of 13 February 2003.

206 This contention is completely misconceived. On the very day of the confrontation, Ms Williams made a formal complaint. It is barely conceivable therefore that Mr Hamid could have done anything other than allow this complaint to take its course thereafter.

207 In any event, as a general proposition, having regard to the totality of Mr Hamid's evidence and the manner in which he presented as a witness, the Tribunal does not accept that in any of the dealings that he had with Ms Williams did he treat her less favourably than he would have, in materially undifferentiated circumstances, treated a male officer. By November 2000 Mr Hamid had an extremely volatile work situation to manage. May well it be, although the Tribunal expresses no view, that he might have by certain different actions defused this situation. Again, this is not the point of this Inquiry.

208 Again, this complaint is dismissed.

### **Ms. Williams complaint to the City**

209 Ms Williams made a complaint against Mr Jamieson and Mr Gibson on 30 November 2000. The Tribunal has little doubt that the events of the day were the final impetus to Ms Williams making the complaint. Again it ought be noted that the Amended Points of Claim at par 25 oddly refers to the making of the complaint as resulting from the conversation between Mr Hamid and Ms Williams on 16 November, i.e. the discussion of Mr Jamieson's complaint of 16 November. Again, nothing much turns on this, but the Tribunal has no doubt that the precipitating cause of the making of the complaint by Ms Williams on 30 November were the events of earlier in that day.

210 Thereafter a process of investigation was commenced by the City into Ms Williams' complaint. Aspects of this process of investigation found separate complaints.

### **Sequence of events in the City's complaints investigations**

211 As noted, Ms Williams made a formal complaint concerning Messrs Jamieson and Gibson on 30 November 2000.

212 On 20 December 2000 Mr Jamieson lodged a formal complaint with the City concerning the conduct of a number of fellow officers, including Ms Williams and on 21 December 2000 responded to the complaint made against him by Ms Williams.

213 On 8 January 2001 the City advised Ms Williams of Mr Jamieson's  
complaint.

214 On 23 January 2001 Ms Williams' representatives wrote to the City  
seeking to stop the investigation that was being conducted by the City into  
Ms Williams complaint. The investigation ceased on 23 January 2001.

215 In the course of a great deal of evidence that related in various ways  
to these events, Ms Williams made various complaints.

216 For instance, Ms Williams complained that a copy of her complaint  
was actually given to Mr Jamieson and Mr Gibson. This is a  
misconceived complaint even if it is factually true, as contended by  
Ms Williams (though disputed by other witnesses) that the City did not  
advise her that this would occur. Ms Williams was advised throughout  
these complaints and in this Inquiry by officers of her union. If she was  
not advised by them then she should have been that the provision of the  
terms of her complaint to the people who were the subject of complaint  
was obvious, necessary and inevitable.

217 Ms Williams complains that Mr Jamieson in his complaint of  
20 December 2000 mimicked certain of the terminology that she used in  
her complaint. This is a matter of no significance whatever.

218 Without reviewing all of the evidence in minute detail, the Tribunal  
is satisfied that in investigating Ms Williams complaint made on  
30 November 2000 the City dealt with her in manner materially identical  
to that in which it would have dealt with a like complaint by a male  
officer. Indeed, the manner in which the City dealt with Ms Williams'  
complaint was materially identical to the manner in which it dealt with the  
complaint of Mr Jamieson.

219 Accordingly, these complaints are dismissed.

### **Allegations of victimisation**

220 In early December 2000 Ms Williams lodged a complaint with the  
Equal Opportunity Commission pursuant to s 83 of the Act. Ms Williams  
alleges that thereafter she was subjected to various detriments or acts of  
victimisation contrary to s 67 of the Act.

221 As this Tribunal stated in *Archer v State School Teachers Union*<sup>69</sup> at par 63 and par 64:

*"Section 67 is a provision of the Act in the contravention of which the Tribunal has a particular, specific, over-riding and overwhelming interest. Contravention of s.67 is a grave matter indeed. Any such contravention strikes at the essence of the proper, effective and uninhibited operation of the Act and the fulfilment of the objects enshrined and expressed in the Act.*

*... Any inquiry into contravention of s.67 is intensely factual. Unlike perhaps some other provisions of the Act, s.67 presents few difficult questions of construction or interpretation."*

222 Some of the matters contended to constitute a "detriment" for the purpose of s 67 of the Act that have been explicated by Ms Williams in the Amended Points of Claim are misconceived. For instance, as noted above, it is barely conceivable that the provision by the City to Mr Jamieson of the terms of Ms Williams complaint of 30 November 2000 could constitute victimisation, as contended at Particular (b) of par 34 of the Amended Points of Claim. This is not a detriment. Likewise, it is incomprehensible that the City could be said to have subjected Ms Williams to a detriment within the meaning of s 67 of the Act by receiving Mr Jamieson's response to Ms Williams complaint, as is contended at Particular (d) of par 34 of the Amended Points of Claim.

223 The acts said to contravene s 67 are outlined in par 34 of the Amended Points of Claim (excluding those that are simply misconceived) are:

- (a) That on 26 January 2001 Mr Ken Canagasabi, a fellow Parking and Information Officer, telephoned Ms Williams at home and made abusive, threatening and sexually inappropriate comments to Ms Williams via her answering machine.
- (b) That in or about February 2001 a "Health News" newsletter, with offensive annotations, was left in an area accessed by a number of employees of the City.
- (c) That in April 2001 Mr Jamieson shouted threats at Ms Williams from his car parked outside Ms Williams home at night.

224 These will be considered in turn.

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<sup>69</sup> EOT Matters 15 and 16 of 1999.

## The allegations concerning Mr Canagasaby

225 Ms Williams provided details to the Tribunal of the words which she says were left on her telephone message service on the evening of 26 January 2001. They were, in essence:

*"I have been watching you and following you. Watching you playing and feeling yourself. I know where you are and I am watching you now. I will get you."*

226 Ms Williams' evidence was emphatic that Mr Canagasaby was the person who spoke these words.<sup>70</sup>

227 Mr Canagasaby gave evidence before the Tribunal and denied saying these things or indeed ever telephoning Ms Williams.

228 An affidavit of a police officer, Senior Constable Philip Tapsell was read into evidence. His evidence was uncontradicted. Senior Constable Tapsell deposed that on 29 January 2001 he attended Ms Williams' home and listened to what he described as "an abusive message" left on Ms Williams message service. He described the message as "threatening, abusive and of a sexual nature".

229 The most obvious explanation for this course of events was that Ms Williams simply misidentified Mr Canagasaby. After all, no doubt a person motivated to make such a phone call and say such things in such circumstances would seek to conceal his identity.

230 As noted, Ms Williams was emphatic in her evidence that the call was made by Mr Canagasaby. She agreed that prior to this time she had got on well with Mr Canagasaby; that they had rarely spoken but had always exchanged greetings. Ms Williams expressed shock that Mr Canagasaby made such a call.

231 Mr Canagasaby's denial of making this call was entirely plausible. His evidence was entirely believable and is believed by the Tribunal. We specifically find that Mr Canagasaby did not make the telephone call which Ms Williams alleges. We do so because we find Mr Canagasaby to be a witness of unquestioned credit. There is absolutely nothing in the evidence led in this Inquiry that would suggest that he would have been motivated to have made or was capable of making such a call. He was not involved in the work place disputes involving Ms Williams. He was not

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<sup>70</sup> T127-129 of 16 December 2002, T185-186 of 17 December 2002.

aligned to any of the cabals that appear to have formed and bedevilled this workplace.

232 Rejection of Ms Williams evidence as to identity of the caller might be considered to cast doubt upon her credit in respect of this particular incident and generally. The Tribunal took a great deal of care to ensure that Ms Williams be presented openly with the option of equivocation as to the identity of the caller. This can be seen at T184-189 of 17 December 2002. Oliver Cromwell's famous plea, prior to the Battle of Dunbar, springs readily to mind:

*"I beseech ye in the bowels of Christ, think that ye may be mistaken."*

233 Ms Williams rejected that she might have been mistaken. It would be unfair to conclude from this that Ms Williams invented this whole incident. The Tribunal concludes that, contrary to her assuredness in this matter, Ms Williams is *in fact* mistaken.

234 In light of the finding that Mr Canagasaby did not make the telephone call which Ms Williams alleges, it is unnecessary to further consider this matter. The possibility that any message was left by another employee of the City or on behalf of such a person was not contended.

235 Accordingly, this complaint is dismissed.

### **The offensive annotations on the "Health News" newsletter**

236 The precise allegation made is that on a leaflet that was left in a common room used and frequented by Parking and Information Officers an unidentified officer scrawled annotations of a rather puerile nature. These annotations used mildly offensive language – the term "shit stirring".

237 There was nothing in the evidence led before the Tribunal to suggest that these annotations were directed at Ms Williams. The annotations in themselves are mildly offensive, but really little different in substance and tone to comments that one would hear sitting at a football match, sitting in a coffee shop or in a junior school playground.

238 There is nothing in this complaint whatever. It is dismissed.

## **The allegation concerning Mr Jamieson shouting threats at Ms Williams at her home**

239 Ms Williams alleges that in early 2001, after the making of the complaint to the Equal Opportunity Commission, upon returning home one evening after work, she observed Mr Jamieson in his car toward the end of the driveway to her home. When Ms Williams drove near to the car, Ms Williams alleges that Mr Jamieson yelled at her that he was going to "get her".<sup>71</sup>

240 Mr Jamieson denied this.<sup>72</sup>

241 This is a serious allegation. For the reasons that have been explained earlier in this decision, neither Ms Williams nor Mr Jamieson presented as witnesses of great credit. The Tribunal declines to make a finding of fact in respect of this incident on the basis that even if it be true that this incident occurred, this circumstance could not constitute the subjection of Ms Williams to a detriment *by the City*. It is, after all, the City that is the Respondent to this complaint, not Mr Jamieson. There is nothing in the evidence to suggest that the City was aware that an incident such as this was likely or possible prior to its occurrence. Of course, it has been found that the City required Ms Williams to work in an environment in which sexist comments were made. A threatening incident such as that alleged is of an entirely different character. There was simply nothing to suggest that the City could have contemplated that such a thing might have occurred. Accordingly, the City could not be liable in respect of this act, either directly through s 67, or by reason of s 161 of the Act.

242 It follows from this that all allegations of contravention of s 67 of the Act are dismissed.

243 It might be observed that Ms Williams does not allege that she was not re-employed in April 2001 by the City by reason of victimisation. That is, Ms Williams does not contend that the making of the complaint to the Equal Opportunity Commission was any part of the decision of the City not to re-employ Ms Williams when her contract came to an end in April 2001.

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<sup>71</sup> T142 of 17 December 2002; Particulars (g) and (h) of paragraph 34 of the Amended Points of Claim.

<sup>72</sup> T50 and T69 of 13 February 2003.

## Impairment discrimination

244 It will be recalled that Ms Williams also complains of contravention of s 66B(1) of the Act – discrimination on the grounds of an impairment. In this respect Ms Williams alleges that the City of Perth discriminated against her in respect of arrangements made for the purpose of determining whether she would be offered employment with the City of Perth after her initial one year contract came to an end in April 2001.

245 This complaint can be dealt with briefly.

246 The City initially employed Ms Williams on a one year fixed term contract which came to end in April 2001. On 3 March 2001 Ms Williams was involved in a further motor vehicle accident at work. She suffered from a back injury as a result.

247 By reason of this injury, Ms Williams was on leave when the City came to commence the process of filling the two one year fixed term positions. As it happened, at around this time the City was in fact seeking not only to permanently fill these two positions, but also to employ one or perhaps two additional Parking and Information Officers.

248 Ms Williams in par 39 and par 40 of the Amended Points of Claim contends that she was treated less favourably than in materially similar circumstances a person without a back injury was or would have been treated (in the meaning of s 66A(1) of the Act) by being required to:

- (a) "sit an interview ... that would last between two and three hours",
- (b) "complete a computer test while sitting down continuously for over an hour",
- (c) complete such a test continuously seated while a "male applicant" for the same position was allowed to move around the room in which the computer test was being conducted.

249 Why the gender of the applicant who was allegedly permitted to move around was thought material was not explained. As the Tribunal has understood this complaint, it is one of impairment discrimination only.

250 Ms Williams' evidence in respect of this matter was somewhat vague. It is clear, however, that Ms Williams gave no evidence nor was any other witness called by her to the effect that she was required to "sit an interview ... that would last between two and three hours". Indeed, the evidence was that Ms Williams participated in a short interview with an



employee of the recruiting firm<sup>73</sup>. Likewise, no evidence was led that during the conduct of a computer test administered by the recruiting firm another applicant for the positions was permitted to move around the room in which the computer test was being conducted.

251 Accordingly, these two complaints are dismissed.

252 The remaining complaint in reality amounts to this; that Ms Williams was not permitted to take short breaks to stretch her back during the course of taking a computer test, which was a component of the selection process<sup>74</sup>. Again, Ms Williams' evidence in respect of this matter was vague.

253 In respect of this matter Ms Williams called Mr Ross Anzar to give evidence. Mr Anzar was the officer who, along with Ms Williams, was employed on a fixed one year contract in April 2000. So in early 2001 he too applied for one of the permanent positions. Mr Anzar sat the test described by Ms Williams.

254 Mr Anzar's evidence was that the various elements of the testing, which included a spelling test and the computer testing, were run continuously and there was a time limit. However, he felt that he could have stopped and "had a breather if he had wanted to"<sup>75</sup>.

255 Although the Respondent did not call as a witness the employee of the recruiting agency who spoke with Ms Williams, it is simply incredible to suppose that Ms Williams would have been denied the opportunity to take breaks, when other applicants were given this opportunity. The evidence given by Ms Williams as to the manner in which the employee of the recruiting agency who dealt with her treated her suggests that she was treated kindly and thoughtfully.

256 By reason of the evidence of Mr Anzar, the vagueness of Ms Williams' evidence in this respect and issues as to Ms Williams' reliability as a witness, the Tribunal finds that Ms Williams was not in fact denied the opportunity to take short breaks to stretch her back during the course of taking the computer test component of the selection process.

257 Accordingly, this and all allegations of impairment discrimination are dismissed.

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<sup>73</sup> T160-161 of 17 December 2002.

<sup>74</sup> See T161 of 17 December 2002.

<sup>75</sup> T367 of 18 December 2002.

## Conclusions

258 Accordingly, the Tribunal finds that the City contravened s 11(2)(d) of the Act, by requiring Ms Williams to work in an environment in which comments of the nature of that found to have been made by Mr Gibson and Mr Jamieson were able to be made.

259 All other complaints are dismissed.

## Order to be made under s 127 of the *Equal Opportunity Act*

260 Section 127(b) of the Act provides a range of orders that might be made in respect of substantiated complaints. By s 127(b)(i), compensation not exceeding \$40,000.00 "for any loss or damage suffered by reason of the respondent's conduct" can be awarded. By s 127(b)(v) the Tribunal can decline to, in effect, make any order.

261 Some evidence was led as to the psychological effect that the matters that have been the subject of this Inquiry have had on Ms Williams. Mr Guest, a clinical psychologist who has treated Ms Williams, gave evidence as to depression suffered by Ms Williams which, he opined, "primarily relates to her perception of the incidents that occurred with her co-workers"<sup>76</sup>.

262 The Tribunal accepts that the matters that have been the subject of this Inquiry and Ms Williams' perception of them have affected her terribly. By reason of the findings that have been made, however, where the majority of the complaints which Ms Williams has made have been dismissed, it is simply impossible to attribute in any sensible way, and as required by s 127, the damage which she has suffered to the incidents which have been found to constitute contraventions of the Act. Indeed, as outlined earlier, as at November 2000, being a time by which the contraventions of the Act by the City had occurred, Ms Williams was describing the incidents involving Mr Jamieson which have been found to have contravened the Act as "childish", and Ms Williams was wishing to resolve these matters by a simple face to face meeting with Mr Jamieson. In light of this, it is impossible for the Tribunal to assess compensation in respect of these contravening events.

263 Accordingly, the Tribunal declines to make any order in respect of these matters, pursuant to s 127(b)(v) of the Act. This is not to say that the contraventions which have been found to occur are trivial. They are

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<sup>76</sup> T207 of 17 December 2002.

not. This Tribunal does not, however, have power to award a sum of money to a complainant pursuant to s 127(b)(i) of the Act, or otherwise, for the purpose of punishing contravening conduct. The power to award compensation arises only in respect of loss suffered by reason of contravening conduct. This order ought not be construed as some sort of punishment of Ms Williams on the basis that many of her complaints have been dismissed. The order is made for the sole purpose stated, that this Tribunal could not in any principled way attribute any of Ms Williams loss to the contraventions found.

264 Accordingly, the Tribunal finds the complaints that have been considered in these reasons at par 103-121, par 134-138 and par 151-158 substantiated and declines to take any further action.

