

RESOLUTION FORWARDED FROM CLOSED COUNCIL TO OPEN COUNCIL –
SEPTEMBER 25TH, 2006

TO BE ADDED AS ITEM NO. 15A ON THE CONSENT AGENDA

15A MEDIATION/ARBITRATION CONSENT ORDER OF VINCE READY
RICHMOND FIRE DEPARTMENT & RFFA LOCAL 1286
POLICY GRIEVANCE: HARASSMENT

That the following resolution and associated report be received for information:

- (1) *That the terms of Vince Ready's Consent Order defining mediated recommendations for Fire facilities, training and a dispute resolution mechanism for any complaint of harassment or sexual harassment be approved.*
- (2) *That staff report to the October 2nd, 2006 General Purposes Committee meeting with an updated plan on the physical changes to the fire hall facilities.*

Staff Report

Statutory Closed Meeting Criteria:

This report meets the following statutory closed meeting criteria:

90(1)(c) labour relations or other employee relations

Discussion concerning the Consent Order may become part of the City's labour relations strategy for 2007 collective bargaining.

Recommendation on Disclosure

It is recommended that the recommendation be forwarded to open Council for information as part of the Consent Agenda at the next open Council meeting.

Origin

As a result of a May 27, 2005 RFFA, Local 1286 policy grievance alleging the employer has failed to provide a Harassment Free Workplace, the City and Union ultimately agreed to engage in a binding mediation/arbitration process properly constituting Vince Ready with jurisdiction to hear and decide matters raised in the Union's "Harassment Grievance".

Analysis

Although matters pertaining to arbitral awards are typically addressed at the administrative level, the sensitivities of issues leading to Council adoption of the Richmond Fire-Rescue Review and Implementation Plan makes it appropriate for Council to be made aware of and approve the direction contained within the Consent Order issued by mediator/arbitrator Vince Ready.

As per the terms of his appointment, Vince Ready did find harassment and sexual harassment have occurred within the RFRD and that it is the responsibility of the City to take various steps to ensure an end to discrimination. To that end, his mediated recommendations include:

1. Changes to Facilities: Alterations to signage allowing for the provision of adequate bathroom, showering, changing and sleeping facilities for women. Changes are required for Fire Halls 1, 2, 3, 6 & 7.
2. Training: As per Council approved training in the Implementation Plan.
3. Dispute Resolution Mechanism: Provision for an expedited non-precedential dispute resolution system using Vince Ready as mediator/arbitrator for only harassment or sexual harassment issues occurring within the next three years. Such use will occur only in the event Union and Fire Management are unable to agree to a complaint resolution.

Financial Impact

The financial impact of the report is minimal. Recommendations to facilities do not involve major construction and although such costs have not yet been defined, funding is available from 2006 budgetary sources. Approval for Training will be contained within the 2007 budgetary process. The Dispute Resolution mechanism, if agreed and followed, should result in cost savings compared to expenses incurred in full arbitration, civil court or before the Human Rights Tribunal.

Conclusion

Council should approve acceptance of the Consent Order mediated recommendations. Endorsement reinforces the direction already taken by Council in its objective to ensure an end to harassment and discrimination within Fire and establish a culture embracing diversity.



Mike Pellant
Director, Human Resources
(4092)

MP.mp

IN THE MATTER OF A MEDIATION/ARBITRATION

BETWEEN:

CITY OF RICHMOND
(RICHMOND FIRE RESCUE DEPARTMENT)

(the "Employer")

AND:

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1286

(the "Union")

(Harassment Grievance)

CONSENT ORDER

MEDIATOR/ARBITRATOR:

Vincent L. Ready

COUNSEL:

Nazeer Mitha for
the Employer

Marjorie Brown for
the Union

PUBLISHED:

September 21, 2006

JURISDICTION TO HEAR AND RESOLVE DISPUTE

1. The parties have agreed that I am properly constituted with jurisdiction under the Collective Agreement and the *Labour Relations Code* to hear and decide the matters raised in the Union's "Harassment Grievance", dated May 27, 2005.
2. The Harassment Grievance concerns a number of problems in the workplace that the parties have agreed can be loosely defined as issues relating to discrimination, harassment, sexual harassment and a lack of equality between various identifiable groups. The parties have agreed that I have jurisdiction within this process, over all harassment and sexual harassment matters arising prior to the publication of this Report and, subject to the process set out in this Report, jurisdiction over any new or emerging issue of harassment or sexual harassment at the Richmond Fire Rescue Department until the grievance is fully and finally resolved.
3. The Employer in this matter is the City of Richmond, specifically, the City's Fire Rescue Department. For the purpose of this Order and Recommendations I will refer to the operations of the Employer as the Richmond Fire Rescue Department or RFRD.
4. The Union representing employees at RFRD is the Richmond Fire Fighters Association, which is Local 1286 of the International Association of Fire Fighters.
5. Prior to proceeding to a hearing, the parties agreed to engage in a binding mediation/arbitration process. It was agreed that I would exercise powers pursuant to section 89(h) of the *Labour Relations Code* to meet with representatives of the Employer and the Union, Counsel for the Employer and Union and various employees that might otherwise have appeared as witnesses, should the matter proceed to a hearing.

6. The parties agreed that through these meetings I would hear evidence that might otherwise be adduced in a formal arbitration. The parties agreed that these meetings could occur without the presence of opposing Counsel. In some cases the parties agreed that the meetings could take place without any Counsel present.

7. It was further agreed that, while I would not use the evidence heard during the various meetings to make any formal findings of fact with respect to whether or not particular events occurred in the fashion described by the various witnesses, I would comment generally on the nature of what transpired at RFRD. Further, within the mediation/arbitration context described above, it was agreed that this Consent Order would contain binding recommendations with a view to resolving the dispute between the parties.

BACKGROUND TO GRIEVANCE

8. The problems at RFRD are not new. RFRD is a male-dominated workplace. Women make up only a very small minority of the workforce. Until a little over a decade ago there were no women at the RFRD. Without going into the genesis of the difficulties, both the Employer and Union are aware that female members of the RFRD have experienced difficulties at work that can accurately be described as harassment generally and sexual harassment specifically. While there may be various explanations for certain specific events and while not all of the allegations made by all of the women at RFRD would necessarily be substantiated at a hearing, the evidence presented to me by the various women in the RFRD persuades me that, were this matter to proceed to full arbitration, there can be little doubt that sufficient evidence would be adduced to support a finding that women in the RFRD have faced treatment at work that amounts to harassment and sexual harassment.

9. I pause to emphasize that I have heard the accounts of various male members of the RFRD and understand that there may be valid defenses to some of the particular allegations raised. This is obviously of some significance to various individuals accused of some specific incidents.

10. I have also heard that some of the conduct complained of by women in the RFRD was faced by men in the RFRD as well. As a result, some of the men in the RFRD may have failed to appreciate how unwelcome the behaviour was, when directed towards women members.

11. This difficult situation has not been assisted by a perception amongst many of the men in the RFRD that the Employer either condoned their behaviour or was perhaps indifferent to its continuation.

12. Finally, there has been considerable difficulty in addressing this matter through the grievance and arbitration process. While this particular dispute arises as a result of a grievance filed by the Union, in other instances where harassment or sexual harassment occurred no grievance was filed. Instead there appears to have been extensive direct communication between the Employer and some of the individuals raising various complaints. In my view this direct communication, without the presence of the Union, was counter-productive and served only to prolong and perhaps heighten the dispute. For the sort of far-reaching change to happen at the RFRD that is required to achieve workplace equality, there is no doubt that the Union and Employer must both participate in the process of transformation.

13. These factors aside, both parties must be commended for their efforts in now addressing the matter. I have been greatly assisted by the candour of all who took the time to meet with me, both from the Employer and the Union. I have also been impressed with the stated commitment of all parties to fully

engage in this process so that all members of the RFRD can go to work feeling they are a valued and equal member of the workplace.

ATTEMPTS TO ADDRESS HARASSMENT/SEXUAL HARASSMENT

14. The Employer has taken some steps to address the problems in the workplace outside of this grievance process. In the past the Employer has developed a so-called "Action Plan" for building a respectful workplace at RFRD. While the goal of the Action Plan was laudable and while the activities contemplated in the plan appear for the most part useful, the implementation of the plan has been a dismal failure. Little, if any of the plan has been put in place. Key players in the plan process are now no longer with the RFRD.

15. The Employer acknowledges the Action Plan process did not proceed as rapidly as it might have. To the Employer's credit, the lack of success with the Action Plan has not stopped it from pursuing other measures to address workplace problems. More recently, the Employer commissioned a report by Susan Paish on the RFRD, which the Employer has committed to implementing by way of the Richmond Fire Rescue Implementation Plan (the "Implementation Plan"). I do not propose to duplicate any other processes which have investigated and commented on the circumstances at the RFRD, including Ms. Paish's recently published Richmond Fire Rescue Review (colloquially referred to by the parties as the "Paish Report"). While I have reviewed the Action Plan, the Paish Report and the Implementation Plan, and while I am of the view that they demonstrate some commendable effort by the Employer, I have a different role in this process which I do not think was contemplated in the Paish Report, or any other process outside of the grievance.

16. My jurisdiction to address these matters flows from a grievance filed in May, 2005. As I understand it, Ms. Paish commenced her review almost one year later, on April 28, 2006. Although many members of the bargaining unit and the Union executive participated in the review process, the decision to

commission the review was taken by the Employer alone and the terms of reference for the resulting report were unilaterally set by the Employer. While Ms. Paish's review provides valuable insight into the situation at RFRD, it is entirely separate and apart from this proceeding.

17. Further, the efforts of the Employer in undertaking the Paish Report or developing the Action Plan are largely eclipsed by years of inaction in the face of very clear requests from women in the RFRD to make what would have been relatively simple changes or implement fairly straightforward measures. For example, the lack of separate washroom, showering and changing facilities has been a source of contention at RFRD since women first started working there. It has undoubtedly contributed to the problems at RFRD. Many inappropriate interactions which have fuelled sexualized comments might have been avoided through separate facilities. Unfortunately, by failing to act to ensure that the physical space for women adequately accommodated their needs, this aspect of the problem has taken on somewhat mythical proportions and, unsurprisingly, generated a backlash itself. However, further delay in ensuring that all facilities have an adequate minimum level of privacy for women for showering and changing as well as separate washroom space will only serve to allow this problem to grow.

18. This proceeding will address the Union's still outstanding grievance over harassment in the workplace. As a result of the grievance, it is no longer open to the Employer to attempt to solve this problem unilaterally. Simply put, this matter has laid at the feet of the Employer for many years with insufficient action taken to create any real progress. I find that, despite the Action Plan, the Paish Report and the Implementation Plan, the issues raised in the Union's grievance remain live and a resolution to that grievance is still required.

WHAT IS HARASSMENT?

19. During the course of my meetings with the women members of the RFRD, I agreed, for the purpose of the mediation/arbitration process, to keep much of what was disclosed to me confidential and, as described above, the purpose of this Report and Recommendations is not to issue any findings of fact with respect to specific instances or particular allegations. That being said, my interviews with various members of the bargaining unit, the Union and the Employer, have satisfied me that there would be little real dispute over many of the events raised by the women.

20. Consequently, rather than describe specific incidents, I will simply state that the conduct described to me meets the legal test for harassment and sexual harassment and thus discrimination on the basis of sex. In my view, the conduct described falls within the definition of harassment described by the BC Human Rights Tribunal in *Jubran v. North Vancouver School District No. 44*, [2002] B.C.H.R.T.D. No. 10, (which was affirmed by the BC Court of Appeal in *North Vancouver School District No. 44 v. Jubran*, [2005] B.C.J. No. 733).

21. In considering harassment under the *Human Rights Code*, in *Jubran*, the Human Rights Tribunal held:

¶ 90 Although harassment is not defined in the Code, human rights legislation in other jurisdictions does contain definitions of harassment and sexual harassment. The Manitoba Human Rights Code, S.M. 1987-88, c. 45, s. 19 defines harassment as “a course of abusive and unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2) [the prohibited grounds]”. The human rights statutes of Ontario, Newfoundland and the Yukon define harassment as meaning “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”.

¶ 91 Harassment, with respect to a prohibited ground of discrimination, is discrimination even though it is not specifically prohibited by the Code (see *Robichaud et al v. Queen* (1987), 40

D.L.R. (4th) 577, *Johnstone v. Zarankin* (1984), 5 C.H.R.R. D/2274 (B.C. Bd. of Inq.), aff'd 6 C.H.R.R. D/2651 (B.C.S.C.).

¶ 92 In *Janzen v. Platy Enterprises Ltd.* (1989), 10 C.H.R.R. D/6205, the Supreme Court of Canada confirmed Canadian, English and American jurisprudence concluding that sexual harassment constitutes sex discrimination (at para. 44461). The Court defined sexual harassment as "unwanted conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victim of the harassment" (at para. 44451). The Court found that sexual harassment was "a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it." (at para. 44451)...

22. The conduct described to me, with its continued focus on gender, meets the specific test for sexual harassment, as a form of harassment, contemplated by the Human Rights Tribunal in *Jubran* and as described by the Supreme Court of Canada in *Janzen v. Platy Enterprises Ltd.*, [1989] S.C.J. No. 41, (as mentioned above in *Jubran*). The result, as set out in *Janzen*, is the imposition of barriers on women in the RFRD and a denial of equality in the workplace. As described in *Janzen*:

¶ 48...Both sex discrimination and sexual harassment are broad concepts, encompassing a wide range of behaviour...I will restrict my discussion of each of these terms to their manifestations in the workplace. In *Canadian National Railway Co. v. Canada Canadian Human Rights Commission*, [1987] 1 S.C.R. 1114, a case raising a claim of systemic sex discrimination, the Court had occasion to consider the meaning of discrimination in the employment context. The Court adopted at pp. 1138-39 the definition of discrimination found in the *Abella Report on equality in employment* (*Abella, Equality in Employment: Royal Commission Report* (1984), at p. 2), which I quote in full below:

Equality in employment means that no one is denied opportunities for reasons that have nothing to do with inherent ability. It means equal access free from arbitrary obstructions. Discrimination means that an arbitrary barrier stands between a person's ability and his or her opportunity to demonstrate it. If the access

is genuinely available in a way that permits everyone who so wishes the opportunity to fully develop his or her potential, we have achieved a kind of equality. It is equality defined as equal freedom from discrimination.

Discrimination in this context means practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics. What is impeding the full development of the potential is not the individual's capacity but an external barrier that artificially inhibits growth.

It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.

In keeping with this general definition of employment discrimination, discrimination on the basis of sex may be defined as practices or attitudes which have the effect of limiting the conditions of employment of, or the employment opportunities available to, employees on the basis of a characteristic related to gender.

23. To elaborate on the application of the legal test for harassment and sexual harassment to the conduct described to me in the interviews, the information relayed convinces me that instances of harassment and sexual harassment at the RFRD have had the effect of limiting the employment opportunities available to women in the RFRD and thus women in the RFRD have faced discrimination. At various times, women in the RFRD have faced a range of conduct which left some of the women feeling unwelcome, unsafe and at times, unable to continue to attend work. Much of this conduct focussed on female members of the RFRD's identity as women firefighters, calling into question their abilities and their very place in the RFRD on the basis of their

gender. In many instances this conduct was condoned by the Employer or addressed in a half-hearted fashion. The women have also faced inadequate facilities that quite rightly left them feeling that there was no physical place for them at the RFRD and subjected them to sexualized encounters that were more easily orchestrated by their inability to find privacy.

24. I have observed a culture amongst members of the RFRD characterized by juvenile and hostile behaviour towards firefighters generally and women in the RFRD specifically which I find has contributed to the barriers to women's potential within the RFRD. The negative elements of this culture eclipse anything laudable, such as the apparent trust between men in the RFRD who, it must be acknowledged, work in extremely dangerous conditions where the ability to rely on other employees is critical. However, this culture, which may have appeared to serve firefighters well in the past, at least in the RFRD, is incompatible with the diversity of the contemporary workplace and the legal right that all employees have to equality in the workplace.

25. As much of the behaviour that can be described as harassment or sexual harassment flows from the dominant cultural norm in the workplace, many of the men in the RFRD have denied their intent to discriminate against specific individuals or to participate in harassment or sexual harassment generally. I do not doubt the sincerity of these individuals. However, in *Jubran*, in the context of considering whether "name-calling" was discriminatory, the Human Rights Tribunal held that intent is irrelevant to a finding of harassment:

¶ 97 In any event, whether or not the name-calling was intended to hurt is irrelevant, **since it is the effect of the conduct, or action, not the intent of the harassers, that is relevant in determining whether discrimination has occurred** (Ontario Human Rights Commission v. Simpson-Sears Ltd., [1985] S.C.R. 5369).

(emphasis added)

26. Later, the Court of Appeal elaborated the point in their consideration of the case, holding:

¶ 48 Including the “subjective component” in determining discrimination extends the analysis beyond a requirement that a person complaining of discrimination actually have the characteristics of a person within a prohibited ground...[and] raises all of the concerns that McIntyre J. expressed in O'Malley in rejecting the proposition that intent or motive played any part in the determination of discrimination under human rights legislation. He said (at 549):

To take the narrower view and hold that intent is a required element of discrimination under the Code would seem to me to place a virtually insuperable barrier in the way of a complainant seeking a remedy. It would be extremely difficult in most circumstances to prove motive, and motive would be easy to cloak in the formation of rules which, though imposing equal standards, could create...injustice and discrimination. Furthermore, as I have endeavoured to show, we are dealing here with consequences of conduct rather than with punishment for misbehaviour. In other words, we are considering what are essentially civil remedies. The proof of intent, a necessary requirement in our approach to criminal and punitive legislation, should not be a governing factor in construing human rights legislation aimed at the elimination of discrimination.

27. I do not find that all of the discrimination was necessarily motivated by an intentional desire to obstruct women's potential at RFRD, nor is it necessary for me to do so. It is enough to find that there have been barriers that have had an adverse impact on women. Thus, the goal of this process must be to put in place systems that will promote the equal opportunity of all members of the RFRD to develop their potential as firefighters.

28. In my view, the promotion of equality is best achieved through a focus on the ameliorative or remedial purpose of measures prohibiting harassment and that is the approach taken in this informal process, as a means of resolving the Union's grievance. To comply with the legislative requirement of ending harassment and discrimination identified in the grievance, it is, as described in *Janzen*, not necessary to find or attribute any sort of fault to a particular individual and I have not done so. However, the freedom to progress without first attributing fault must be differentiated from an acknowledgement of responsibility to set right the situation. Returning once again to the Supreme Court of Canada's decision in *Janzen*, I find that the Employer bears a significant responsibility for the continuation of the practices or culture that gave rise to the harassment at the RFRD. As described in *Janzen*:

¶ 68 The liability of employers for the acts of their employees...has been settled by the recent decision of this Court in *Robichaud v. Canada (Treasury Board)*, supra...In *Robichaud*, La Forest J., writing for the Court, considered the liability of an employer for sexual harassment under the Canadian Human Rights Act, where the harassment was committed by an employee. His words are equally applicable to the Manitoba legislation; each Act has a similar purpose and structure.

¶ 69 La Forest J. began by stating that human rights legislation (at p. 92):

...is not aimed at determining fault or punishing conduct. It is remedial. Its aim is to identify and eliminate discrimination. If this is to be done, then the remedies must be effective, consistent with the "almost constitutional" nature of the rights protected.

He continued two pages later:

Indeed, if the Act is concerned with the effects of discrimination rather than its causes (or motivations), it must be admitted that only an employer can remedy undesirable effects; only an employer

can provide the most important remedy – a healthy work environment.

La Forest J. then concluded that the statute requires that employers be held liable for the discriminatory acts of their employees where those actions are work-related. He did not try to apply principles of vicarious liability, saying that this was unhelpful and, in any event, unnecessary since the employer's liability could be found within the statute (at p. 95)...

29. To summarize, I find that, whether or not members of the RFRD intended to do so, the women in the RFRD have faced harassment and sexual harassment which has had the effect, at the very least, of undermining their dignity and imposing barriers on their equal participation in the workplace and thus amounts to discrimination. This conduct can be described as a cultural practice within the RFRD that has continued for some time with the Employer's knowledge and with insufficient measures to bring it to the end. Thus, while all parties going forward must work together towards the creation of equality in the RFRD, the responsibility of the Employer to take various steps to ensure an end to discrimination against women in the RFRD cannot be overlooked.

WHAT NEEDS TO BE DONE?

30. The Union must continue to take a leadership role within the bargaining unit in opposing harassment and sexual harassment in the workplace. Similarly, senior individuals with the Employer must set the tone for interactions between employees and intervene when inappropriate conduct is observed. However, I do not think that either leading by example or setting the tone will be sufficient to turn the tide towards equality in this workplace.

31. Similarly, I think it would be unwise for punitive measures to outweigh remedial measures in confronting unacceptable behaviour in the near future. The wrong message has been sent to employees by, for example, developing an Action Plan and then failing to ensure it is implemented in any meaningful

sense. It is my view that change must first take place at the workplace at a macro level: through alteration of physical barriers to women's equality, through training so that all employees clearly understand expectations and through on-going processes to rapidly address problems in the workplace so that inaction can no longer be allowed to prevail.

32. Prior to publication of this Report and Recommendations, I met with both parties to discuss my findings and my recommendations. Both parties therefore agree that, in light of what I found through the interview process and my view of the appropriate legal meaning to be given to the same, the following remedial measures are appropriate and will be adopted.

33. I must stress the difference between my recommendations and those contained in the Paish Report. As I understand it, the focus of the Paish Report is change at the workplace on a long-term basis. Undoubtedly this long-term work must occur, but the time involved in, for example, re-writing Employer policies or changing recruitment practices, must be acknowledged. Quite simply the women at work at the RFRD right now have waited too long to see tangible progress towards equality in the workplace. While the Employer undertakes whatever it has planned with respect to the Paish Report in the longer term, immediate action is required.

34. I have developed the following recommendations with a view to squarely meeting the wrong complained of in the Union's grievance: harassment in the workplace. To resolve the dispute, the parties must put into place concrete and truly transformative measures. These concrete and transformative measures should change the dynamic of the workplace with respect to the place of women in the RFRD and it is my hope that behavioural change will then follow. I am therefore making three specific recommendations to: (1) change the physical space for women at work so that they are no longer physically reminded that the workplace was designed for men, with women

only an afterthought; (2) continue to pursue behavioural change through increasing the commitment to ongoing awareness training immediately; and (3) providing a forum to address disputes arising from this process and any ongoing manifestations of harassment at work.

35. The parties have mutually agreed to my mediated recommendations. These recommendations are intended to resolve the matters which gave rise to the Union's grievance. As a result, the Union agrees not to raise or pursue the specific matters which gave rise to the grievance except through the dispute resolution mechanism contained in this Order.

CHANGES TO FACILITIES

36. The difference between the physical space for men at the RFRD to attend to their personal needs and the physical space for women is an ongoing reminder of the inequality between men and women at that workplace. The lack of adequate bathroom, showering, changing and sleeping facilities for women perpetuates the message that women are entering what is otherwise a man's space.

37. While some of the changes I am recommending will, in some cases, allow for more facilities than might otherwise be required for the number of women presently employed at the RFRD, the burden should not fall on women entering the RFRD in the future to demand adequate facilities. They must be put in place now so that any woman joining the RFRD will be presented with an ostensibly gender-neutral physical work environment.

38. It is my understanding that Fire Halls Nos. 4 and 5 have been rebuilt with new facilities that provide gender-neutral bathroom, showering, changing and sleeping facilities for men and women. I will not therefore make any recommendation for changes to these Halls at this time. Instead, I will await

the opening of these Halls and seek submissions from the parties as to the adequacy of the new facilities upon completion.

39. Changes to the other Fire Halls are required. With respect to the other Fire Halls, I make the following recommendations:

No. 1 Hall

40. The showering facilities at No. 1 Hall are a perfect example of the discrepancy between the physical space available to men and women at the RFRD for their personal needs. Presently, the men have a relatively spacious showering facility with natural light and toilets in the same facility in a locker room format. By contrast, the women have a shower that can only accommodate one at a time. The room is small and cramped and does not have a toilet within the same facility. To access a toilet, women must go down the hall and around the corner to a separate facility.

41. The problem with the discrepancy in space will only grow more acute as more women join the RFRD and take up employment at No. 1 Hall. Therefore, until adequate gender-neutral facilities with relatively equal access can be constructed, the Employer must install sliding signs on the shower facilities that can be moved to indicate the facility is presently being used by men or women, as required. Additionally, the Employer must install a sliding sign to indicate whether the facility is vacant or occupied. As a result, in practice, a male or female firefighter requiring a shower could chose to use either facility, assuming either was vacant. If either a male or female firefighter entered one of the facilities, they would flip the sign to indicate their gender and to indicate that the facility is occupied. If a man entered the communal shower/toilet facility, other men could then enter. Similarly, if a woman entered that facility, the occupied sign would indicate that while other women could enter and also use the facility, men would have to access the other shower facility.

42. The lack of privacy for changing and sleeping heightens the probability of sexualized encounters between men and women. The Employer must therefore provide for a gender-neutral changing facility at No. 1 Hall. As well, alterations must be made to the sleeping quarters to allow some relative degree of privacy. For example, privacy for both sleeping and changing could be achieved through the use of the sort of curtains separating beds in hospital wards. I will leave it to the Employer to determine the exact manner in which it will provide privacy for sleeping and changing with the proviso that the Union must agree that whatever changes undertaken are adequate to meet the privacy goal, or the matter may come back before me.

No. 2 Hall

43. It is my understanding that the bathroom and showering facilities at No. 2 Hall provide a reasonable degree of equal access. Similarly, No. 2 Hall has two lockable change areas. What No. 2 Hall lacks, and what the Employer must provide, is privacy for sleeping. Again, I will leave it to the Employer to determine the exact manner in which it will achieve a reasonable degree of privacy for sleeping, with the Union to agree, or the matter will come back before me.

No. 3 Hall

44. I understand that the bathroom facilities at No. 3 Hall provide relatively equal access for men and women. There is only one shower and it should therefore have the male/female occupied/vacant signs installed. There are no private change facilities or privacy in the sleeping arrangements at No. 3 Hall. The Employer must therefore make alterations to the Hall to provide privacy in this regard, in the manner set out above.

No. 6 Hall

45. No. 6 Hall has recently renovated bathroom and shower facilities providing an adequate level of equal access for men and women. However, as

with No. 3 Hall, there is inadequate privacy for changing and sleeping and alterations to provide same must be made, in the manner set out above.

No. 7 Hall

46. I understand that the bathrooms downstairs at No. 7 Hall are adequate for access for both men and women. While there are locks for the shower and bathroom facilities upstairs at the Hall, the Employer must also install the flip signs to indicate whether the facilities are in use by men or women and whether they are vacant or occupied. I understand that there is a degree of private space in the manner in which the sleeping arrangements are set up at No. 7 Hall, although there is no dedicated change area. The Employer must therefore make alterations to provide a dedicated changing area and improve on the privacy for sleeping. For example, this might be done through the installation of curtains around the beds so that privacy for both changing and sleeping could be achieved in the same room. While the Employer may determine the exact arrangements, the matter may come back before me if the Union is dissatisfied.

47. With respect to the alterations to the facilities described above, all of the recommendations must be put in place within 90 days of the date of this decision. If for whatever reason a component of the alterations cannot be completed by that date, the Union and Employer may agree to completion at a later date. However, if the parties cannot agree to completion at a later date, the matter must come back before me.

TRAINING

48. As noted in the Implementation Plan, the Employer has provided some training towards ending harassment in the workplace. In consultation with the Union, the Employer developed a "Respectful Workplace" series, through which a series of two hour presentations were made to RFRD employees by the Fire Chief, the President of the Union and the Manager of Human Resources.

Further, the Employer has also committed to providing three days of training for each fire fighter in 2007. Additionally, the Employer has offered all RFRD employees a one day training session on inappropriate workplace conduct known as "Arete" training and training has been offered with respect to the RFRD Code of Conduct for workplace behaviour.

49. I am advised by the Union that those attending the various training sessions have, for the most part, found them to be well done and useful. The Employer is to be commended for this work.

50. The Implementation Plan describes a variety of ongoing initiatives the Employer proposes to address the needs identified in the Paish Report. I understand that the Implementation Plan and the funding requirements for the Implementation Plan have been presented to the Richmond City Council for budget approval. As I understand it, there will be an evaluation of the effectiveness of the training performed throughout. For 2008 and 2009, the City Administration has recommended to the City Council continuing training of three days per fire fighter but this training has not yet been budgeted by City Council.

51. In my view, significant training is required to bring about the sort of change that is required at this workplace. While I do not propose to set out in detail exactly what training the Employer must provide, the Employer must increase its commitment to ongoing anti-harassment and equality training. A number of means by which this might be done are contemplated in the as yet unfunded Implementation Plan. I find that it is reasonable to allow the Employer the opportunity to organize and implement the measures identified in the Implementation Plan as a method of delivering the required training. However, should the Employer fail to fund a reasonable level of training for employees of the RFRD, subject to further evidence and argument from the parties, I will make a specific order for particular training.

RETAINED JURISDICTION/DISPUTE RESOLUTION MECHANISM

52. As noted at the outset, this is a Consent Order and it is the hope of all parties that the adoption of the measures in this decision will hasten the progress of ending harassment at the RFRD such that a further formal process is not needed. However, while my recommendations are being implemented, and for a period of not less than three years from the date of this decision, the parties mutually agree that I retain jurisdiction under s. 89 and s. 92(2) of the *Labour Relations Code* over this dispute and any continuing complaint of harassment or sexual harassment and may hold a hearing or conduct a mediation, with or without the presence of Counsel, into same.

53. I have determined that with the completion of this preliminary decision, the most effective use of my retained jurisdiction would be to continue to be available to the parties on an informal and expedited basis. I will therefore remain seized of this matter with the necessary jurisdiction to resolve any dispute arising in relation to the implementation and interpretation of this Consent Order and the measures necessary or involved in completion of the various steps.

54. Prior to bringing any matter before me, the Union must present the matter to the Fire Chief, in writing, and allow the Employer ten days to attempt to resolve the matter. Similarly, the Employer must present any matter it wishes resolved to the Union Executive, in writing, and allow the Union ten days to attempt resolution. In either case, if resolution cannot be reached within ten days, subject to the mutual agreement of the parties to extend the time to effect a resolution, the matter may come before me for determination.

55. The determination of any issue brought to me under this expedited process will be non-precedential unless the parties (Union and Employer) mutually agree otherwise.

56. The parties agree that to the extent necessary to effect the recommendations herein, this document supercedes the Collective Agreement between the parties.

57. In my view, this process will be particularly helpful for resolving disputes between employees, should any arise, while all members of the RFRD adjust to the expectations that accompany building an equal workplace. It will also provide a forum for quick resolution to minor issues that may arise during the implementation of the other substantive measures.

58. There is no doubt that there is much to be done and that the work involved in transforming the RFRD will be difficult. However, there is also no doubt there is a legal obligation on all parties to ensure the RFRD becomes a place where the contributions of all employees are valued and where all employees come to work knowing that neither gender nor any other prohibited ground of discrimination will serve as a barrier to their success and acceptance at work.

59. Dated at the City of Vancouver in the Province of British Columbia this 21st day of September, 2006.

Vincent L. Ready

Vincent L. Ready