

IN THE MATTER OF AN ARBITRATION

BETWEEN:

BROCK UNIVERSITY

("the Employer")

-and-

BROCK UNIVERSITY FACULTY ASSOCIATION

("the Association")

Re: Dismissal Grievance

Before

Leslie Reaume, Arbitrator

Appearances for the Employer

Jonathan A. Maier, Counsel

Hicks Morley Hamilton Stewart Storie, LLP

Appearances for the Association

Adriel Weaver, Counsel

Goldblatt Partners, LLP

AWARD

I. Introduction

[1] This award addresses a grievance filed by the Brock University Faculty Association (the Association) challenging Brock University's (Brock or the Employer) decision to terminate the employment of a tenured Professor (the Grievor) on May 20, 2022. The dismissal followed an independent, external investigation (investigation or investigator) into a complaint of sexual harassment by a graduate student (GS) whose doctoral work was supervised by the Grievor. The names of the Grievor and GS, and identifying information about their work together, have been anonymized to protect GS's privacy for the reasons set out at the conclusion of the award.

[2] The investigation concluded that the Grievor's conduct breached the sexual harassment provisions of the Employer's *Respectful Work and Learning Environment Policy (RWLEP)* and that this conduct created a poisoned work and learning environment for GS. The investigation also concluded that the Grievor had improperly disclosed to GS confidential information about a previous complaint and investigation against him under the *RWLEP*. In 2017, the Grievor was found to have breached the personal harassment provisions of that policy. This breach of confidentiality is not disputed by the Grievor.

[3] In 2016, the Grievor was appointed at Brock in St. Catharines, Ontario, as an academic administrator and a tenured professor. From 2008 to 2016, he was appointed a Professor at a University in Australia (AU). The Grievor and GS met in 2013 at AU and worked on projects together when GS was an undergraduate student in the Faculty of Science. GS enrolled in a Master's program at AU, and the Grievor became her supervisor. When the Grievor accepted his appointment at Brock beginning in July 2016, he invited GS to join him, to set up his lab and continue her studies as a visiting student. With the Grievor's support, GS transferred to the Ph.D. program at AU and was approved to carry out her doctoral studies as a visiting student under the Brock University Mentorship Program.

[4] The incidents giving rise to the complaint and investigation are alleged to have occurred at Brock between March 2017 and February 2019. During that period, GS was a Ph.D. candidate, enrolled at AU's School of Medicine, completing her doctoral studies as a visiting student at Brock.

[5] The Employer alleges that after GS arrived at Brock in March 2017, the Grievor engaged in an escalating pattern of sexually-oriented and/or gender-oriented conduct that made GS increasingly uncomfortable. The Employer alleges that this behaviour continued after GS met with the Grievor in August 2018 and asked him to stop. By February 2019, GS concluded that she could not continue into post-doctoral work with the Grievor after the completion of her Ph.D. because he continued to cross her personal boundaries. On February 4, 2019, GS met with the Grievor to advise him of her decision and an intense conversation followed. The Grievor withdrew as GS's faculty advisor and doctoral supervisor. In April 2019, GS completed her thesis at Brock with the support of other faculty members and was awarded her Ph.D. from AU.

[6] The Grievor has been represented by the Association since he was first notified of the complaint. He strongly denies the Employer's allegations and asserts that he supported GS's academic career in every possible way and considered her a member of his family. The Grievor alleges that GS has completely revised the history of their relationship, fabricated certain events and presented others out of context, betraying himself and his family and destroying his career. He denies making comments to GS or engaging in conduct that would meet the definition of sexual harassment under the *RWLEP*.

[7] The complaint against the Grievor is dated August 1, 2019. The investigator found that the Grievor repeatedly directed attention of a sexually-oriented or gender-oriented nature toward GS, throughout the period from when she arrived at Brock in 2017 to their final meeting on February 4, 2019. The investigator also found that the Grievor's conduct constituted discrimination on the basis of gender and created a poisoned work and learning environment for GS at Brock.

[8] The Employer accepted the investigation findings and initiated a disciplinary process. The Grievor and his Association representative met with the administration twice, following which, the decision was made to dismiss the Grievor from his employment for just cause.

[9] The disciplinary decision was also based in part on prior discipline and a separate finding by the investigator that the Grievor violated the confidentiality provisions of the *RWLEP*. With respect to the prior discipline, in the fall of 2017, the Grievor was removed from his position as an academic administrator because he was found to have engaged in personal harassment against a female director under his supervision. The Grievor exhausted his recourse under the *RWLEP* with respect to that discipline but maintains his objection to the findings and the discipline imposed. The breach of confidentiality arose when the Grievor disclosed confidential information about the prior complaint and investigation to GS. The Grievor acknowledged and apologized for this breach during the discipline process.

[10] There is no dispute that the onus is on the Employer to prove, on a balance of probabilities, that it had just cause to dismiss the Grievor from his appointment as a tenured professor at Brock. Just cause is defined in the collective agreement as misconduct that is serious and directly shows the Grievor to be unfit, or unwilling, to discharge his responsibilities (Article 9.14). There are two broad issues to be determined. The first is whether the Employer has proven that the Grievor directed attention toward GS that was unwanted, that was of a sexually-oriented or

gender-oriented nature, and that he knew or ought to have known that the attention was unwanted. The second is whether termination was the appropriate disciplinary penalty in all the circumstances.

[11] The Association's position is that even if GS's evidence is preferred, few if any of the comments and conduct at issue would be viewed by a reasonable person as sexually-oriented or gender-oriented in the context in which they took place. Accordingly, the Grievor did not engage in sexual harassment as described in the *RWLEP* and there was no cause for termination. In the alternative, if the Grievor is found to have engaged in sexual harassment, the Association submits that termination is not proportionate given the degree of severity and surrounding circumstances.

[12] The hearing of this matter took place by videoconference over 13 days, from March 30, 2023, to November 7, 2024. I heard testimony from five witnesses, three for the Employer, including GS, as well as the Grievor and a witness for the Association. The parties also filed extensive documents and written submissions.

[13] For the reasons that follow, the grievance is dismissed. The University had just cause to terminate the Grievor's employment in accordance with the collective agreement.

II. Background

A. The nature of the evidence relied on at arbitration

[14] This arbitration is a hearing *de novo*. The issues have been determined on the basis of the testimony of the witnesses and the documentary evidence adduced throughout this hearing. I have also carefully considered the Employer's and the Association's legal submissions. (*Memorial University of Newfoundland Faculty Association v. Memorial University of Newfoundland*, 2015 CanLII 154120 (NL LA) at p. 32)

[15] I am not bound to follow the investigator's findings or the Employer's conclusions arising from the investigation report. While the Employer accepted the investigation findings as part of the disciplinary process, it did not rely on the investigation in this proceeding as proof of the Grievor's alleged misconduct. GS and the Grievor testified about their relationship, how it changed over time, and the circumstances giving rise to the allegations in the complaint. The Employer also relied on testimony describing the disciplinary process given by Amanda Villella, Director of

Faculty and Staff Relations and Dr. Lynn Wells, Provost and Vice-President Academic and the Interim President at the time of the termination. Dr. Alison Braley-Rattai, the Grievor's Association representative, also testified for the Association about the investigation and disciplinary process.

[16] The evidence in this arbitration included the August 1, 2019 complaint filed by GS, which she adopted as part of her testimony. A previous investigator drafted and formalized the complaint for GS to approve, after meeting with GS in April and May 2019 and gathering a chronology of events and supporting documents. GS testified that she shared as much information as she could about the events she recalled, providing corrections or further details where necessary, along with copies of relevant documents before the complaint was formalized. The Association objected to the first investigator's role in drafting the complaint. In response, the University agreed to retain a second investigator to initiate a new investigation, including re-interviewing GS.

[17] GS adopted the documents she prepared during the investigation and the summaries of her meetings with both investigators as part of her evidence. The incidents of alleged sexual harassment and gender discrimination are described in detail in these documents, including her recollections of her surroundings and even the clothing she was wearing. GS testified to most of these incidents, but her testimony was not always as fulsome as the written record she adopted. GS agreed that when she prepared her materials for the first investigator, the events were more recent and her ability to recall them was better than when she testified four years later. She was also re-interviewed about the relevant issues by the investigator responsible for the report.

[18] The Grievor also adopted as part of his evidence the documents he prepared and submitted during the investigation including an initial response to the complaint in December 2019 and responses to follow-up questions from the investigator in September 2020 and November 2021. The Grievor adopted these materials subject to certain caveats about his state of mind when the materials were prepared.

[19] Due to a serious health condition that prevented him from meeting directly with the investigator, the Grievor participated in the investigation process in writing. The Grievor testified about the stress he experienced throughout the investigation process which was no doubt significant. He carried on with his professional obligations during this period but the experience was overwhelming and it took a toll on the Grievor's physical, mental and emotional health. This was compounded by the Grievor's belief that he had treated GS as a member of his family and

he felt shocked, disoriented and betrayed by her allegations. He testified that reading his materials from the investigation during the hearing process, he realizes that he came across as angry, which reflected how upset he was at the time. He regrets the tone of the materials he submitted during the investigation, but stands by the substance.

[20] As part of his initial response to the complaint, the Grievor included a counter-complaint against GS, alleging that she personally harassed him, contrary to the *RWLEP* and knowingly made false allegations against him. The Grievor made various allegations regarding GS's temperament, character, and behaviour which she denied. The investigator found that the allegations were either not supported by the evidence or not within the scope of the policy. Although the Association did not directly pursue these allegations at arbitration, the Grievor referenced them at times during his testimony as illustrations of the complex nature of his relationship with GS.

[21] The August 1, 2019 complaint includes comments and conduct alleged to have taken place at AU prior to March 2017. The investigator concluded that those allegations were out of scope and that only the incidents alleged to have occurred after March 2017 could be considered under the *RWLEP*. The allegations were not determined by the investigator nor did they form part of the Employer's rationale for terminating the Grievor's employment. In addition, GS testified that until she arrived at Brock University, she took note of that alleged behaviour but it did not compromise her studies or her ability to work with the Grievor. Rather, it was the period after she arrived in Canada, where GS alleged that the Grievor's conduct increased in frequency and intensity to the point that she could no longer consider working with him beyond the completion of her Ph.D.. I have considered the evidence given by GS and the Grievor about the nature of their relationship prior to March 2017, solely as part of the overall context, not as separate allegations that could be determined under the *RWLEP*.

[22] GS and the Grievor testified about the specific allegations that were addressed during the investigation into GS's complaint. The Employer and the Association focussed primarily, although not exclusively, on the allegations that were substantiated and relied on by the Employer as part of the termination decision. The Employer acknowledged that it did not seek further information about the allegations that were found to be unsubstantiated during its deliberations on the appropriate discipline to be imposed. For those reasons, I have also focussed my attention on the issues that were relevant to the question of just cause, and not attempted to address the many

allegations and cross-allegations raised by GS and the Grievor during the course of the investigation.

[23] The basic timeline of the relationship between GS and the Grievor, and the key events leading to the Grievor's dismissal, are generally not in dispute. This background has been summarized below. The allegations that were substantiated in the final investigation report and relied on by the Employer were the focus of the testimony of GS and the Grievor. In several instances, the Grievor claims that the events described by GS never occurred; in others, he asserts that his words or actions were taken out of context. Consequently, those incidents and the context in which they occurred are addressed in more detail following the background summary.

[24] The documentary and testimonial record was substantial, as were the parties' comprehensive and thoughtful submissions, all of which I have carefully considered in rendering this award.

B. The relationship between GS and the Grievor and key events

1) Early period at AU

[25] The Association submitted a copy of the Grievor's extensive curriculum vitae which includes a large number of publications he has authored in collaboration with his graduate students and others over the course of his career. From 2008 to 2016, the Grievor was appointed as a professor at AU and lived with his family in Australia.

[26] GS grew up in Australia and received her undergraduate degree and Ph.D. degrees from AU. She met the Grievor in 2013 at AU when she was an undergraduate student in the Faculty of Science. She was interested in the Grievor's area of science and was paired with him for projects in her last year of undergraduate studies. She testified that the Grievor was friendly and approachable, positive about taking her on, and that she was thrilled to be working with him.

[27] GS and the Grievor worked successfully together on two projects involving the use of the Grievor's lab. GS felt fortunate to be working with the Grievor, who was accomplished and well-

known in his field. She was increasingly hopeful about the relationship with the Grievor being mutually beneficial. The Grievor testified that GS was becoming skilled "at the bench" (in the lab) and was generating good data. After completing her undergraduate degree, GS enrolled in a two-year Master's program at AU, and the Grievor became her faculty supervisor. GS testified that the Grievor was instrumental in getting her approved for a Master's program. She also credited the Grievor for his support in helping her to secure a scholarship to pay her living expenses.

2) The Grievor's approach to supervision

[28] The Grievor testified that he works closely and collaboratively with his graduate students, preferring to be seen as an advisor or mentor rather than a supervisor. He has mentored many graduate students over the years, some of whom have continued with him through post-doctoral fellowships. Both the Grievor and GS anticipated that she would go on to do post-doctoral work in his lab. The Grievor testified that he spends considerable time supporting students to become independent scholars, working with them in the lab, jointly authoring papers, writing letters of support for their scholarship and grant applications, and providing advice about postdoctoral and fellowship opportunities. There is no dispute that the Grievor supported GS in the same way.

[29] The Grievor testified that he sees all of the students in his lab as equal collaborators and that it is his role to support them to become independent researchers. In that sense, he considers them to be potential future colleagues, particularly those who demonstrate the most promise.

[30] The Grievor also described his graduate students as his "kids". The Grievor explained that he thinks of the students in his lab as his children, and he wants the best for them as he does for his own children. The Grievor testified that this often means being involved with graduate students outside of the academic environment. He has lent money to students and provided a place for them to stay. They have socialized at his home and with his wife and sons, and stayed with them during the holidays. The Grievor testified that it was not unusual for a graduate supervisor to have close relationships, especially with their Ph.D. students. From the Grievor's perspective, he treated GS as "part of the family" in the same way as his other graduate students.

3) *GS's Arrival at Brock*

[31] In July 2016, the Grievor was pleased to return to Brock as a professor and an academic administrator. The Grievor testified that he was concerned about certain aspects of his research not continuing at Brock because of the demands of his academic administrative position, and the lack of proper lab facilities. Accordingly, he invited GS to come to Brock as a visiting student to establish his lab and continue her studies under his supervision.

[32] GS accepted the invitation for several reasons, including the fact that her partner at the time was working in the United States within driving distance of St. Catharines. GS met her partner in the Grievor's lab in Australia. The Grievor was also his Ph.D. supervisor. Email communications between GS and the Grievor in April 2016 indicate that they were both enthusiastic about the plan for her to set up the lab and continue her studies at Brock.

[33] Several exchanges took place between the Grievor, GS, the administration at AU and at Brock. The Grievor told GS about the Brock mentorship program and who to speak with about applying. He provided a letter of support and agreed to be her faculty advisor. On the Grievor's recommendation, GS transferred from the Master's to the Ph.D. program at AU. With the Grievor's support, GS was awarded a AU School of Medicine Postgraduate Research Award which was intended to support her travel and living expenses during her doctoral studies. She was also accepted as a visiting student under the Brock mentorship program to pursue directed research study in her area of expertise with the Grievor as her key academic mentor and faculty supervisor.

[34] Initially GS was occupied with setting up the lab and the Grievor was busy with his role as an academic administrator. It took about a month for GS to transform the empty room into a functioning lab. They met for weekly lab meetings of an hour or less that were generally held over coffee in a shop or the Grievor's office. After the Grievor was stepped down from his academic administrative role, their meetings increased in frequency to almost every day, sometimes twice a day.

4) *Socializing with the Grievor and his family*

[35] When GS arrived at Brock in March 2017, she had no friends or family in the St. Catherines area. Other than an invitation to their home in Australia, which she attended with her partner, GS had not socialized with the Grievor or his family. After she arrived, GS accepted the occasional invitation from the Grievor or his wife to join in a family outing or meal. GS and her partner broke

up in June 2017 but remained friends and spent Christmas with the Grievor and his family. GS also accepted the occasional lift home from the Grievor. Over time, GS developed a close friendship with the Grievor's wife. As discussed below, however, from GS's perspective, there was a point at which she felt she had to distance herself socially from the Grievor and his family because of the Grievor's alleged conduct toward her.

[36] There is no dispute that GS and the Grievor initially greeted each other at Brock with a hug and a kiss on the cheek. This practice stopped very soon after GS arrived. The Grievor testified that he told GS it was not appropriate in that setting. GS testified that they mutually decided to stop. The Grievor testified it was a mutual decision to stop greeting each other this way when travelling together in the car, while GS testified that she stopped the practice, wanting to keep their personal and professional relationship separate. When she visited his family, GS continued to greet the Grievor and his wife with a hug and a kiss and occasionally hugged the Grievor's sons if appropriate. GS also hugged the Grievor once at work in May 2018 when she was told that one of the Grievor's colleagues had died.

[37] There is no need to resolve the differences between the Grievor and GS about the few occasions where they exchanged hugs and cheek kisses at work. GS did not include these instances in her complaint and does not allege that these instances were not consensual.

5) The nature of the professional relationship

[38] There is no dispute that the professional relationship between the Grievor and GS was mutually beneficial. The Grievor provided support to GS in various ways, including letters recommending the approval of extensions to her funding, her status as a visiting student, and time to complete her thesis. She could not work outside Brock and the Grievor helped GS supplement her stipend from AU, which was paid in Australian dollars. He made a payment to her of \$2000.00 for work she had done testing the imaging equipment in the lab. The Grievor also recommended GS for work at Brock, for which she was otherwise ineligible because she was a visiting student. He recommended to the administration that GS was the only qualified candidate to work as a marker/grader and teaching assistant in two of his course. The Grievor also arranged for GS to access fitness facilities at the University, which were otherwise restricted to Brock students and faculty.

[39] GS worked long hours setting up the Grievor's lab, conducting research, working together with the Grievor and other collaborators, writing papers and preparing for conferences. She generated good data to support their research and the papers they published together benefited both of their careers. All of the papers GS published and the conferences she attended during this period were with the Grievor. There was no dispute about the importance of developing a publication record and building a professional network during doctoral studies.

[40] Even when the relationship had reached its lowest point in February 2019, GS still credited the Grievor and thanked him for his support of her academic career. In the acknowledgements section of her thesis, GS thanked the Grievor "for the many instrumental and appreciated opportunities and lessons that followed". As discussed below, GS testified that her concerns were not about their professional collaboration, but what she described to the Grievor as the "male/female" dynamic that she felt was interfering in their work together.

6) Summary of the disputed allegations of sexual harassment and gender discrimination

[41] The incidents addressed by the investigation and disciplinary process occurred between March 2017, when GS arrived in Canada and February 2019, when the relationship between GS and the Grievor completely unravelled. The Employer alleges that the Grievor's conduct escalated over time and GS became increasingly uncomfortable with comments about her appearance, touching of lower back and shoulders, intrusive questions about her personal life, comments about her diet and exercise regimes, and intrusions into her personal time, including the time she spent with male friends or partners.

[42] The Grievor disputes the Employer's narrative about his relationship with GS. He testified that he thought of GS as a member of his family and treated her like a daughter as well as fully supporting her academic career. The Grievor believed that GS gave him every reason to believe that she felt the same way. He testified that the allegations were entirely inconsistent with the collegial relationship that existed between himself and GS. In his view, if these incidents actually occurred as she alleged, GS was outspoken and would have had no difficulty raising these issues with him. While the Grievor agrees that he paid her compliments from time to time, he strongly denies engaging in any conduct toward GS that could be characterized as sexually-oriented or gender-oriented in nature.

[43] The Employer alleges that between March 2017 and July 2017, GS noted a few sporadic comments about her appearance. In July 2017, they attended a conference in Lisbon, Portugal together, where the Employer alleges that the Grievor made repeated remarks about GS's appearance which continued when they returned to campus. The Grievor recalled making some but not all of the comments alleged and denied that any compliment he gave to GS was anything more than social niceties between colleagues.

[44] GS's relationship with her long-term partner ended in June 2017, following which the Employer alleges that the Grievor became increasingly interested in her personal life, regularly asking her personal questions and taking an interest in the men she was friends with or dating. The Grievor testified that GS's perceptions in this regard were unreasonable and that she had difficulty taking responsibility for the things that were happening in her personal life.

[45] The Employer alleges that when he was removed as an academic administrator on September 7, 2017, the Grievor disclosed confidential information about the complaint and investigation process to GS and asked her to write a letter of support on his behalf to the President of Brock. The Grievor admits the breach of confidentiality but alleges that GS took it upon herself to write the letter. GS acknowledges that the letter of September 14, 2017, accurately expressed the positive feelings she still had about the Grievor and their working relationship at that time.

[46] The Employer also alleges after they returned from the Portugal conference, through the fall of 2017 and into the early months of 2018, the Grievor continued to make comments about GS's appearance, her diet and exercise regimes, loss of weight and attractiveness. The Grievor's position is that there was casual talk about diet and exercise, often initiated by GS, and that there was nothing sexually-or gender-oriented about these interactions.

[47] The Grievor and GS attended a second conference in San Diego in April 2018, during which the Employer alleges that the Grievor's comments became more sexualized, and he began to touch GS's lower back as he guided her through doorways, monopolized her time, asked whether she bought a "one-piece" or a bikini swim suit (which is not factually disputed) and repeatedly invited her to swim at his hotel pool. GS described this conference as a turning point in her feelings toward the Grievor. Again, this conduct is alleged to have continued after the Grievor and GS returned from the conference. The Grievor denies making any sexually- or gender-oriented comments to GS or deliberately guiding or touching her. He says that GS was

not required to spend time with him and that she was the one who was adamant about swimming at his hotel pool.

[48] Following the San Diego conference, GS resolved to speak with the Grievor about her concerns. On August 16, 2018, she initiated a lengthy meeting with the Grievor, during which she described her concerns in detail, particularly the Grievor's alleged conduct at the conference. There is no dispute that GS told the Grievor that there was a "male/female dynamic" between them that made her uncomfortable and affected their ability to work together. The Grievor did not agree with GS's perspective on all the issues raised, in particular, her claim that he was encroaching on her time with a male employee with whom she regularly had coffee (BB). However, both parties agreed that the meeting concluded with a commitment to continue their working relationship.

[49] The Employer alleges that for a period, some of the unwanted attention GS received from the Grievor improved but eventually resumed and intensified. Her concerns peaked on February 1, 2019 when the Grievor approached her on a Friday night in a local pub where she was having dinner with her partner. The discussion between them was brief. GS was wearing a short dress that fit closely to her body. There is no dispute that the Grievor touched the fabric on the sleeve of her dress, commenting, "Nice dress," as he was leaving the pub. A day or two later, while GS was having tea with the Grievor's wife, the Grievor reiterated the "nice dress" remark and asked whether she had been "cold in that dress". GS was very upset by these interactions, particularly after the meeting in August 2018. GS was close to completing her Ph.D. and decided that once she finished, she could not continue to work with the Grievor.

[50] On Monday, February 4, 2019, GS initiated the final meeting between them at the end of the day when the Grievor was leaving his office. GS informed the Grievor of her decision not to pursue post-doctoral work with him. She explained to the Grievor that he continued to cross her personal boundaries. The Grievor told GS that there were rumours circulating about her relationship with BB, the male employee they had discussed in the August meeting. GS was incensed by this statement and it prompted her to pull out her phone and record the remainder of what was a highly accusatory and volatile conversation. The audio and transcript of that conversation were admitted in evidence.

[51] In March 2019, the Grievor resigned as GS's Ph.D. supervisor, leaving her to find a new supervisor to complete her thesis and a faculty advisor to continue as a visiting student at Brock. She was denied access to the Grievor's lab and she stopped her work as a marker/grader and teaching assistant. Alternate arrangements were made for GS to remain at Brock as a visiting student until she completed her thesis in April 2019 and was awarded her Ph.D. by AU.

7) *The complaint and discipline*

[52] As I have previously indicated, the complaint was investigated by an external investigator. The Association takes issue with some of the investigator's findings but the parties agree it is not my role to resolve those issues or to evaluate the investigation process. The Employer was aware of the Association's position on the report and concluded that the issues being raised had been appropriately dealt with by the investigator. Accordingly, the Employer did not seek any further information from the investigator and did not respond to the Association. I agree with the Association that as a labour relations matter, it would have been preferable for the Employer to provide a brief response that it was satisfied the Association's concerns had been properly addressed by the investigator at first instance.

[53] The final investigation report recommended that disciplinary proceedings be commenced pursuant to the terms of the *RWLEP* and the collective agreement. The Grievor and Dr. Braley-Rattai, his Association representative, met with administrative officials twice; first with Ms. Villella and the Dean of the Grievor's faculty (his direct manager) and second with Ms. Villella, the Dean, and Dr. Wells who made the final decision to terminate the Grievor's employment effective May 20, 2022. In the first meeting the Grievor read from a prepared statement, discussed in more detail below. Ms. Villella, the Dean and Dr. Wells met privately after the second meeting and the decision was made to terminate the Grievor's employment.

[54] The reasons for the termination are set out in a letter dated May 20, 2022 signed by Dr. Wells:

RE: Dismissal for Cause

I am writing in follow up to our meeting on May 19, 2022, where we discussed the recent Final Investigation Report (the Report) dated March 2, 2022, whereby you were found to have violated the Respectful Work and Learning Environment Policy (RWLEP). Also in attendance at the meeting were Dean Peter Tiidus, Ms. Villella (Human Resources), and Alison Braley-Rattai (BUFA representative).

During our discussion I confirmed the University's serious concerns with the findings that you violated the RWLEP when you engaged in acts of sexual harassment towards the Complainant and that you created a sexually and gendered poisoned learning and work environment. In addition, you were found to have violated the confidentiality requirements under the RWLEP in relation to a prior complaint made against you, and that you made comments of a discriminatory nature on the basis of sexual orientation, gender, and race. The full details of the charges against you are outlined in the findings of the Report, which you have had an opportunity to review.

Of particular concern is that you held a position of relative power and authority over the complainant and that you neglected to fully recognize that power differential in your relationship. Although the complainant approached you in August 2018 to express her discomfort with your gendered treatment toward her and asked you to change your behaviour, you failed to do so and continued to harass her and subject her to a poisoned work and learning environment.

I also noted that you were found to have violated the RWLEP in 2017. The disciplinary outcome resulting from that previous violation was your removal as [an academic administrator] and you were warned that any future contravention of the RWLEP would result in further discipline, up to and including your dismissal for cause. That discipline remained active on your employee file at the time the investigation that culminated in the Report was commenced.

The University cannot tolerate these serious and repeated violations of the RWLEP. You have refused to accept responsibility for your own actions, and, because of your behaviour, the University has lost any trust that you would refrain from acting in a manner contrary to the RWLEP. You have left me with no alternative but to issue this dismissal for cause. Accordingly, please be advised that your tenure and employment with the University is terminated and you are hereby relieved from all of your professional responsibilities effective immediately.

The Dean will arrange for your current graduate students to be transferred to another faculty supervisor and I expect that any inquiries you receive from students about these arrangements, or any other subject, will be immediately forwarded to the Dean or his designate for a response. I expect you will refrain from attending the University for any reason other than to meet with your BUFA representatives or unless you receive my express approval in advance. You may contact Ms. Villella to make arrangements to retrieve any personal belongings that you have at the University and to return any University property that you have in your possession.

Please note that your current salary and applicable benefits will be maintained for a period of time as required by Articles 10.09 and 9.16 of the collective agreement between the Parties.

III. Credibility and factual findings

[55] As noted at the outset, this is a hearing *de novo*. I have considered the evidence and submissions of the parties and made my own findings and assessments of credibility independent of the investigator. Because GS and the Grievor gave conflicting evidence on the central incidents at issue in this arbitration, I am required to make factual findings by assessing their credibility.

[56] Credibility generally has two distinct aspects: veracity and reliability. As the Court of Appeal explained in *R. v. Morrissey*, (1995), 22 O.R. (3d) 514 (Ont. C.A.):

Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable...

[57] The Employer and the Association agree that where GS's and the Grievor's evidence diverges, I must assess their respective credibility with respect to each particular incident at issue. This is because a lack of credibility or reliability in relation to one aspect of a witness's testimony does not automatically mean that the totality of their evidence is incredible or unreliable. A trier of fact can accept all, some, or none of a witness' testimony on a number of matters at issue.

[58] In *Visic v. Elia Associates Professional Corporation*, 2011 HRTO 1230 at para. 54, application for judicial review dismissed application for judicial review dismissed 2015 ONSC 7163 (Div. Ct.), the Human Rights Tribunal of Ontario stated:

Evaluating the reliability and veracity of a witness's evidence is a multi-faceted exercise, where a conclusion of credibility develops from various interrelated findings, such as whether, on a balance of probabilities, the evidence was sufficiently probable, logically connected to other points, and/or buttressed by independent evidence; as well as findings with respect to the state of the witness, such as candour or evasiveness, capacity to perceive and remember, and attitude towards the parties. A finding of lack of credibility or reliability with respect to one aspect of a witness's testimony does not automatically render the entirety of the witness's evidence as incredible or unreliable. As such, a tribunal is entitled to accept or reject some, all or none of a witness's evidence: see *Loomba v. Home Depot Canada*, 2010 HRTO 1434.

[59] I am therefore tasked with considering the surrounding circumstances of each particular incident at issue and assessing GS's and the Grievor's conflicting evidence "for its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": see *Serco Canada Inc.* (2020) 318 LAC (4th) 399, at para. 48, quoting *Faryna v Chorny* (1951), [1952] 2 DLR 354 at 357.

[60] The allegations are organized into the following periods:

- March 2017 to April 2018, GS's arrival at Brock up to and including the San Diego conference;
- April 20, 2018, following the San Diego conference to the meeting on August 16, 2018;
- August 17, 2018 to March 2019, the day after the meeting including the final meeting on February 4, 2019.

[61] While the allegations have been organized into specific time periods, and determined individually, they have not been assessed in isolation. Arbitrators are required to take a contextual and holistic approach to determining allegations of sexual harassment. This is particularly important where the alleged conduct is subtle and emerges as a pattern of behaviour which has a cumulative rather than immediate effect on the victim. In cases involving a lengthy and complex professional relationship like the one between GS and the Grievor, it is essential to open the aperture to take in the whole view, rather than focussing on individual actions and explanations in isolation.

[62] The Grievor challenged the veracity of GS's allegations to the point of alleging that she falsified several allegations. The Association's submissions were focussed, properly in my view, on the few instances where GS's testimony diverged from the investigation materials or a credible submission could be made that her growing frustration with the Grievor was colouring her interpretation of certain events. There was no evidence that GS had anything to gain by filing the complaint. She was reluctant to testify, having moved on and put this experience behind her, and expressed that she had nothing invested in the outcome of the arbitration. Overall I found GS to be doing her best to tell the truth under difficult circumstances, not reluctant in any way to make admissions or to say that she did not recall an incident, and that she shared both her gratitude

for the Grievor's support of her academic work and her objections to his conduct, not exaggerating or overstating the effect his conduct was having on her.

[63] I also appreciate the difficult circumstances that the Grievor was testifying under. I found the Grievor's credibility was undermined by patterns of avoidance and minimization in his testimony. His evidence was at times internally inconsistent on matters of central importance. Still, there were a few instances where I preferred his evidence, particularly as it relates to comments he allegedly made about his family members. I have evaluated the Grievor's credibility in the context of each of the allegations and explained my reasons for preferring his or GS's version of the events.

[64] Each of the findings made in this section of the award is based on a balance of probabilities.

A. March 2017 to April 2018: Arrival at Brock to the San Diego conference

[65] This period includes GS's arrival at Brock, the Portugal conference in July 2017, the fall of 2017 when the Grievor was removed from his position as an academic administrator and breached the confidentiality provisions of the *RWLEP*, the winter of 2018 and the San Diego Conference in April 2018.

[66] When GS arrived at Brock she was initially occupied with setting up the lab while the Grievor was busy with his role as an academic administrator. In June, 2017, GS's relationship with her partner ended, and it is at this point, that GS began to feel that the Grievor was escalating his interest in her personal life and particularly her relationships with other men. This issue was raised in the August 2018 and February 2019 meetings between GS and the Grievor and I have addressed it below.

1) The promotional video summer 2017

[67] At some point in the summer of 2017, a promotional video was being produced at Brock. The Employer alleges that the Grievor told GS that he recommended her for the video and described her to the producer as a "gorgeous Australian".

[68] GS's evidence is that the Grievor asked if she wanted to participate in the video production and told her he described her as a "gorgeous Australian" to the producer. She also understood

that the Grievor had told the producer about her work as an international student and that this was the primary reason she had been asked to participate. When she received the script for the video, GS discovered that she would be holding the hand of a fictional boyfriend and that there were no lines that had anything to do with her work. She described this as pointless and objectifying. She testified that she told the Grievor about her concerns and that he was on her side. She understood that the Grievor also believed there would be some substance to her participation in the video.

[69] The Grievor testified that one of the other people from graduate studies raised the issue that there was an Australian graduate student at Brock, and it might be good to have an international student in the video. He denies using the words "gorgeous Australian". The Grievor's evidence is that he described GS to the producers as "photogenic". He was aware that GS had appeared in similar promotional materials at AU. He also confirmed that he shared GS's concerns about the absence of any reference to her work with the producer and required that they re-work the script.

Finding

[70] I prefer the evidence of GS and find, that the Grievor told her that he described her to the producer as a "gorgeous Australian". GS testified as to why she recalled this specific comment, its impact and her reaction to it. The comment was memorable and she took note of it but brushed it off. It was reminiscent of a comment the Grievor made the first time they met, when he asked why she wanted to do a project with him when she could be a model. GS responded to that comment in a similar way by "laughing it off".

[71] GS's credibility was strengthened by the fact that she did not overstate the importance or impact of the comment, acknowledging that she did not believe it was the primary reason she had been recommended for the video. She also credited the Grievor who supported her when the producers failed to highlight her work as an international student. There is nothing implausible about her account, and she provided sufficient context to explain why the comment was memorable.

[72] By contrast, the Grievor did not provide context for how GS's appearance came up in his conversation with the video producer or his recollection of using the specific word "photogenic". He testified that because she appeared in previous promotional materials that had been taken at his lab at AU, she must have been considered "quite photogenic" by the photographer. That

testimony did not assist me in evaluating the reliability of his memory that he actually used the word photogenic rather than the words "gorgeous Australian".

[73] It is also in the Grievor's interest to minimize the sexual or gender-oriented nature of the language he used in describing GS, and any suggestion that he found her attractive, given his role as her supervisor and his testimony that he treated GS like a daughter and member of his family. The word "photogenic" is more neutral and technical in nature, than the word "gorgeous" which carries a sexual and gender connotation when it is used by a male professor to describe a female student. This incident was minor in the scheme of the relationship, but the Grievor's testimony was part of an overall pattern of avoidance and minimization which was repeated in other instances as described below.

2) The Portugal conference July 2017

[74] The Grievor and GS attended two conferences together after March 2017: the first in Lisbon, Portugal in July 2017 and the second in San Diego, California in April 2018. There is no dispute that conferences like this represent important professional opportunities for graduate students to share their research, and engage in networking opportunities that could have a significant impact on their careers, including developing collaborations that could lead to published work. GS valued these opportunities which the Grievor identified and supported. For both conferences GS submitted work and presented posters on her research and was approved for travel awards to defray the costs of her attendance.

[75] The Employer alleges the Grievor commented on GS's appearance several times during the Portugal conference. The Grievor does not recall all of the comments, but did not dispute that he complimented GS on her appearance more than once.

a. Comments enroute to the conference

[76] The Grievor and GS travelled to the conference together. GS was wearing her hair out (down) and an ankle length maxi dress with sandals and a cardigan. She normally dressed in pants in the lab and wore her hair up in a bun. GS testified that when the Grievor saw her, he commented that she looked great and should wear her hair like that more often. She also testified that she believed he complimented her dress and that she responded that she bought it at a

second hand store. GS testified that these comments were impactful enough to notice but did not cause real discomfort at the time.

[77] GS's testimony about the comments made enroute to the airport are not exact, but consistent with her statements during the investigation. The allegation described in the investigation report, from GS's interview with investigator, is that the Grievor said "Wow, you should wear your hair out more often," and "great dress, where did you get that dress?". These minor differences were not material and did not affect GS's credibility in any way. Importantly, her evidence was consistent that the Grievor commented on her dress and said she should wear her hair out more often.

[78] In his direct examination, the Grievor was asked to address the specific comments as they appeared in the investigation report. The Grievor did not recall commenting on GS's dress. He acknowledged that he made the comment about GS's hair apart from the word "wow". He testified that this was an embellishment because "I never say wow". He recalled commenting on GS's hair, because up until then, she always had worn her hair up in a bun, which was useful for lab work. He testified that seeing her for the first time with her hair down "that was the comment". Counsel for the Association confirmed with the Grievor that he acknowledged the comment on her hair. The Grievor also reiterated that he did not recall commenting on her dress. At this point in the Grievor's testimony he disputed only the word "wow" and confirmed the rest of the comment.

[79] In cross-examination, the Grievor gave a different version, which is that he said something to the effect of "your hair looks nice", because GS was wearing it differently. The Grievor was then asked whether it was possible that he said something like "you should wear your hair out more often", the statement that was put to him in his direction examination to which he responded, "that was the comment". The Grievor responded that he did not think he would have, but probably said something to the effect of "that's different – it looks nice". He was asked again whether it was possible, and responded that it was *not possible* that he said: "you should wear your hair out more often".

[80] The Grievor was also asked in cross-examination about the statement: "I never say wow", in commenting on GS's appearance. The Grievor's attention was drawn to the recording of the February 4 2019 meeting, discussed below, during which he used the word "wow" multiple times.

The Grievor explained that this was a different context and that he was using the word wow in a sarcastic sense to mean “shocked” or “taken aback”, as opposed to “wow, you look great”.

b. Comments during the conference

[81] GS testified that throughout the conference there were frequent comments about her appearance and the dresses she wore to various events at the conference. She described her clothing as different from her regular lab attire, but not unusual and not something to comment on.

[82] The Grievor did not recall these comments but did not generally dispute GS’s evidence except to deny the use of words such as “wow”, or “stunning”. The Grievor testified that he may have given GS compliments because of the way she was dressed at the conference as compared to the lab, but he denied making any comments that could be construed as anything beyond normal collegial interactions and social niceties. GS testified that she never asked the Grievor what he thought of her dresses and never initiated any discussions about her appearance.

[83] There were two specific incidents from GS’s evidence that the Grievor was asked about in his direct examination. The first is that the Grievor allegedly commented “that’s a great dress” in response to seeing GS in a long dress with gold embroidery. The Grievor’s evidence is that he did not recall the dress or the alleged comment. This was consistent with what he told the investigator.

[84] The second incident occurred at a dinner during the conference at which GS received her travel award and had to go up onto the stage to be photographed. The Grievor is alleged to have said something like, “you look amazing”. GS allegedly responded that the dress she was wearing was not the dress she had originally chosen to wear, to which the Grievor allegedly responded “you look great anyway”. GS did not testify about this incident. She discussed it in her first interview with the investigator and the Employer relied on that evidence in its final submissions.

[85] The Grievor testified that he and GS were not sitting immediately together and he did not recall saying to GS “you look amazing”. He did recall that as GS was being introduced and getting up to go on stage for having won the travel award, she looked at the Grievor and said “do I look okay?” to which he responded “you look great”. This was followed by GS saying that she was

wondering because it was not the dress she wanted to wear, to which the Grievor responded "you look great anyway."

[86] The Grievor's testimony in his direct examination was inconsistent with what he told the investigator in his written response, namely, that he had no recollection of this incident. Similarly, during cross-examination, the Grievor stated that he had no recollection of attending either of the events in Portugal or San Diego where GS received a travel award.

Finding

[87] I prefer the evidence of GS on the comments that were made enroute to and during the conference. GS's version of the incidents in Portugal was more credible and reliable than the Grievor's in part because she testified about what she was feeling and thinking at the time. She testified that the Grievor's comments about her appearance began to feel like a pattern, they were more concentrated and frequent, she was feeling confused and did not know what to make of them. She testified that it felt like the Grievor was expressing that he was attracted to her, but it was not threatening, there was no touching and she did not feel like he was pursuing her. She also felt that she could avoid the Grievor when she wanted to during the conference. This evidence was compelling. That she was feeling confused about the Grievor's conduct toward her at this stage is entirely plausible given the frequency and nature of his comments toward her. At the same time, she still gave the Grievor the benefit of the doubt and did not overstate his conduct or potential motives. On the whole, where they diverged, GS's evidence about the Portugal conference was more coherent and persuasive than the Grievor's evidence.

[88] The Grievor does not deny commenting on GS's attire throughout the Portugal conference but did not have the same detailed memories of those incidents as GS. He testified these comments were consistent with the kinds of compliments he would give to any colleague in the same circumstances.

[89] The Grievor does not recall commenting on GS's dress on the way to the conference. GS's evidence included specific details about the time, place and what she was wearing, when the Grievor complimented her on her dress and asked where she purchased it. I find that this conversation occurred as described by GS.

[90] There is no dispute that the Grievor commented on GS's hair while travelling to the conference. GS had a clear and consistent recollection that the Grievor said she should wear her hair out more often. The fact that the word "wow" appears in GS's written materials but was not repeated in her testimony at arbitration does not undermine her credibility or reliability in any way.

[91] By contrast, the Grievor's evidence on this issue was vague and inconsistent. In response to the question whether he said "wow, you should wear your hair out more often", he disputed only the comment "wow". He explained that he does not use "wow" in this context and that this part of the allegation was an embellishment. He did not contradict the balance of the statement but rather confirmed, "that was the comment". In cross-examination the Grievor contradicted this testimony by saying that it was not possible that he could have said that GS should wear her hair out more often. If this were true, he would have challenged that statement in his direct examination, as he did her use of the word "wow". In cross-examination he also speculated that he probably said something to the effect of "that's different – it looks nice", which suggests that the Grievor did not actually recall the words he used.

[92] If the Grievor had simply said that he made a comment about GS's hair but did not recall specifically the words he used, that would have bolstered his credibility. Instead, his credibility was undermined by the inconsistency between his direct and cross-examination, and his suggestion that he probably said something more consistent with his own narrative, that the compliments he paid to other people were social niceties meant to make them feel good. The statement, "you should wear your hair out more often" is a more intimate comment about GS's attractiveness as a woman when she is wearing her hair a certain way. This is an example of a pattern of avoidance and minimization where the Grievor is confronted with a statement that could be viewed by an employer as objectively inappropriate for a graduate student supervisor to make to a female graduate student.

[93] This pattern was also evidence in the Grievor's description of the comments that were made when GS accepted her travel award. The Grievor told the investigator he had no memory of this incident. He gave a version in his direct examination in which GS initiated this conversation and he was reassuring her about how she looked. In cross-examination, the Grievor testified that he did not recall being present when GS accepted her travel awards at either the Portugal or San Diego conferences. I do not find this credible given the Grievor's conflicting evidence and the fact that his version reverses the conversation to make it seem as if GS was initiating and he was

passively reassuring. I also note that the Association submits that it is "entirely plausible" that the exchange between them began with the Grievor complimenting her on her dress, as they both agreed he had in other instances at that conference. I find that the conversation about GS dress was initiated by the Grievor.

[94] I am unable to find that the Grievor specifically said "you look amazing", but rather that the conversation began with "something like" that statement, as GS told the investigator.

c. Comments by the Grievor about his wife

[95] When the Grievor and GS arrived in Lison, Portugal, they had drinks together while GS waited to check into her accommodation. GS testified that the Grievor talked about his wife and some of the challenges she was experiencing, like her inability to find time to exercise given her demands as a caregiver. She testified that the Grievor made comparisons between his wife and GS with respect to their fitness level, appearance and state of happiness. GS described the closeness of this conversation as an oddity. She testified that it was a "strange and intimate conversation" and that she put some distance between herself and the Grievor during the conference because of it.

[96] This was the first of two incidents where the Grievor allegedly raised issues about his wife in discussions with GS. In the second incident, in 2018, GS and the Grievor were travelling in a car to a business meeting together. GS described this as the "same line of conversation" as occurred at the Portugal conference. GS responded that perhaps the Grievor and his wife should try having "date nights".

[97] The Association submits that while there may be some element of complaint, it is clear the Grievor was seeking support and input on his relationship with his wife rather than telling GS how much fitter and more pleasant she was in comparison. The Association submits that although GS and the Grievor's wife were not close at this time, they spent time together, and the Grievor was speaking with GS about some minor difficulties in his relationship with a person with whom she was already friendly. Although I do not agree that this is appropriate, and suggests an overfamiliarity on the Grievor's part, these incidents were fleeting and of a different nature than the comments about GS's appearance. Accordingly, this allegation will not be addressed as part of the analysis of the sexual or gender-oriented nature of the Grievor's conduct.

3) *Comments about personal appearance between the Portugal and San Diego Conferences (July 2017 to April 2018)*

[98] The Employer alleges that in the summer of 2017, following the Portugal conference and GS's break up with her partner, the Grievor's comments no longer focussed on the clothing GS wore, or how different she looked outside of the lab. The Employer alleges that his comments began to centre on her physical appearance, particularly her body and how her increased fitness made her appearance more attractive.

[99] GS testified that during this period she was single and devoting more time to fitness. She was also paying attention to her diet. The Grievor would often comment that she looked "great", or "fantastic" and that "the running was paying off". GS testified that these comments were always initiated by the Grievor.

[100] The Grievor testified that there was a lot of friendly discussion about exercise and diet over coffee, or when the GS visited his home and that some of these conversations related to their research. From the Grievor's perspective, these were normal, friendly, collegial discussions that he would have with anyone, including other colleagues. He testified that he made comments to GS and others about having lost weight or the fact that their exercise routine was "working". However, the Grievor testified that his comments usually came in response to GS telling him about an activity, like running or going to yoga. He disagreed with the use of the words "looked fantastic" because that is not the way he talks. However, the Grievor agreed it was possible he said GS was "looking great". He also brought GS supplements to support the diet she was on because he was concerned about the health effects of her eating habits.

[101] The Employer alleges that the Grievor also made "gross" comments about GS's participation in hot yoga. There was a discussion between them about "guys" participating in GS's hot yoga classes and whether the Grievor's son would enjoy attending. GS alleged that when she told the Grievor that guys attended her classes, he responded, "I'm sure there are a lot of guys there", implying that they were there to look at women including GS. The Employer also alleged that the Grievor said: "I'm sure he would enjoy that" implying that his son would enjoy looking at women as well.

[102] The Grievor testified that this was taken out of context and that yoga was recommended for his son because of a health condition. The Grievor testified that he and his wife are always on

the lookout for something to benefit their son. The Grievor testified that he meant that his son would enjoy being around other guys in a yoga class not that guys were there to look at women and his son would enjoy that.

Finding

[103] There is no dispute that there were general discussions about exercise and diet between the Grievor and GS. There is similarly no dispute that the comments about fitness and GS's changing appearance were made by the Grievor. I accept GS's testimony that she did not initiate discussions about her appearance with the Grievor which is consistent with her discomfort and actions in attempting to avoid these comments at the Portugal conference. Even if I were to accept the Grievor's testimony that his comments usually came in response to GS telling him that she had been to yoga or had been out running, there is no evidence that she was inviting comments from him about her appearance. There was also no evidence called to corroborate the Grievor's testimony that he complimented other colleagues on the changes in their physical appearance that resulted from their fitness regimes.

[104] On the issue of the hot yoga comments, the evidence was insufficient for me to find that the Grievor was implying that men attended hot yoga to look at women and that his son would also enjoy that. The Grievor's explanation is plausible and his testimony appeared sincere when discussing the relationship between hot yoga and the needs of his son who had a health condition. Accordingly, this allegation will not be addressed as part of the analysis of the sexual or gender-oriented nature of the Grievor's conduct.

4) Breach of Confidentiality September 2017

[105] On September 7, 2017, the Grievor was advised by the University President that he was being removed from his role as an academic administrator following a finding that he had breached the personal harassment provisions of the *RWLEP*. One week later, on September 14, 2017, GS wrote a letter to the president of the University expressing support for the Grievor and the hope that "this is not over and that all will be put right soon enough".

[106] GS testified that the Grievor asked her to write this letter to the President and that she did so out of a sense of obligation for all the letters of reference the Grievor had written on her behalf. GS testified that she would never had thought to write the letter to the President on her own. She

testified that the details she included in the letter and her own impressions of the fairness of the investigation were informed by the information the Grievor had disclosed to her. The Grievor acknowledged that he shared with GS the name of the complaint, the nature of some of the allegations and his belief that the investigation was biased and unfair.

[107] GS also acknowledged that the letter accurately reflected her largely positive experiences with the Grievor up to that point in time. Notably, she acknowledged in her testimony that she had not been completely candid in the letter to the President. She testified she stated in the letter that information about the investigation had come from others, in order to protect the Grievor.

[108] The Grievor's evidence was that GS was enraged when she heard that he had been removed from his decanal position and that she took it upon herself to write the letter to the President. The Grievor denied asking GS to write the letter. He testified that he told GS not to bother writing to the President, because the decision would not be reversed.

[109] GS forwarded to the Grievor her email to the President and the response she received. The Grievor responded with the following email:

Far kinder words than I deserve. Thank you.

If he is half the leader I think (hope) he is, this has to have some effect. I have been told others have/are writing as well. I hope some word to him from my former team has an effect – if only to make sure this never happens to anyone else again.

The only thing necessary for the triumph of evil is for good men to do nothing. Edmund Burke

[110] The Grievor testified that he was not seeking to have the decision overturned but wanted to ensure, as his email states, that something like this never happened to anyone else again.

Finding

[111] I prefer GS's evidence about how she came to write the letter to the President and the information she included. Her version is consistent with the Grievor's email which bears no evidence of their prior conversation during which he allegedly told her not to bother. In fact, the message conveyed by this email is that GS has done the right thing - the necessary thing - if there is to be any effect on the President's decision. In addition, I agree with the Employer that it is

improbable that GS, a visiting student who had been at the University for just over 6 months, would decide on her own, against her supervisor's advice to write such a letter to the President about events which largely predated her arrival at Brock.

[112] This incident is relevant to the seriousness of the confidentiality breach. The Grievor testified that he thought it was appropriate to give GS some information about what was going on because she was alone in the lab and others were likely asking her about his absence. I agree with the Employer that the evidence demonstrates that the Grievor disclosed selective information to GS and then encouraged her to write a letter, joining others mentioned in his email, as part of larger campaign of support on his behalf. This is particularly problematic given that the Grievor had not exhausted his recourse in relation to the investigation findings and discipline.

5) The meeting with the Grievor's colleague at a local pub

[113] The Employer alleges that in December 2017, following a meeting at a pub with one of the Grievor's male colleagues (Dr. C), the Grievor said to GS that Dr. C was looking at her the whole time, that he liked her, and that she had an admirer. The Grievor testified that the conversation in which these comments were alleged to have been made never occurred.

[114] The meeting at the pub was preceded by several email exchanges. GS testified that she had spoken with one of Dr. C's students who requested assistance interpreting data that GS was familiar with. Dr. C emailed to introduce himself to GS, copying the Grievor, following up on the conversation she had with his student. He suggested an "initial chat" and the possibility that GS could work on a paper with the student involved in the study.

[115] There were discussions about a meeting time and place to discuss the possibility of a collaboration in more detail. The meeting took place in mid-December 2017 in the afternoon at a local pub. GS testified that as they were leaving, she was speaking to the Grievor about the meeting when he said Dr. C could not stop looking at her and he thought she had an admirer. GS testified that she told the Grievor she did not think this was true. She was not happy about the Grievor's comments and did not laugh it off, but rather actively shut it down.

[116] The Grievor did not confirm or deny these statements in his direct examination. He speculated that the conversation may have had something to do with the work itself, and if Dr. C

was looking at GS, then he was looking at both of them because they were seated next to each other on one side of a booth and Dr. C was on the other side. However, he testified in cross-examination that it was "absolutely untrue" that he told GS that Dr. C liked her and she had an admirer in him. He testified that the conversation never happened, including GS's alleged response to his comment.

Finding

[117] I find that after the meeting with Dr. C, the Grievor told GS that Dr. C was looking at her the whole meeting, that he liked her, and that she "had an admirer".

[118] The Association submits that it is more likely than not, that GS was sincere, but mistaken about the Grievor's use of the phrase "you have an admirer" and that this language was added by the first investigator.

[119] The Association pointed out that this incident appears in the investigation documents after GS met with the first investigator on May 15, 2019. GS wrote to the investigator the next day that: "Reflecting on this now I recall (the Grievor) saying to me after that meeting that (paraphrasing) "did you notice that Dr. C was looking at you the whole time?", "I think he likes you", "He didn't even look at me while I was talking". GS said essentially the same things to the second investigator. However, the words "you have an admirer" appear for the first time in written form in the August 1, 2019, complaint which was prepared by the first investigator. GS also repeated this phrase in her testimony.

[120] The complaint makes the allegation that the comments about Dr. C looking at GS arose after the meeting while they were discussing the Grievor's demeanour toward Dr. C. GS found the Grievor unnecessarily stubborn and dismissive about Dr. C's preferred interpretation for the research project's data. GS asked the grievor why he did not explain his reasoning to Dr. C, to which the Grievor allegedly responded: "while I was talking, he was looking at you the whole time". GS further alleged that the Grievor commented that Dr. C "liked" GS and that "you have an admirer".

[121] The Grievor's written response to the complaint states: "That there was possibly not enough data to do the full analysis that Dr. C was thinking of is true. Everything else is a falsification". He was asked for further details by the investigator and responded that he did not

recall leaving the pub with GS and had no recollection of what she was claiming. He speculated that perhaps GS felt that Dr. C showed interest or that she found him attractive.

[122] While it is not entirely clear how that statement "you have an admirer" became part of the complaint, GS reviewed and endorsed the complaint when it was finalized. When she was asked by the second investigator for specifics about the comments allegedly made by the Grievor that Dr. C was looking at her the whole time, that he liked her, and "you have an admirer" she did not correct any of those statements. She responded that this was after the meeting and that "this was one of the first things that came out of (the Grievor's) mouth - "I think he likes you" and that he was looking at her the whole time. GS added that she responded to the Grievor that she did not see that and it was not what had happened, but that the Grievor did not let it go and repeated his views.

[123] In my view, it is unlikely that the phrase was added by the first investigator without first receiving that information from GS. The comment is consistent in nature with the Grievor's alleged observation that Dr. C was looking at GS throughout the meeting and appeared to like her. GS never corrected that statement during the investigation process.

[124] Even accepting that "you have an admirer" is not the exact language that was used, GS's evidence has been consistent that after the meeting, while she was talking about the meeting itself, the Grievor told her that Dr. C was looking at her and that he liked her. GS had a clear recollection of the time and place, the context for the meeting, the comments the Grievor made, how they affected her and what she did in response to put a stop to the conversation. Her version is plausible and the Association did not argue that GS had any motive for making this story up.

[125] I do not accept the Grievor's denial. The Association submits that if this conversation did occur, a more plausible interpretation would be that the Grievor's comment that Dr. C was looking at GS and that he liked her, was expressed as his having felt professionally affronted by the attention that Dr. C paid to GS, rather than the belief that Dr. C found GS attractive. This submission was speculative and the Grievor never testified to this belief.

[126] The clear implication of these statements is that the Grievor believed that Dr. C was looking at GS because of her gender and attractiveness. The Grievor made this connection himself in his suggestion to the investigator that perhaps GS felt that Dr. C showed interest or that

she found him attractive. Given the nature of these comments, the Grievor has a strong self interest in denying that this conversation took place.

6) *"Lucky Boys" comments*

[127] The Employer alleged that GS visited the Grievor and his family at his home, at Christmas, and gave his sons a hug and perhaps a kiss on the cheek, at which time the Grievor said "Oh, lucky boys" and "lucky you". GS testified that when the Grievor made this comment, it made her "flinch" and gave her a "flickering second of disgust".

[128] The Grievor acknowledged making the comment (lucky boys or lucky you) one time. He testified that his sons were young when they moved to Australia where they spent their formative years and where GS was from. The Grievor testified that he was expressing that the boys were lucky to have GS in their lives.

Finding

[129] This is a circumstance where GS and the Grievor agree on the words that were used but not the interpretation. I do not doubt the sincerity of GS's impression about the meaning behind this comment, particularly given that it came after she made physical contact with the Grievor's sons. However, the comment is not inherently sexual or gender-oriented in nature and the Grievor has provided a plausible explanation for using those words in the context of a Christmas celebration at his home. Accordingly, this allegation will not be addressed as part of the analysis of the sexual or gender-oriented nature of the Grievor's conduct.

[130] The Association submits that throughout the investigation GS referred to two incidents, one where the Grievor said "lucky boys", the other where he said "lucky you". GS testified about only one incident and it may have occurred in 2018 rather than 2017. However, given my finding that I prefer the Grievor's explanation, and the Association's position that nothing turns on whether GS conflated these events in her memory, I have not provided further reasons on this issue.

7) *Comments and conduct during the San Diego Conference April 20 to 25, 2018*

[131] GS and the Grievor attended a second conference together in San Diego from April 20 to 25, 2018. They met one of the Grievor's male colleagues, Dr. D and spent considerable time together, including over various drinks and meals.

[132] GS testified that prior to the San Diego conference, she had dealt with the Grievor's comments about her appearance and personal life in various ways like "laughing them off", ignoring them, or openly disagreeing with the Grievor as she did with the comments about Dr. C looking at her. From GS's perspective, while the Grievor's comments were becoming increasingly personal, they were not accompanied by any physical touching and she could go about her studies on campus without having to constantly interact with him. GS testified that the San Diego conference marked a turning point in her relationship with the Grievor because of an escalation in the frequency and nature of his comments. He also began touching her in a way he had not before, guiding GS ahead of him by touching or holding her lower back. He also commented on her appearance openly in front of one of his male colleagues, Dr. D which he had not done before.

[133] GS's evidence was that in addition to the touching, which was new, the Grievor made repeated comments about her personal appearance, monopolized her time, made inappropriate comments about her swim suit and encouraged her to swim at his hotel pool even after she declined. GS testified that she was sufficiently concerned about this alleged escalation in the Grievor's conduct that she resolved to meet with him when they returned from the conference.

a. Comments about her appearance

[134] In her testimony, GS referred to the documents submitted during the investigation process which included specific detailed descriptions of her outfits and the alleged comments the Grievor made. She arrived on April 20th and met the Grievor and Dr. D in the afternoon in the lobby of their hotel. The Grievor made a comment about her appearance that she could not recall but it was in front of Dr. D which was unusual for him to do so openly. Later she was wearing black jeans and an off-the-shoulder top with straps and the Grievor commented "that's a nice top".

[135] On the next day, April 21st, she was wearing a polka dot dress with heels. The Grievor commented: "I love the sway. Dresses don't sway like that anymore" as they were walking between conference events. He also commented that she looked "stunning...amazing".

[136] On the following day, April 22nd, she wore a blue knit dress and heels and the Grievor commented that she looked "amazing" and touched her lower back as he guided her up the escalator. Later that evening she joined the Grievor and Dr. D for dinner. She wore a floral dress, long cardigan and heels. When she arrived at the restaurant the Grievor commented that her legs "looked great" (she also used the word "fantastic" with the investigator and clarified that the comment was made on arrival at the restaurant). GS told the investigator that she recalled needing to pull in her long cardigan close to her as she went up the stairs of the restaurant to get to their table because of this comment. He also commented that she was wearing a "great dress" and asked if the dress was new because he had never seen it before. This bothered GS and she responded that she bought it second-hand and added something to the effect of "why would you have ever seen it before?".

[137] GS's evidence was that on the last day of the conference, the Grievor insisted on going to dinner again and asked GS to pick the restaurant. She made a reservation at a Spanish restaurant. She met the Grievor and Dr. D at the pool bar at their hotel at about 5 p.m. She was wearing a floral top and skirt. The Grievor commented that she looked like a movie star and had already ordered her a drink. GS's evidence was that there was a second occasion when the Grievor said she looked like a movie star one morning when she met the Grievor and Dr. D for breakfast and was wearing sunglasses.

[138] GS testified that most but not all of these comments were made in front of Dr. D, including the comment about her legs, which was out of character since the Grievor did not usually speak openly about her appearance in front of other people.

[139] The Grievor's evidence was that he did not recall the comment about dresses "swaying" but also did not believe he said it. He was asked whether he recalled telling GS that she looked stunning or amazing. The Grievor testified that he had no recollection of that whatsoever and did not see why he would say that.

[140] The Grievor was asked about the second day of the conference and whether he commented on GS's appearance by saying: "wow, you look stunning." The Grievor testified again that the "wow" in the statement was an indication that this allegation had been "crafted". The Grievor again explained that he does not use "wow" in this way.

[141] The Grievor similarly denied saying that GS's legs looked great when she arrived to meet him and Dr. D at dinner. The Grievor testified that he would never make a comment like that to a student or colleague. The Grievor did recall making the comment "great dress" and asking GS where she bought it because he had never seen it before. The Grievor testified that he asked GS if she bought the dress at a store in San Diego because he could then go shopping for his wife to see if there was anything she would like.

[142] The Grievor gave somewhat conflicting evidence on the "movie star" comments. In his written response to the investigator he said that he did not recall making this comment, but if GS was wearing certain sunglasses he may have said it. At the hearing, in his direct examination, he denied commenting that GS looked like a movie star, before the dinner on their last night as alleged because he would have no reason to do so. But he "definitely" remembered making the comment the second time it was alleged. He testified that the sunglasses GS had on at the time looked like something a movie star would have on from the 1930's or 1940's, or black and white posters you might see on someone's wall. The Grievor concluded with "I definitely said that, no question," but did not explain why his recollection of this incident was more clear at arbitration than it was in his response to the investigator. In any event, I accepted this as an admission by the Grievor that he made this comment to GS.

Finding

[143] I find that the Grievor made the comments as alleged by GS during the San Diego conference.

[144] The Association submits that the Grievor complimented GS's clothing when she was dressed more formally, not when she was more casually attired as she ordinarily was in the lab. The Association submits that this was consistent with GS's statement to the investigator that it was unusual and out of character for the Grievor to compliment her clothing and something he normally did not do. The Association submits that this is supported by the evidence that every specific occasion where the Grievor complimented GS's attire was one on which she was "dressed up".

[145] I disagree with the Association's interpretation of this evidence. In GS's second interview with the investigator, she was asked about meeting up with the Grievor and Dr. D in the lobby of their hotel where the Grievor allegedly commented on her appearance in a more blatant way in front of Dr. D. GS could not recall the comment but she told the investigator that it was a comment

about her appearance "which was an unusual thing for him to do." This was followed by the comment "This was out of character - he didn't normally or in front of people say openly how I looked." In my view, the interpretation that is consistent with all of the other evidence given by GS in relation to the San Diego conference, is that it was unusual for the Grievor to comment this way on her appearance, and that it was out of character for him to make such blatant comments about her appearance openly, in front of other people.

[146] I prefer the evidence of GS about the comments the Grievor made during the conference. She was able to describe in her testimony or by reference to the extensive documents she prepared during the investigation, the comments that were made and the context they were made in, including specifically what she was wearing. She described the impact, how some of the comments about her appearance differed from previous comments about her attire, and her concerns that the Grievor's comments were escalating in frequency and nature. GS's evidence about what occurred in San Diego is further bolstered by the fact that she made a plan to meet with the Grievor, and when they did meet in August, 2018, the conduct she experienced in San Diego was central to that discussion.

[147] Although GS testified that comments about her appearance were made in front of Dr. D, the Employer did not call Dr. D to testify. Both parties acknowledge that Dr. D was interviewed during the investigation and recalled only that the Grievor said at least once, and perhaps more than once, that GS "looked good". Given that I did not hear Dr. D's evidence directly, I have not relied on it. I have also concluded that GS's evidence was credible without corroboration.

[148] The Grievor acknowledged that he made the "movie star" comment but only when GS was wearing sunglasses and that he commented on her dress at dinner because he thought his wife might like it. These admissions support GS's evidence. The Grievor did not recall referring to GS as "stunning" or making the comment about dresses swaying. I prefer GS's evidence and the context she provided where the Grievor is unable to remember whether or not he made the specific comment alleged.

[149] The Grievor strongly denied making the comment about GS's legs because he would never make a comment like this to a graduate student. This was the most difficult allegation to resolve but ultimately I prefer GS's testimony to the Grievor's. The comment is consistent with the evidence that the Grievor's comments were escalating in frequency and becoming more personal and sexual in nature. The comment is of the same nature as those about GS being a model, a

"gorgeous Australian", looking "stunning" or "amazing", and that her fitness and diet regimes were "paying off", although more focussed and explicit. GS's evidence that the Grievor made the comment when they arrived at the restaurant, was bolstered by her description of her response which was to pull her long cardigan more closely around her as she walked up the stairs. This spontaneous response to a comment of that nature would make sense to a reasonable person in these circumstances. Given the clear, consistent recollection and the context GS provided, if I accepted the Grievor's denial, I would have to accept that she was lying, which I have no basis for either in the evidence or the Association's submissions.

[150] I was not persuaded by the Association's submission that the Grievor's evidence on this issue should be preferred on the basis of his evidence that he was raised to believe that paying people compliments was good manners and that he distinguished between common courtesy and comments with a sexual connotation. As discussed more fully in the analysis, based on the Grievor's own admissions, he may have understood that distinction, but that did not stop him from making comments of a sexual or gendered nature. The Association submits that it strains credulity that the Grievor would have departed so far from his usual behaviour as to make a comment not about her outfit or general appearance, but about her legs, and in front of a colleague. As I have previously indicated, in my view, this comment is more specific, but very much in keeping with other comments that the Grievor made to GS about her attractiveness.

[151] In addition, I was not persuaded by the Grievor's testimony about the other comments on GS's attire and attractiveness that he was alleged to have made throughout the conference. This testimony followed a pattern of admissions and denials that closely fit his narrative that he treated GS like a daughter. He acknowledged the comment about GS's dress but explained that he was interested in potentially purchasing something for his wife (which there was no evidence for). He acknowledged the "movie star" comment, but only in a context where he felt it could be explained as non-sexual, and non-gendered because of the sunglasses GS was wearing. The comments he could not remember he said he would have no reason to make. I cannot rely on these explanations or the Grievor's outright denial of the comments he is alleged to have made that GS looked stunning, or amazing, that he liked the way her dress swayed etc., because he cannot maintain the narrative that GS was a member of his family and that he treated her like a daughter, if he were to acknowledge those comments. GS made a similar observation when she testified

that the Grievor's references to her as a daughter were upsetting because they appeared to be more like a cover for his overly familiar and sexualized behaviour toward her.

b. Touching GS's back

[152] GS testified that the first time the Grievor touched her back, she was standing at the base of the escalator. He commented, "You look amazing," and for the first time touched her lower back as he guided her up the escalator. After that, he began to guide her as she walked, touching or holding her lower back through doorways, into her seat, and up the escalator. This was memorable for GS and caused her concern because the Grievor had never touched her like this before, especially after a comment about her appearance.

[153] When GS was asked how this made her feel, she testified that it really started to affect her. The prior comments were ones she noticed, but now she could feel them getting more frequent. They were not normal or appropriate, but they were not accompanied by touching, and she felt she could ignore them. She testified that when the Grievor commented on her appearance and touched her for the first time, she thought to herself: "So I am not crazy, I am not imagining it, and it is getting worse." GS testified that the touching happened frequently throughout the conference, whenever she saw the Grievor, and that she attempted to "dodge" him when she could, which would sometimes result in his hand landing higher up on her back. She also responded by actively walking further ahead of him. GS testified that she was much more conscious of trying to be further away from the Grievor physically.

[154] In his direct examination, the Grievor was asked whether he recalled guiding GS ahead of him by touching or holding her lower back. He responded that he did not recall this. He testified that he routinely opens doors for people, male or female, as a common courtesy. When he holds the door open for someone, he motions for them to go ahead of him and there is no touching involved. He testified that if he touched GS it was inadvertent, and there was no intentional guiding or touching. He testified that he did not believe it was true that GS tried to dodge his attempts at guiding her and touching her back, including the evidence that his hand would sometimes land higher up on her back.

[155] In his response to the investigator, the Grievor stated that GS's claims of touching were a "falsification". However, in cross examination, the Grievor acknowledged it was possible he could have touched GS's lower back more than once during the conference, but never intentionally.

The Grievor was asked whether it was possible that this unintentional touching continued after they returned to campus as GS also alleged. The Grievor denied that this was possible.

Finding

[156] I prefer the evidence of GS on this issue and find that the touching of GS's lower back occurred as she described it, beginning with the incident at the escalator.

[157] GS had a strong and clear recollection that the Grievor had never touched her lower back the way he did at the conference, particularly after a comment about her attractiveness. She also had a clear recollection of the impact of this change in the Grievor's behaviour and the steps she took to avoid him. The Grievor's evidence was inconsistent; however, he ultimately acknowledged the possibility that he touched GS's lower back unintentionally but only at the conference. This, combined with GS's clear account of the circumstances surrounding the touching and her reaction, makes it more probable than not that the touching occurred as GS described.

[158] I accept that the Grievor opens doors for people and at times, motions them to go ahead. It is not alleged that the Grievor was not courteous. The allegation is that he went beyond common courtesy with GS. I do not accept the Grievor's testimony that if he touched GS, it was unintentional. It is illogical that the Grievor, who had worked with GS for almost five years by that time, had never touched her in this manner before, suddenly started to do so unintentionally at the San Diego conference. GS also raised this issue with the Grievor during the August 2018 meeting and asked him to stop. There is no dispute that the Grievor did in fact stop touching GS's lower back and guiding GS after this conversation. None of this is consistent with the kind of unintentional touching that might occur when one holds a door open for another person and motions them to go ahead.

8) Monopolizing GS's time

[159] The Employer alleges that the Grievor included GS in many of his meal plans, invited her to drinks, and generally monopolized her time at the conference. GS testified that she felt obligated to accept the Grievor's invitations and that this limited her own opportunities for networking. She testified that there were few occasions when she was able to be on her own, including a dinner early in the conference when the Grievor encouraged her to leave early to meet him and Dr. D for dinner. Some of these communications about meeting the Grievor and Dr. D.

for drinks or dinner were confirmed in emails. GS denied initiating any of these meals, and there was no documentary evidence to suggest otherwise.

Finding

[160] There is no dispute that GS spent a considerable amount of time with the Grievor and Dr. D during the conference and as a student, I accept that she would have felt some pressure to do so. However there were occasions when she socialized and networked with others, and the Grievor did not appear to insist that she spend her time exclusively with him. Accordingly, this allegation will not be addressed as part of the analysis of the sexual or gender-oriented nature of the Grievor's conduct.

9) Comments about GS's swim suit and invitations to swim during the conference

[161] GS testified that she did not pack a swim suit because she did not plan to swim at the conference. However, she had an opportunity to swim with a group of other students at the Airbnb they were renting and quickly ran out to buy a swim suit. By the time she returned, the other students had already finished swimming. GS testified that when she met the Grievor and Dr. D for drinks later that day at the bar at his hotel, she shared her disappointment about not being able to swim with the other students and mentioned that she had bought a swim suit for that purpose. The Grievor then asked whether she purchased a one-piece or a bikini and invited her to wear her swimsuit and swim in his hotel pool. She found this question intrusive and inappropriate, but responded that she bought a red one-piece suit.

[162] GS testified that she declined the invitation to swim at the Grievor's hotel pool and tried to explain to the Grievor that it was not about swimming per se, but the opportunity to spend time with the other students. She testified that the bar was sufficiently proximate to the pool that she was concerned about the Grievor being able to see her swim.

[163] The Grievor acknowledged that he asked GS if she bought a "one piece" or a "bikini". He testified: "Absolutely" and that it seemed like a perfectly simple question in the circumstances. The Grievor testified that he thought of her as family and if had been one of his boys, he would have asked, whether he bought beach shorts, regular trunks or a "budgie smuggler?" The Grievor explained that a budgie smuggler is an "Australianism", for a speedo. The Grievor testified that Australia is a beach culture, and that asking what kind of swim suit GS had purchased was not

unusual. The Grievor testified that he was shocked at what was being made of this conversation by GS.

[164] The Grievor was asked about the allegations that he invited GS to put on her new swimsuit and swim at his hotel pool and that he reiterated that invitation even when she said no. The Grievor testified that he was responding to GS who was making a particularly adamant case about wanting to go swimming. The Grievor testified that he and Dr. D said that they were both staying at the hotel, there were towels available in the change room, and she should go for a swim if she wanted to. He testified that both he and Dr. D were getting a little tired because GS went on and on about wanting to go for a swim.

[165] GS testified that the following morning, the Grievor reiterated the invitation by email and then again at the conference later that day. GS had emailed the Grievor and Dr. D to say that she would not be joining them for breakfast. The Grievor responded to GS, not copied to Dr. D, with the following:

If you want to do drinks and a swim after your poster, don't forget to bring whatever you need. Likely there are extra towels here.

See you at your poster.

[166] GS did not respond to this email. She testified that the Grievor reiterated the invitation at the conference later in the day. In her direct examination she was asked how the email made her feel. She responded that there were all these new and worsening behaviours that she had not had to deal with before in such a concentrated dose. She testified that she thought that it was meant to be a networking experience but she was expected to either be with the Grievor or had to turn down the Grievor to do something with the other students. She testified: "I felt objectified, like the reason I was there was a joke, like I was there to just be entertaining".

[167] The Grievor testified that he sent the email because GS had been so adamant about wanting to go swimming. He testified that it was not an invitation, rather, he was reminding her that the pool was there, he and Dr. D were both staying at the hotel, so she could probably use the pool if she wanted to. He testified that he had no intention of being there, and there was no mention in the email of him being there. He testified that he assumed that either he or Dr. D would have to be around if GS was going to use the pool since she wasn't staying at the hotel but he

made no mention of being there in the email or otherwise. The Grievor also testified that the statement “don’t forget to bring whatever you need”, was a reference to the materials she needed to bring for her poster, not a reference to what she would need for swimming. The Grievor did not recall reiterating the invitation at the conference.

[168] GS never swam in the hotel pool. She testified that one of the reasons she declined to swim was that the pool could be seen from the bar where she had joined the Grievor and Dr. D for drinks. She could see the pool from where she was sitting. A picture of the area was produced and the Grievor argued that the pool was only in view if a person went to the bar to order a drink. Still, GS testified that she felt the Grievor was obsessed with seeing her in her swim suit and that she would be seen by him if she swam at his hotel pool.

Finding

[169] The Grievor acknowledged that he asked about GS’s swim suit. I do not accept his explanation for why he thought the question was appropriate, particularly in front of Dr. D. This is an example of the Grievor rationalizing his conduct by comparing her to his children, instead of recognizing his professional responsibilities toward a female graduate student. The question is inappropriate in this context and was directed to GS because she is a woman. I do not believe that the Grievor would be interested in or ask the same question of a male graduate student. Moreover, it is irresponsible for the Grievor to make a comment like this in front of a colleague when part of his role is to foster professional opportunities for GS based on her skills. I accept GS’s reaction that she felt objectified by his comments in what should have been regarded as an extension of their professional work together.

[170] The evidence is clear that the Grievor invited GS to swim at his hotel pool and she declined or ignored those invitations. His testimony about the email inviting her for drinks and a swim, what she should bring and his presence there, was not credible. On any plain reading of the email he was inviting GS for drinks with him AND a swim, and she should remember to bring what she needed for swimming, not her poster. This was an example of the Grievor avoiding the truth even where it led to an absurd interpretation of his conduct and intentions. GS also never swam in the pool, which contradicts the Grievor’s testimony that she was adamant about swimming in the pool to the point of annoyance.

[171] It was also acknowledged that the pool could be seen from some parts of the bar and not others. It is immaterial and speculative that the Grievor could have chosen a seat where there was no direct line of sight to the pool. I accept GS's evidence that she was convinced that the Grievor would take the opportunity to see her swimming based on his persistent invitations.

B. April 2018 to August 2018

1) Comments and conduct following the San Diego Conference

[172] GS testified that she had a "really difficult" first week back when they returned from the San Diego conference. GS resolved to meet with the Grievor and express her feelings and perceptions about his conduct and how it was affecting their working relationship. She initially planned to speak with him in May, shortly after their return, but she learned that one of the Grievor's colleagues had died and decided to put the meeting off to another time.

[173] GS testified that she was managing increasing discomfort regarding the Grievor's physical contact and comments about her looks, which she described as "things that don't belong at work" and which were a "permanent feature of work" after the conference. She testified that comments specific to her ("you look stunning/amazing") rather than her clothing, started at the conference and did not stop after they returned. GS's evidence was that the attempts to touch and guide her through doorways continued and the Grievor began touching her shoulders. She testified that the attempts to touch did not stop "no matter how many times I attempted to manoeuvre out of his reach". She testified that with respect to the lower back touching, she did not recall allowing him to do it again, but the touching of the shoulders continued. However, her evidence during the investigation was that the Grievor continued to touch and guide her, or attempt to and she would move away from him. She also recalled the Grievor touching and guiding her as she took her seat in a booth at a local pub where they were meeting another colleague in May 2018.

[174] GS's evidence was that the day they returned from the conference, the Grievor walked up to GS while she was having a conversation with a coworker and asked if she was ok. The Grievor testified that he did not recall this, but acknowledged it might well have happened. GS's evidence was that the Grievor put his hands on her shoulders when she was seated in the lab and that she would actively try to avoid this kind of contact as well. The Grievor did not recall doing this with GS. However, he testified that it would be normal to put his hand on the shoulder of a graduate student if they were upset about something, or to lean in to see something on a computer screen.

Finding

[175] As I previously indicated, it is not credible that the Grievor's conduct including guiding and touching GS at the conference, which he acknowledged may have happened, albeit unintentionally, would have stopped after the conference. The Grievor did not recall touching GS on the shoulder although acknowledged that this was also possible. His explanation for why he might have done so was speculative.

[176] I prefer GS's evidence on the issue of the Grievor's ongoing attempts to physically touch her. In her materials from the investigation, GS was careful to clarify what the Grievor did and did not do. For example, she said that every interaction with him was a "one arm hug", but clarified that these hugs were not sustained for long periods. She confirmed that when she got "stinky" with him and started to give him the "cold shoulder" he stopped. She also stated that the touching dissipated when she brought it up in the meeting in August 2018. The notes indicate that the Grievor "started again later" but GS clarified that the touching only occurred after that "here and there". This attention to detail, ensuring that she was not overstating the Grievor's conduct for her own benefit, reinforced her credibility.

[177] I appreciate the Association's thoughtful submission on the role of corroborative evidence in sexual harassment cases. The Association submits that in this limited circumstance, where the evidence from GS was that the Grievor touched her every time they encountered each other and she made obvious efforts to avoid him, the absence of corroborating evidence from the investigation process calls into doubt the reliability of GS's recollection of the events. In my view, the frequency of the Grievor's attempts to touch GS cannot be quantified by any exact measure. As I have previously described, the careful and measured way in which GS presented her recollections of the Grievor's attempts to touch her, were credible on their own without corroborating evidence, even if the frequency was not exact. The fact that she raised this with the Grievor in the August 2018 meeting and acknowledged that he stopped, confirms that it was happening with sufficient frequency that she needed to address it and it was noticeable when it no longer occurred.

2) Back Tattoo

[178] GS testified that at some point after they returned from the San Diego conference, the Grievor noticed her back tattoo and commented "nice tattoo". This was a tattoo the Grievor had never seen before because it was on GS's lower back. She explained that she was sitting on a chair in the lab and her top had ridden up exposing the tattoo. She responded by pulling her shirt down. There is no dispute that the Grievor was aware at this time that GS was uncomfortable discussing her tattoos.

[179] The Grievor denies this allegation entirely. He has commented on other visible tattoos, but denies ever seeing or knowing about the one on GS's lower back.

Finding

[180] There is no dispute that the Grievor admitted to having asked GS about and commented on other tattoos that were visible on her wrist and behind her ear. The Association submits that there is nothing to suggest that the Grievor's evidence concerning the back tattoo is unreliable given that he volunteered descriptions of other occasions on which he had asked about or comment on GS's tattoos. The Association submits that there is no reason to believe that if this event had occurred, the Grievor would not similarly acknowledge having seen and commented on the back tattoo.

[181] I disagree with the Association that there is no reason why the Grievor would not acknowledge observing and commenting on GS's back tattoo. It was on a much more private part of her body. GS provided a rational explanation for why it was exposed and described how she covered it up in response. The fact that the Grievor commented on all of the other tattoos that were visible on GS's body makes it more probable, not less, that he commented on this tattoo when it became visible. There is no reason to believe that GS was fabricating this allegation. For those reasons, I prefer GS's evidence that this incident occurred as she described.

3) Avoiding invitations

[182] GS testified that in reaction to the Grievor's ongoing conduct after the conference, she began to avoid the Grievor's invitations to spend social time with his family. She declined an invitation to watch fireworks in May 2018. The Grievor invited her to a movie on Saturday

afternoon with his son to which she responded that she was not sure where she would be that weekend. She declined a dinner invitation from the Grievor's wife to join them for dinner. She responded in writing: "as silly as it sounds, I'm keeping to myself for awhile". She did express interest in a "ladies lunch" with the Grievor's wife alone. The same month GS made her first attempt to discuss her concerns about the Grievor's conduct with him, which she refrained from doing when she heard about the unexpected death of a Grievor's colleague. This evidence was supported by the documentary evidence.

[183] GS testified that avoiding invitations to spend social time with the Grievor was difficult because she was fond of the Grievor's wife who was the closest person GS had at the time. GS was comfortable talking to her about things she could not talk to others about. The change in her relationship with the Grievor's wife was upsetting. This evidence was consistent with GS's testimony that her concerns about the Grievor's conduct caused her to spend less social time with him and his family.

4) Invitation to swim at the Grievor's home

[184] A few months after the San Diego conference, in mid-July 2018, GS made arrangements with the Grievor's wife for lunch. The next day, she was in the kitchen with the Grievor's wife at his home when the Grievor allegedly suggested that GS bring her "red" swimsuit and swim in the backyard pool. GS testified that she was "disgusted" at this point. She felt there was a "sleazy tone" to the invitation. She testified that there was no reason to swim in the Grievor's pool - she had never asked to swim there or expressed any interest in doing so.

[185] The Grievor recalled the interaction. He testified that he was never told the colour of the swimsuit that GS bought at the conference. This was disputed by GS who testified that she described it as a red one-piece in response to the Grievor's question about whether she bought a one-piece or bikini. He also testified that it was his wife who made the invitation, but also acknowledged that there were "three of us" in the conversation. He stated that "we routinely invite everyone we know to use the pool and we don't hang around while they're using it". GS testified that she had never been invited to swim at the Grievor's home before this incident and for her, it was a continuation of the Grievor's repeated invitations to swim in San Diego.

Finding

[186] I prefer GS's evidence that the Grievor mentioned her red swimsuit and invited her to swim in his pool on this occasion. Even if he did not initiate, he actively participated in encouraging her to swim. There is no other reasonable explanation for GS's reaction which was to feel "disgust" and to believe that this arose directly from the San Diego conference where the Grievor asked about her swim suit and invited her to swim at his hotel pool. However, I agree with the Association that it is unlikely that the Grievor was using an overtly "sleezy" tone in front of his wife.

[187] By this time in July 2018, the Grievor was fully aware that GS had no interest in accepting his invitations to swim. The fact that the Grievor extends invitations to "everyone" to swim in the pool, does not explain why he chose to encourage GS to swim at this time. There was no evidence that he had extended a general invitation to her at any other time to use the pool whether or not he and his wife were at home. The Association's submission that I should draw the inference that the Grievor encouraged GS to swim because he recalled her disappointment at having missed her opportunity to swim in San Diego is not supported by the evidence. The Grievor did not testify that this was his motivation for encouraging GS to swim, and even if he had, this rationale does not make sense given the passage of time and GS's evidence that it was about networking with other students not swimming per se.

[188] The Grievor's wife was interviewed during the investigation. I have not considered her evidence because it was not given in the proceeding before me. Neither party called her to testify about her recollection of this incident.

5) The Meeting of August 16, 2018

[189] On August 16, 2018, GS initiated a meeting with the Grievor to discuss her growing discomfort with his conduct toward her. The meeting was preceded by the following email on August 15, 2018:

Firstly, for what it's worth, I apologize and am regretful for behaving inappropriately and disrespectfully during the meeting on Tuesday.

I'd like for us to have a meeting to discuss or otherwise air and try to sort through what I feel are a number of underlying and recurring issues (that affect me greatly at this point, and how I interact with you) that have become near impossible for me to deal with effectively when faced with them, however subtle or far between the events. All things considered I hope you'd agree it's become necessary in order to either move

forward, or move on, in the best way possible for us both. If you'll be open to it, as I will be, I'd appreciate the time whenever you'll have it.

[190] GS testified that she was finding it difficult to manage her emotions around the Grievor because he continued to cross her personal boundaries. She realized that she had been short with him and was apologizing for her behaviour. The Grievor responded:

Excellent. But let's please keep it honest and respectful - I may not agree with everything you say and you may agree with everything I say or think, but that does not make either point of view 'bullshit' it just means there is room to find a creative interface or alternative.

[191] GS testified that the reference to "bullshit" was from a conversation she was having with another person that was overheard by the Grievor, who mistakenly thought the conversation was about him. However, GS recognized that she had "snapped" at the Grievor and she was apologizing for this in the email.

[192] GS testified about the meeting and described it in detail in the chronology she provided during the investigation. There is no dispute that the meeting was lengthy at well over an hour. GS described the "underlying and recurring issues", in detail including the Grievor's conduct in San Diego.

[193] GS testified that she told the Grievor that she did not like the "male-female dynamic" between them, specifically saying that she did not like him always paying for coffee, touching her body, holding her to guide her, bringing her treats, buying and wanting her to drink alcohol around him, inviting her to dinners and especially making comments on her looks and clothing. She mentioned a comment he allegedly made that: "Everything was fine until a woman walked in" which she said the Grievor apologized for. She told the Grievor that she was struggling to control her anger in response to his behaviour. She also told him that they worked well together professionally, she wanted "work to be work", that she never used her gender in the workplace and she expected that no one else would treat her differently based on her gender at work. She testified that she "listed everything he was doing that I was not happy with" including that she did not want to be touched and she did not want to hear about how she looked and her clothing.

[194] GS also raised with the Grievor her concern that he had imposed on her time with BB when they were having coffee together. She told the Grievor that the frequency with which he was turning up when they were having coffee, made them so uncomfortable that they stopped.

[195] GS's evidence was that the Grievor was not defensive other than regarding the issues she raised about BB. He said that it was his role as a supervisor to buy coffee. GS's evidence was that she did not recall the Grievor denying or commenting further on the touching or comments about her physical appearance. In her evidence from the investigation, GS stated: "Overall, I was satisfied and felt he acknowledged and validated what I was saying at the very least by not denying and becoming defensive at the times I thought he would have, which I felt positive toward." Similarly, she testified that the Grievor acknowledged and validated what she was saying by not pushing back. She recalled him saying something like, "fine, I won't do that" at the end. She was satisfied that she was understood, the Grievor acknowledged the things she was bringing up, and she felt he was not going to it again. GS's evidence was that she was heard, that she felt "relieved, re-energized and hopeful".

[196] GS testified that her expectation was that the relationship would be more professional, more focussed on work, and that she was not going to feel pursued, objectified, imposed on - more like 2017 when they had what she described as a normal work relationship. She confirmed that the Grievor asked her to bring things up sooner rather than letting them "stew" and she agreed but also told him that it would not always be easy to do and that it had taken time for her to feel comfortable enough to bring these issues to his attention.

[197] The Grievor confirmed that GS had used the phrase "male/female" dynamic in their meeting. In his initial response in the investigation, he stated that GS "did make some of these accusations..., and I became increasingly concerned about her state of mind as most were simply untrue and the rest clearly misinterpretations of the facts". He went on to describe his impressions of the meeting:

62. Not sure how long the meeting was, but it was long! I most certainly was offended that one of my collaborators (that is how I mentor - everyone in my group is treated as a collaborator), in particular someone I held in such high regard as a researcher and colleague - and had said as much to all my colleagues, and did whatever I could whenever I could to promote her career (as for all my other students) - would presume to accuse me of treating them 'like a pet.' Nonetheless, this was fairly typical of the Complainant's style of being completely overboard and aggressive in her interpretations when she was stressed or upset. I made no attempt to hide my disgust

and disappointment with such statements that were so thoroughly disrespectful and untrue. I was also forced to remind the Complainant that she was a respected collaborator and colleague and was treated as such for a reason - that she had tremendous promise as a researcher. She admitted that she did indeed understand that and appreciated all my support. I also pointed out that when discussing science, trying to bring inuendo of 'male-female dynamic' into the discussion when she could not support the argument she was trying to make with solid facts, was totally inappropriate. She had certainly never had any issue fully speaking her mind to me about anything before, including somewhat routinely using me as a scapegoat or for viciously venting about others. She apologized, admitted that her comments had been inappropriate, and said that she was in fact grateful for the open and supportive nature of our relationship and appreciated what I had done to help with her career. The meeting ended with us both agreeing to 'take a deep breath and move constructively forward' and that 'we were agreed that any and all future issues, real or perceived, would be transparently discussed and solved in a collegial and professional manner....

[198] The Grievor was asked follow-up questions by the investigator about the specific issues raised by GS in the meeting, including her use of the term "male/female dynamic". The Grievor's response was that he "never really understood what she was talking about unless she was alluding to trying to create one." He stated that he made the point to her that they were collaborators and gender had no place in their relationship. When he was asked by the investigator if he recalled GS telling him that she did not want to be touched or led through doors, the Grievor responded: "(GS) never said anything to me about "touching" or most if not all of these allegations." He told the investigator that if GS had said anything about her concerns he would have stopped and added: "Notably, I am quite well aware of boundaries and how situations can be misconstrued; even the appearance of an impropriety being unacceptable."

[199] The Grievor was also asked by the investigator:

During the August 16, 2018 discussion, do you recall the Complainant raising with you her discomfort with your comments about her appearance and her clothes, and saying that she did not use her appearance at work and did not want to be seen that way, and that she wears what she wears because she likes it and it is comfortable, and that she wants to be seen as a person, and not as a woman or as an object for any male-female dynamic? The Complainant states that she was getting upset at this point at this point in the discussion, and says that you responded, "I know, I know". Do you recall this?

[200] The Grievor's response was as follows:

I do not recall such specifics beyond her usual reference to 'male-female dynamic' (which I felt she was trying to create) and if I said 'I know, I know' it was likely me just trying to calm her down as usual. I was probably concerned that her usual pattern of aggressive yelling/ranting was going to initiate yet again and then nothing would be accomplished in the meeting.

[201] Grievor was asked in his direct examination to explain these comments and responded as follows:

I was a little put off to start with when she made reference to not being treated as a person because again, that's completely counter to what our relationship was actually - the male female dynamic, at the time I understood that to have a sexual connotation, a negative sexual connotation to it. And which, again, is simply not relevant to our relationship with, it didn't have anything to do with our relationship either working or in a family sense. The point of this is that it was obvious how upset she was and in line with our relationship, I wanted to understand why and have a constructive discussion so that I can understand why she was upset.

[202] The Grievor testified about the comment he made about GS trying to create a male/female dynamic between them. He testified that GS was incredibly outspoken and had no difficulty speaking her mind in the context of what he described as their very collegial relationship, including sharing personal details with him. He testified that he thought she was inventing this as part of their relationship because she had the ability to communicate with him throughout the relationship. He testified that he was "left at a total loss as to how she could bring up something regarding the male/female dynamic".

[203] The Grievor also explained his comment about being well aware of boundaries. He testified that they had a very open, communicative relationship, as colleagues and as a member of his family, and if there had been anything bothering her at the time, like the allegations of touching, "if there was anything like that actually going on at the time", she could have no issue telling him and being "incredibly blunt about it". The Grievor did not acknowledge in his direct examination that GS raised concerns with him about touching and guiding her.

[204] The Grievor was asked about boundaries and his statement about the appearance of impropriety. He responded that at the time his understanding was that "anything whatsoever that had sexual connotations, that was sexually suggestive." He went on to say "that was inappropriate use of what I guess is called a power imbalance. That is unacceptable. That is to be avoided at all costs." He was asked if he would describe his relationship with GS as having sexually suggestive or sexual connotations. The Grievor responded that GS was like a daughter, one of his graduate student colleagues and it was abhorrent even to think about.

[205] The Grievor was also asked in his direct examination what his awareness of boundaries and impropriety today is and he responded as follows:

I think looking back and considering what would be called a power imbalance, and I don't fully agree that existed between us, but nonetheless, my official title was supervisor. She was a student yet probably comments compliments that I would find aimed to an adult daughter - nice dress, nice pair of shoes, great haircut - that I thought were completely innocent and were well received at the time, I can see now that could be construed as inappropriate.

[206] The Grievor testified during his direct examination that from his perspective the meeting ended constructively. He testified that they agreed to "continue to interact in our usual straightforward manner, there would be no expressions of being upset, but rather we would continue as we had in the past to discuss the issues". The Grievor testified that he understood it would be difficult for some people to understand, but in his group, he sees people on an equal footing as collaborative colleagues. He recognizes that there is a "power imbalance by official channels", but in their private communications, they were very straightforward with each other.

[207] The Grievor acknowledged in cross-examination that he considered GS's accusation about the male female dynamic to be off base and inappropriate. He testified that he has the same perspective at the time of the hearing on some of the things that GS said during the meeting. He acknowledged that GS mentioned during the August meeting her discomfort regarding her interactions with him in San Diego. He acknowledged that GS said she was not comfortable with the comments the Grievor allegedly made about her appearance and that she said she "didn't like or need compliments" or for the Grievor to buy her things like meals. He confirmed that he did not recall GS raising the issue of him physically guiding her through doorways. He also acknowledged that GS said something to the effect of her being uncomfortable with his incursions into her personal space and time, like appearing to check up on her coffee breaks with BB. He denied that GS brought up anything about him leaving her treats.

[208] The Grievor also confirmed that he pushed back on the issue of buying GS coffee because that was his role as a supervisor. He also pushed back on GS's perception of him intruding on her time with BB with which he did not agree. This was a period during which the Grievor was in the lab more frequently and he denied that he was checking up on GS or had any feelings about the time she was spending with BB. On this issue at the conclusion of the meeting, the Grievor and GS "agreed to disagree".

Findings

[209] I prefer GS's evidence about what was discussed during the August 16th meeting and find that it unfolded as she described in her investigation materials and testimony.

[210] GS gave this discussion considerable thought. She had delayed it in May because of the death of the Grievor's colleague. She set the table for the discussion by opening her email with an apology for her own conduct. She then clearly indicated that there were issues that had been going on for some time, which she was having difficulty dealing with, and that these issues were affecting her ability to continue to work with the Grievor. She also noted the seriousness of these issues and that if they were not resolved, they would need to move on. Her ability to make this overture to the Grievor, including her reference to the fact that their ongoing professional relationship hangs in the balance, speaks to both her courage, and the familiarity of their relationship.

[211] I accept GS's evidence that she shared all of her concerns, including specific examples, and specifically drew the Grievor's attention to the gendered nature of his conduct toward her. There can be no doubt that the Grievor was on notice from this point forward that the conduct GS described, including paying for coffee, touching her body, holding her to guide her, bringing her treats, buying and wanting her to drink alcohol around him, inviting her to dinners and especially making comments on her looks and clothing, were unwanted and part of a pattern of gendered conduct on his part that was undermining her efforts to complete her Ph.D. Whatever he was thinking internally, the Grievor gave GS the appearance that he was listening and understood what she was saying and pushed back on only a few issues, most notably her comments about his incursions into her time with BB.

[212] The Grievor presented an entirely different version of the meeting that cannot be reconciled with GS's credible, reliable narrative about that pivotal event in their relationship, including the fact that she felt "relieved, re-energized and hopeful", when it was over. The Grievor's own version paints him in a far *worse* light than hers, openly rejecting GS's efforts to bring to his attention gender-based issues that were concerning her. This is not the conduct of a graduate student supervisor or someone who claimed to care about GS as a daughter and member of his family.

[213] The Association submits that the Grievor initially did not understand what GS meant by a male/female dynamic, which to his mind had a sexual connotation. If that is what she was implying, then the Grievor believed that she was inventing it. In his view, that was simply not relevant to their relationship. I reject this submission for several reasons. First, GS never suggested a sexual dynamic between them and she explicitly raised concerns about the gendered nature of the Grievor's treatment of her. The Grievor gave no explanation as to why GS might be inventing this dynamic. Second, if the Grievor did not understand what she meant by the male/female dynamic, he was obliged to seek further clarification. Third, if the Grievor thought GS was accusing him of sexual impropriety, or he thought she was making up a sexual dynamic between them, he had a responsibility as her supervisor to ensure that this was clarified, resolved, and monitored to ensure that it did not recur. The Grievor did none of these things and took no responsibility for monitoring his own conduct going forward. He asked GS to raise issues with him, despite the fact that she expressed how difficult it had been to bring these issues to his attention in the first place.

[214] The Employer submits that the Grievor's suggestion that GS was trying to create a "male-female" dynamic indicates that he did not take the concerns she was raising seriously. In my view, the Grievor's responses during the investigation and throughout the hearing support this conclusion. I also accept GS's evidence that despite this, he gave the appearance that he was taking her seriously.

C. August 17, 2018 to March 2019

1) Incidents following the August meeting up to the final meeting in February 2019

[215] GS's evidence was that following the August meeting: "I felt like I had space. He gave me the space that I was looking for. I was suffocating with the lack of space from him before." The touching stopped. Their discussions were focussed on GS's work in the lab and opportunities for post-graduate work. She testified that the Grievor did not completely stop commenting on her appearance, but the comments were about her attire, not about her attractiveness. She resumed spending time with the Grievor's wife and his family and the Grievor did not intrude on those visits. However, by the fall, GS stated that she began to have further difficulties with the Grievor, including touching her shoulders, although she acknowledged that this was brief and usually when she was wearing headphones.

2) Tattoo comments

[216] In November or December 2018, the Grievor and GS attended a meeting in a pub with potential business partners. During the meeting, one of the men asked GS about the meaning of the tattoos on her wrist. GS responded that the tattoos were personal and something she does not discuss. The Grievor then allegedly said: "I've asked her about that too and one day, I'll make her tell me".

[217] The Grievor recalled the interaction and acknowledged he said the first part but denied saying: "and one day, I'll make her tell me". He testified that he was trying to shut the conversation down because this colleague tended to press about things, and he wanted to make sure that he did not pursue the matter. The Grievor was aware that GS did not like to speak about her tattoos. In his investigation materials he stated that he believed he said "I've asked about those too but she doesn't want to talk about them."

Finding

[218] Even accepting that the Grievor made the comment as alleged by GS, this was an awkward situation which the Grievor was not responsible for initiating. He was aware that GS was uncomfortable speaking about the meaning of her tattoos. Although his comments could be interpreted as normalizing the question and emphasizing his familiarity with GS, I accept that it was spontaneous and awkward to address the issue with a potential business partner. I also note that there was no further discussion of GS's tattoos at the meeting beyond this exchange. Accordingly, this allegation will not be addressed as part of the analysis of the sexual or gender-oriented nature of the Grievor's conduct.

3) Sperm Donor comments

[219] At some point in late 2018, GS and the Grievor were having a conversation about her future career plans. GS raised the possibility of having a child in the context of a discussion about her need for financial stability in her post-doctoral work. GS's evidence is that the Grievor said that she would have no problem finding a "donor" if she wanted to have a baby herself and that "they'd be lining up."

[220] In his direct examination, the Grievor testified that while they were in the car one day, GS said "out of the blue" that it might be fun to have a baby. He recalled saying in response: "you don't have kids because it would be fun - it is about parenthood". He testified that GS said she could get a donor or adopt, but provided no other context. The Grievor denied saying anything about people lining up or anything else.

[221] In his cross-examination the Grievor agreed with GS's testimony that the subject of her interest in having a child arose as part of a discussion that was centered on financial stability and funding for her work. The Grievor was reminded that in his direct examination he said that it was GS who made the comment about sperm donors. The Grievor did not recall that part of his testimony. To be fair to the Grievor, there appeared to be a misunderstanding about his earlier testimony. Counsel put to the Grievor his testimony that GS said that she could "get a donor a dog". My recollection of his testimony was that GS commented she could "get a donor or adopt". This may be the reason the Grievor did not recall his earlier testimony. He did not use the word "dog". In any event, in cross-examination the Grievor testified that neither one of them said anything about a sperm donor when GS raised the question of needing sufficient funding if she were to have a child. The Grievor testified that he asked "is there a partner involved" and that there is a big difference between that statement and a comment about sperm donors.

[222] GS testified that she had a clear recollection of these comments and that this was a set back in her relationship with the Grievor. She testified that she felt like she was back in that place where the Grievor could not resist making comments of this nature and she could not just laugh it off.

Finding

[223] I prefer GS's evidence on this issue and find that it is more likely than not that the Grievor said that GS would have no problem finding a "donor" if she wanted to have a baby herself and that "they'd be lining up." Given the nature of the comment it was not surprising that GS had a clear recollection of what was said and how the Grievor's comments made her feel.

[224] The Grievor's evidence was inconsistent. In his direct examination in chief he testified that GS raised the issue of having a child "out of the blue" and he chastised her for not taking parenting seriously. Later he acknowledged that she raised the issue in the context of a serious discussion about her financial security during her post-doctoral studies. He admitted in cross-examination

that he asked: "is there a partner involved", which provides context for the donor comments. In direct examination the Grievor testified that it was GS who said she could get a donor or adopt. In cross-examination he stated that neither of them brought up a donor. These inconsistencies undermined the Grievor's credibility and the reliability of his testimony on this issue. The comments were vulgar and overtly sexually-oriented and gender-based, drawing attention to GS's attractiveness ("they will be lining up") and raising the method by which she might become pregnant. The Grievor denied making these comments but agreed that they would be highly inappropriate and would serve no academic or work-related purpose.

[225] There was no evidence to support the Grievor's allegation that this was an "outright falsification". The Association's submission was that the Grievor's evidence had the "ring of truth" because he clearly understood that such a statement would be inappropriate and considered it to be deeply distasteful. The Association also submits that GS was very mindful of the distinction between what he described as social niceties and sexual innuendos or overtures. The Association submits that the Grievor was consistent and unequivocal in his evidence that while he paid compliments he does not make sexualized remarks and his evidence on this point should be accepted.

[226] I cannot accept the Grievor's evidence primarily because of the inconsistencies in his testimony, and his initial statement that it was GS who brought up the issue of a donor. The fact that he testified that he viewed these comments as inappropriate and has consistently denied making comments of a sexual nature, are not factors that bolster his credibility.

4) Comments about GS's personal life

[227] The Employer alleges after the August meeting, the Grievor returned to making comments about GS's romantic life.

[228] GS's evidence was that in January 2019, when she appeared to be distracted during a lab visit, the Grievor allegedly commented that things with her "boyfriend" must be getting serious. In his direct examination, the Grievor testified this may have come up because GS was constantly talking about her boyfriend, both at work and in her visits to the Grievor's home. The same month, GS expressed concern about her data and the Grievor allegedly said that she would be fine, she was "just in love". The Grievor testified that he did not recall the comment but did tell GS that she

would be fine and that anything that wasn't completed in the thesis could be completed during the post doctoral work. The Grievor testified that he had no idea if GS was "in love" or not.

[229] The Employer alleges that the Grievor made the same kind of comments in a December 19, 2018 email that began with the Grievor asking GS's opinion about lab equipment, and then "veered" into comments about her personal life. The text of the email supports that submission. The email begins with work related issues, and then the Grievor comments: "I would like to see you as a faculty candidate in the 3-5 years...assuming that might in some way fit your plans?", followed by:

I know I can be presumptuous of those I consider exceptional (apologies), but I hope this might be at least a small part of your potential future planning. Although it is not a key priority...you do nonetheless have "family" here (and God they love you!) AND have fully proven yourself; that is, I stand WAY BACK beyond any fundamental comments on your facilities/capacity (I have to be unbiased and yet completely honest in any evaluation). and yet I have every reason to suspect you would be a key choice of many others on a couple of years).

OK? I know life is what it is. and the finally really smart right guy might snatch you up tomorrow and take you to Asia or Europe, etc, but I (we - as a family) can only promise to do my damndest to support however you choose to proceed with your career....

[emphasis in the original]

Finding

[230] I have no reason to reject GS's evidence about these comments, which the Grievor does not recall making. The fact that documentary evidence exists from that time period, where the Grievor merges discussions about work with comments about GS's personal life, and specifically the possibility that she will be "snatched up" by the right guy, demonstrates that he has no hesitation commenting on her personal, romantic life. This evidence supports GS's testimony and makes it more probable than not that he made the comments alleged, while they were working together. In addition, the Grievor made a highly personal and inappropriate comment about a potential sexual relationship between GS and BB during the February 4, 2019 meeting discussed below.

[231] I note that in the documentary evidence, there is a fragment of an email where GS states: "Not sure how to answer the rest of the email content right now...much future talk. I do, however,

love you all right back. Don't know what to say about what you're dealing with right now. I hope there's plenty of hope and spirits are alright". There is no dispute that GS cared for the Grievor's family and this supports the Grievor's perception that they had a familiar, and at times, affectionate relationship. However, this is not of the same nature as the Grievor's ongoing intrusions into GS's personal life, and specifically her romantic or potential romantic attachments.

5) Frostbite comment

[232] GS testified that on a cold morning in late January, 2019, she entered the Grievor's lab, went to her desk and sat down. The Grievor and another graduate student were already there. The Grievor allegedly asked GS: "do I need to check you for frostbite?", while adjusting his moustache in what GS described as a "sleazy" demeanour. GS testified that the comment was upsetting and she responded: "excuse me?" in an unfriendly tone and that the Grievor repeated the comment while he played with his moustache. GS set out the incident in detail and the stress and discomfort this caused in the chronology she prepared for the investigation.

[233] The Grievor testified in his direct examination "I recall this and I did not say what's written here. I asked did you check for frostbite in a joking manner." He testified that he did not recall GS saying "excuse me" and he did not repeat the comment. He also confirmed that there was another student present at the time. During the investigation, the Grievor wrote: "I may have jokingly said something like "Have you checked for frostbite?" but honestly do not recall."

Finding

[234] The Grievor's evidence was inconsistent between the investigation and hearing. He first stated that he could not recall, but speculated as to what he likely said. That evidence morphed from speculative to concrete by the time of the hearing, like the earlier comment about GS looking like a movie star.

[235] I am not suggesting anything intentional on the Grievor's part. Memories are fallible, and the Grievor has had to confront this material and these memories several times since 2019. However, it makes the Grievor's evidence that he specifically recalls the incident less reliable, as compared to GS who had a consistent recollection and described how this experience made her feel. In my view, it is more probable that the Grievor did not recall this incident and speculated

that if it happened, he would have used different words and said it as a joke as he described in the investigation.

[236] Accordingly, I do not agree with the Association that the Grievor's version is more plausible and reliable because GS acknowledged that a person would have to be incredibly oblivious to repeat that comment in light of her response, or that she was frustrated by his demands and his behaviour towards her, or that she had been outwardly abrasive with him and he had responded by asking if she was OK? This account is speculative. GS could not have misheard or misremembered a comment that the Grievor does not recall making. GS also did not agree that the Grievor was self-aware enough not to make or repeat the frostbite comment. There is no question that she was frustrated by demands and his behaviour toward her, but I do not accept that this would colour her memory of an incident as specific as this one. I find that the Grievor made the frostbite comments as alleged by GS.

[237] In addition, this incident took place only a day or two before GS sent a text to her partner on January 31, 2019, which read:

mostly my boss, pushes my boundaries and becomes almost impossible to deal with, I'm not good at accepting bullshit or hiding frustration so that makes things worse. we've cleared the air before but slowly crept back to a relationship I know I can't put up with long-term. brings into question next move, post-doc, if I don't take that I think I'll have to move back. or not, find a job, or a postdoc opportunity elsewhere here. he has a lot of power right now, as throughout the degree, which I have to consider and work with best I can. might just need to talk again. might also just be added stress and frustration from results lately, thesis. just a lot to consider right now.

[238] GS testified that this text accurately reflected her concerns about her relationship with the Grievor at that time and about the consequences if she were to confront him again. This is clear, documentary proof that GS perceived the Grievor to be continuing to cross her boundaries since the August meeting. She was drawing closer to making the decision not to work with him after the completion of her Ph.D., but also weighing the potential consequences, including the fact that she did not have a "plan B".

6) Commenting on GS's dress at the local pub, February 1, 2019

[239] The evening after the text, on Friday, February 1, 2019, the Grievor approached GS at a local pub where she was having dinner with her partner. The Grievor did not introduce himself to GS's partner. The discussion between them was brief. GS was wearing a short, "body conscious"

dress that fit close to her body. There is no factual dispute that as the Grievor was leaving he touched the fabric on the sleeve of her dress, commenting, "Nice dress". GS testified that he pinched or pulled the fabric at her sleeve, while the Grievor testified that he touched her forearm like he would anyone he was saying goodbye too and confirmed that she was coming to his house the next day. The Grievor acknowledged that he had touched the sleeve of GS's dress for a few seconds at most and that it "felt nice" and "looked nice". The material was light and the Grievor was surprised by that because everyone else was wearing coats and sweaters.

[240] A day or two later, while GS was having tea with the Grievor's wife, the Grievor reiterated the "nice dress" remark and asked whether she had been "cold in that dress". The Grievor testified that he asked this question because everyone else in the pub was bundled up in big coats or sweaters and it was not unusual for Australians to be constantly cold in Canadian winters.

[241] GS was very upset by these interactions, particularly after the meeting in August 2018 and the incidents that had built up since then. GS was close to completing her Ph.D. and decided that once she finished, she could not continue to work with the Grievor.

Finding

[242] The facts regarding these two interactions are largely agreed. The Grievor also made the same admissions during the meeting on February 4, 2019 which was recorded.

[243] The Association submits that the touching of GS's dress occurred as part of their overall encounter that evening, which included GS's perception that the Grievor's visit to the pub was not coincidental and that he had gone there knowing that she and her boyfriend frequented that pub. The Association also submits that there is no evidence that the Grievor could see that her dress was short, but she persisted in the belief that this was partly behind the comment "nice dress". The Association submits that at this point, GS was "deeply suspicious of and hostile toward" the Grievor and her interpretation of his actions had become distorted. GS's recollection of the way in which the Grievor touched her dress was part of an overall perception that was clearly inaccurate and unreliable.

[244] The differences in their accounts of the meeting at the pub are whether the Grievor felt, or pinched the fabric of GS's dress. I do not see how GS's belief that the Grievor intended to find her at the pub, true or not, would distort her visual and touch perception to such an extent that she could not discern between a touch on her forearm and a pinch or pull of the fabric on her

dress. She may or may not have been correct that the Grievor saw the length of her dress at some point when her legs were out from underneath the table, however, it was clear that her dress was fit tight to her body. The Grievor made a choice to approach her, touch her, and comment on her dress, and that contributed to her perceptions. These perceptions do not undermine her credibility or reliability in any way. I accept her testimony that the Grievor pinched or pulled the fabric of her dress and then commented: "Nice dress."

[245] Shortly after that, Grievor repeated the comment about her dress at his home, drawing attention to the light weight and body-conscious style of the dress by asking if she was "cold" in that dress.

[246] It is also a part of the overall context that the Grievor chose to approach GS on a Friday night, while she was dining with her partner, despite having been told that she did not appreciate his incursions in to her private time, particular when she was with a male friend. He had been asked to stop touching her and commenting on her clothing in the August meeting. There is also no dispute the Grievor did all of this without introducing himself to GS's partner or asking if he was intruding. I agree with the Employer that these were not benign compliments or expressions of concern about the cold. This behaviour is an egregious breach of GS's boundaries, and it is at odds with the expected interactions between a faculty supervisor and his graduate student.

7) February 4, 2019 final meeting

[247] GS decided after the interaction at the pub that she could not continue studying under or working with the Grievor after she completed her doctorate. She intended to tell the Grievor this, although she had every intention of completing her Ph.D. with him as her supervisor.

[248] GS's evidence given during the investigation was that on February 4, 2019, she found the Grievor leaving his office. GS said that she wanted to talk to him about something so they went back to his office. She said that she was not staying for post-doctoral work and the Grievor responded: "I figured". She said that she felt like he was crossing her boundaries and making her uncomfortable and it was better if they stop here, let her finish her Ph.D. and move on. GS observed that the Grievor became agitated, and asked her to sit down. He went to close the door and she gestured to leave it ajar. The Grievor then allegedly said: "First of all everyone here is saying you are banging BB." GS's evidence was that she was shocked and said: "now that you

have said that I am going to record the conversation." She recorded the remaining conversation, which lasted approximately 14 minutes. It was in intense and accusatory.

[249] The Grievor's evidence is that GS came marching down the hall toward him, yelling at him at the top of her lungs that she wasn't staying for post doctoral work because he did not respect her boundaries and was clearly spoiling for a fight. In his response to the investigator, the Grievor wrote that GS was yelling something about things being his fault and following her to the (pub) and looking for her knowing that she was there. The Grievor's evidence was that he was at his "wit's end" and could no longer deal with GS's "vicious temper, and her continuous accusations seemingly always needing a scapegoat to escape from dealing with her own issues in her own personal and professional life". He agreed that he responded: "I figured" to the comment about her not staying for post-doctoral work. He let her into his office, making sure to keep the door open, asked her to sit down and tried to calm her down, but she was "absolutely ranting at that point".

[250] In the response the Grievor prepared for the investigation, he stated:

I finally looked at [GS] and said "I can't do this anymore, just leave. I won't be the scapegoat anymore for your problems, and I certainly won't be subjected to your negative presumptions anymore. Remember, I've been going to that pub since long before you were even old enough to drink legally. The Merchant is not your private domain. Last time you had a major issue you were blaming me for [BB] no longer coming around. Maybe it wasn't me, maybe he perhaps realized that there were apparently rumours about you two being involved floating around." She went pale and said, "Oh, so people thought I was banging [BB]? Who, who, I want to know right now you bastard. Fuck you."

[251] In his direct examination, the Grievor used different words than were described in his response. He testified that he said: "Everyone here believes you are in a relationship with BB." He also testified that: "the graduate student who mentioned this to me used much a more explicit term than that." In cross-examination, the Grievor testified that the rumour he was referring to was that there was a relationship between GS and BB and that: "No one said anything about sex except for GS,". Employer counsel asked the Grievor to confirm whether he was describing a non-sexual relationship between GS and BB. The Grievor responded: "that's what I assumed it was and I had no reason to suspect differently". He confirmed a second time in cross-examination that his statement to GS was not about an alleged sexual relationship between GS and BB, despite having previously admitted to hearing a graduate student describe the rumour in "much more explicit" terms.

[252] The Grievor acknowledged during the hearing that this comment to GS about her rumoured involvement with BB was a lapse in judgment. He testified that this was completely his fault and he should never have gone there. The context was that he had a long day, he was exhausted and leaving work, likely for another meeting. His student came marching down the hall yelling at him. At that point he was at his wit's end. He testified that GS's usual mode of operation is always to find someone to blame, whenever there is a problem.

[253] The Grievor was asked why he said this at all. He responded that it was because GS had brought up time and again to him that supposedly, her daily interactions with BB stopped because of him, which the Grievor did not believe. He testified that GS would bring up that BB "doesn't come around because of you" as a reminder whenever she's upset about something.

[254] While they disagree on what was said, there is no dispute that at this point, GS said that she was going to record the rest of their conversation and did so. A copy of the audio recording and a transcript were entered into evidence. The first few lines of the transcript read:

GS: No, if you want to tell me that I'm banging somebody...

Grievor: No, no I'm telling...

GS: That's married, that is a friend of mine...

Grievor: Yes, exactly...

GS: Than I am going to record the conversation.

Grievor: And that is what I told everyone in response to that.

GS: You do not need to defend. Look you are used a certain environment, you operate a certain way obviously you feed into these things and then you are going to hold that information and when I tell you that I'm not happy and that I am not going to stay for a post-doc than you throw it in my face with that language that I was banging somebody that I was banging a friend.

Grievor: No, I'm telling you this is not the first time that you have come in here and blamed me for things in your personal life.

GS: No, I'm not blaming you for things in my personal life. I am blaming you for

imposing on my personal life with matters that do not concern you. Who I am dating; Who I am seeing. Where I am, these things do not concern you.

Grievor: You are right they don't.

GS: And who is telling you that I am banging BB?

Grievor: That, that was in the whole building...

GS: Because you just chat with everybody and they just come and tell you 'hey, she's banging BB'.

Grievor: Until I said that he's a married man and she's not like that.

GS: Who told you that?

Grievor: Other graduate students, a faculty member and a staff.

GS: Names.

Grievor: No. I'm not giving you names.

[255] There are several points in the conversation where GS raises with the Grievor that he accused her of "banging" BB. The Grievor does not once deny this or attempt to correct GS. Notably, just before the 4-minute mark in the recording, GS reiterates how their conversation started which is consistent with her testimony:

This is why I can't work with you anymore because that's what you do. I come in with a personal thing I tell you that I am making a professional decision tell you that I am uncomfortable; tell you that I'm not going to stay for a post-doc; I decided this and I'll give you the respect you deserve and tell you sooner than later because I have made up my mind and you hit back with people say your fucking banging someone... I could just explode right now. I don't even know what to say to you and this is exactly what is laying...on...below the surface with you. I can't trust you and that's why I don't talk to you.

[256] During the recorded portion of the meeting, the Grievor did not attempt to correct this description of his comment about "banging" BB and how it followed directly after her explanation about why she was not going to continue post-doctoral work with him.

Finding

[257] The Grievor's evidence about what he said to GS about her relationship with BB was inconsistent and followed a pattern of minimizing and de-sexualizing the comments he made to

her which undermined his credibility. This was the clearest example of that pattern. First, the Grievor described his comment to the investigator: "apparently rumours about you two being involved", which clearly implies a sexual relationship. In his direct, he used the words "in a relationship", and added that a graduate student had used a more explicit term, again, implying that the rumours were about a sexual relationship. In his cross-examination, he claimed more than once that he was talking about a non-sexual relationship. This evidence was not credible.

[258] In addition to the Grievor's lack of credibility in relation to this incident, GS's evidence about the Grievor's use of the word "banging" was credible and reliable. It was shocking to her, so much so, that she pulled out her phone to record the rest of the conversation. Multiple times throughout the conversation, GS repeats that the Grievor said she was "banging" BB and the Grievor never once corrects her. I do not accept his explanation that he could not get a word in because she was ranting. GS was certainly angry, and for good reason, but the Grievor was able to speak and push back on issues, and could even be heard when GS was talking over him. At no point did he reject her accusation that he used the word banging.

[259] I also prefer GS's evidence on how the conversation started. She told the Grievor she would not be staying for post-doctoral work. He responded, by his own admission: "I figured". She explained that he continued to cross her boundaries and he responded with, the statement about "banging" BB.

[260] The Association submits that the Grievor was responding to being accused of deliberately and deceitfully intruding on GS's time with others and that he was challenging the accuracy of her perceptions about his attendance at the pub. I have carefully reviewed the Grievor's testimony on this issue. In the investigation he said that she came down the hall yelling something about blaming him and the incident in the pub. In this hearing, he did not testify that this was the reason he made the statement about the rumours. He was asked in direct examination what the relevance of this comment was and why say it all? He responded that she brought the issue of BB up "time and again". He was asked if he made the comment about the rumour in response to that. He responded: "No she hadn't said it. Like I said, this is completely my fault for saying that."

[261] Even accepting that GS made a comment about the incident in the pub before the recording was turned on, as the Grievor alleges, this issue was addressed later in the recorded portion of the conversation. Approximately two minutes into the recording, the Grievor interjected

as GS was asking him for the names of the people he was talking to about the rumour. The Grievor says: "Let's make something else clear I've been going to that pub since it opened before you [were] legal to drink OK" and comments follow about the incident in the pub. In his evidence to the investigator, the Grievor said he made these comments prior to the recording being turned on. He did not testify that the comment about "banging" BB was in response to GS's alleged accusations about the pub incident.

[262] In my view, it is more probable that the initial part of the conversation unfolded as GS described in the recording, that the Grievor was responding with the allegation about BB to GS saying she was not staying for post doctoral work because he continued to cross her boundaries.

[263] The Grievor's description of GS coming down the hall and yelling at him is inconsistent with someone who intended to continue on to complete her Ph.D. and had been thinking and weighing how she should approach the Grievor in order to minimize the potential negative consequences. However, when GS approached the Grievor and said she had something she wanted to discuss with him, and given the events of the past few days, he likely had a sense that she was upset.

8) The Grievor's escalating interest in GS's relationships with men

[264] The evidence about the rumour about GS's sex life, and the fact that the Grievor had talked to multiple people about it, as well as the way he intruded on GS's evening with her partner, touched her and commented on her dress, supported GS's testimony that there was evidence of a growing interest in her relationships with men after her relationship with her partner ended in June 2017. She testified that the Grievor became increasingly interested in her personal life as a single person. The Grievor's intrusions on the GS's coffee time with BB was raised in the August 2018 meeting, although he continued to deny this. He commented that one of his colleagues was looking at her and liked her. He commented that things with her boyfriend must be getting serious and that she was just in love. There is also the email in which he talks about the "right smart guy" coming along.

[265] The evidence did not confirm that the Grievor took an unusual interest in a student that GS was dating early on. His explanation was plausible, that he was spending time support a student who had expressed an interest in medical school. But the rest of these examples support a finding that Grievor had failed to maintain one of the most important boundaries between a male

graduate supervisor and a female student, by taking an interest in her personal relationships with men.

9) *Academic Consequences for GS*

[266] Following the meeting on February 4, 2019, GS's academic circumstances changed quickly. She testified that she lost access to the Grievor's lab. The Grievor withdrew as her supervisor and she was advised to end her employment as his marker-grader. With the assistance of the AU and Brock, another professor became her host under the mentorship program which allowed GS to complete her thesis at Brock. Despite what she had been through, her thesis was completed in April 2019. It was approved and she received her doctorate.

IV. Analysis

Relevant policy and collective agreement provisions

[267] The Employer's position is that the Grievor's conduct breached the confidentiality and sexual harassment provisions of the *RWLEP* (issued July 1, 2006, last revised September 2018) and created a poisoned work and learning environment for GS. The relevant provisions of the *RWLEP* include its purpose to:

- Develop and support a work and learning culture that values diversity and inclusion and fosters respect, and does not tolerate prejudice, discrimination, harassment or bullying;
- Outline rights, responsibilities and types of behaviour which fall within the scope of this policy; [...]

[268] Section 3 of the *RWLEP* states:

3. Brock University opposes behaviour that is likely to undermine the dignity, self-esteem or productivity of any of its members and prohibits any form of discrimination or harassment whether it occurs on University property or in conjunction with University-related activities. Therefore, Brock University is committed to an inclusive and respectful work and learning environment, free from:

- Human rights discrimination or harassment;
- Workplace harassment;
- Sexual harassment; and

- Personal harassment, psychological harassment and bullying.

[269] There is no dispute that the Grievor breached the confidentiality provision of the *RWLEP* at section 19 which reads follows:

Confidentiality is critical in all procedures under this Policy. Because of the particular sensitivity of discrimination, harassment and bullying complaints, and their consequences, confidentiality is of the utmost importance and will be maintained at all times, unless the safety of members of our community are at risk or legal obligations require disclosure of information. Maintaining confidentiality benefits everyone involved in the complaint process. Those making complaints should not discuss the matter other than with the appropriate parties. Those involved in dealing with the complaints will make every effort to maintain confidentiality of information and will disclose only where absolutely necessary. Wherever possible, the complainant will be consulted before any disclosure of information is made. The importance of confidentiality will be stressed to all those involved in an investigation and everyone will be strictly required not to discuss the complaint with colleagues or friends. Breaches of confidentiality may give rise to investigation under this policy and procedures and to disciplinary action.

[270] The *RWLEP* prohibits harassment, including sexual harassment, as well as discrimination based on a person's sex and/or gender. The relevant definitions are as follows:

"Discrimination" means differential treatment of an individual or group which is based on a personal characteristic (such as gender, race, creed, disability, and/or sexual or gender orientation) of that individual or group, and which has an adverse impact on them.

"Harassment" means a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Single acts of sufficient severity may also constitute harassment. "Harassment" includes "Human Rights Harassment," "Human Rights Discrimination," "Personal Harassment," "Psychological Harassment," "Sexual Harassment," and "Workplace Harassment" as defined below.

"Human Rights Discrimination" means differential treatment of an individual or group which is based on a personal characteristic of that individual or group and which has an adverse impact on them. Personal characteristics include race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identification, gender expression, age, marital status, family status, disability, record of offences (in employment only), and receipt of public assistance (in accommodation only) as defined by the Ontario Human Rights Code. "Human Rights Discrimination" may include or be linked to "Workplace Sexual Harassment," as defined below.

Sexual Harassment" and/or "Workplace Sexual Harassment" is deemed to include, but is not restricted to:

(a) any unwanted attention of a sexually oriented or gender-oriented nature directed at an individual or group by another individual or group of the same or opposite sex who knows, or ought to reasonably know, that this attention is unwanted;

(b) engaging in a course of vexatious comment or conduct because of sex, sexual orientation, gender identity or gender expressed, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome;

(c) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome;

(d) any implied or expressed promise of reward for complying with a sexually oriented request or advance;

(e) any implied or expressed threat of reprisal for refusing to comply with an implied or expressed sexually oriented request;

(f) any behaviour, verbal or physical, of a gender- or sexually oriented nature that interferes with the academic or work environment of an individual or group or creates an intimidating or hostile atmosphere.

[271] Appendix A to the *RWLEP* provides:

“Sexual Harassment” can be psychological or physical. It is defined in two parts: engaging in a course of vexatious comment or conduct because of sex, sexual orientation, gender identity or gender expressed [sic], where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advantage to the individual, and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

[272] There is no allegation of sexual solicitation in this case.

[273] There is no dispute that the *RWLEP* applies to the Grievor and GS in these circumstances. The collective agreement also confirms in Article 4.03, that this policy applies to the Grievor's role as a professor and graduate student supervisor.

[274] The parties agree that the *RWLEP*'s definitions of “discrimination”, “harassment”, “human rights harassment”, and “sexual harassment” closely parallel those in the *Human Rights Code*, R.S.O. 1990, c. H.19 (the “*Code*”) and the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1's (the “*OHS Act*”). The *Code* prohibits sexual harassment and discrimination. The Employer also cited the *OHS Act*'s prohibition on workplace sexual harassment, emphasizing that GS was also someone who worked for the Grievor when she was setting up his lab and when she secured employment as his teaching assistant and marker-grader. The parties agree the legal principles

established in decisions interpreting and applying the definitions in the legislation should be adopted in this case.

[275] The grievance includes the following allegations:

The Employer terminated the Complainant without just cause;

In the event that the Employer had just cause to discipline, termination was disproportionate in the circumstances;

By unnecessarily revealing to the Faculty that the Complainant was no longer a Brock employee the Employer exhibited undue insensitivity, which independently caused extreme distress to the member and reputational harm, and amounted to bad faith in the manner of termination;

[276] The grievance cites a breach of Article 3 (Management Rights) and Article 9 (Discipline) and seeks immediate reinstatement of the Grievor with any backpay owing, \$50,000.00 in damages for mental distress caused by bad faith in the manner of termination, and the return of lab notebooks. The collective agreement provides that Grievor receive his wages and access to benefits until the grievance is determined.

[277] Article 3 (Management Rights) reads:

In accordance with the Brock University Act, the University retains the rights to manage the University, except to the extent modified by the terms of this Agreement. These rights shall be exercised in a fair and reasonable manner consistent with the provisions of this Agreement.

[278] Dismissal requires just cause (9.13) which is defined in Article 9.14:

"Just cause" for dismissal shall be predicated upon misdeeds that are serious and that directly show a member is unfit, or unwilling (i.e. repeated demonstrated failure) to discharge their responsibilities as defined in Article 12 (Rights and Responsibilities of Members)

[279] Article 9.03 states that any disciplinary action shall be commensurate with the severity and frequency of the violation and with any aggravating and/or mitigating circumstances, and, except in very serious instances, discipline shall be progressive.

Relevant legal principles: sexual harassment, gender discrimination and poisoned work environment

[280] The parties relied on numerous cases that are set out in the Appendix to this Decision. Not all of the cases were necessary to explicitly reference in this award and some were duplicative, but I appreciate the breadth of the guidance they provide. The cases cited in the award were those that were most relevant to resolving the issues in dispute.

1) *The test for sexual harassment*

[281] For the most part, the parties agree with respect to the legal principles, but disagree regarding their application to the facts.

[282] Arbitrators have long recognized that sexual harassment is one of the most severe forms of workplace misconduct. The Employer submits that employees who have been found to have sexually harassed others cause severe damage to their victims and to the environment in which their victims work and learn. The University cites *Trillium Health Centre* (2001), 102 L.A.C. (4th) 48 (*Trillium Health Centre*) where Arbitrator Surdykowski wrote at p. 57:

Sexual harassment or assault is intolerable. It is one of the most frightening and damaging things that one person can do to another. The effects of sexual harassment or sexual assault on the victim can be extreme and long-lasting, and incidents of this misconduct can disrupt the workplace. I am satisfied that sexual harassment falls within the same category of serious misconduct as theft, and that discharge is *prima facie* the appropriate penalty even in the case of a first offence. This does not mean that discharge will necessarily be appropriate in every case, but the onus is on the Union and the grievor to demonstrate that it is appropriate to mitigate the penalty in a particular case.

[283] Both parties cited the Supreme Court of Canada's definition of sexual harassment in *Janzen v. Platy Enterprises Ltd.*, 1989 CanLII 97 (S.C.C.) (*Janzen*). In *Janzen*, the Court defined sexual harassment in the workplace as "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment". The Court also confirmed that sexual harassment is a form of sex discrimination.

[284] The *RWLEP's* definition of sexual harassment is consistent with the generally accepted legal test requiring proof, in this case, of "any unwanted attention of a sexually-oriented or gender-oriented nature" directed at GS, by the Grievor "who knows, or ought reasonably know, that this attention is unwanted".

[285] The parties agree that comments or conduct that may be sexual harassment encompass a wide variety of forms. In *Canada (Human Rights Commission) v. Canada (Armed Forces)*, [1999] 3 FC 653 ((*Canada (Armed Forces)*)) the Federal Court notes at paragraph 38 Dickson J's discussion in *Janzen* that "...sexual harassment can manifest itself both physically and psychologically. In its milder form it may be confined to verbal innuendoes and inappropriate affectional gestures", and can escalate to more extreme forms of behaviour. The authorities the Court draws from reinforce that there is a broad range of conduct that could fall within the ambit of what is "sexual in nature" including, among other things, unwelcome remarks, jokes that cause awkwardness or embarrassment, innuendos, gender-based insults or sexist remarks, physical touching, and comments about a person's looks, dress, appearance or sexual habits.

[286] The *RWLEP* contains a similar, non-exhaustive list of examples of conduct that may constitute sexual harassment which includes suggestive remarks of a sexual nature, offensive language alluding to a person's private life or sexual behaviour, suggestive comments about an individual's appearance, characteristics or clothing, unnecessary or inappropriate touching to which the individual has not consented or had the opportunity to object to.

[287] Sexual harassment also encompasses behaviour that is gender-oriented. In *Regional Municipality of York Police Services Board*, 2020 CanLII 25423, at para. 110 Arbitrator Price stated: "it is well established that sexual harassment includes a course of vexatious conduct related to gender, regardless of whether the conduct has an underlying sexual purpose." Where a relationship of power and authority exists, this is a factor in determining whether certain behaviour ought to be characterized as having gendered overtones. (See *Loiselle v. Windward Software Inc.*, (No. 2) 2021 BCHRT 7)

[288] The question whether the Grievor knew or ought to have known that his conduct was unwanted has both a subjective and objective component. If the Grievor knew that his comments and/or conduct were unwanted, this is determinative. The University submits that the distinction between what the Grievor knew and ought to have known is particularly relevant in this case because GS shared her concerns during the August 16, 2018 meeting.

[289] The absence of subjective knowledge or intent is not a defence. The focus is on the effects of the Grievor's conduct on GS not on his intentions. The parties generally agree that whether the Grievor ought reasonably to have known that his comments and/or conduct were unwanted is

assessed objectively. The question is whether a reasonable person, apprised of all the circumstances, would conclude that the Grievor ought to have known that his conduct was unwanted.

[290] Context is important to evaluating whether less overt or seemingly benign comments and conduct are nevertheless sexual or gender-oriented in nature. Ultimately, the parties agree that the question whether the conduct was objectively sexual or gender-based in nature or objectively unwanted remains a question of fact to be decided on the evidence in each individual case. Determining whether an individual ought reasonably to know that their comments or conduct were unwanted requires a detailed analysis of the factual matrix in which the events at issue occurred. (See for example *S.S. v. Taylor*, 2012 HRT0 1839 at para. 68 and *Faculty Association of the University of St. Thomas and St. Thomas University*, 2018 CanLII 152726 (*St. Thomas University*))

2) *Sexual harassment is an abuse of power*

[291] In *Janzen*, at p.33 the Supreme Court of Canada confirmed that sexual harassment is an abuse of power:

[sexual harassment] is, as Adjudicator Shime observed in *Bell v. Ladas, supra*, and has been widely accepted by other adjudicators and academic commentators, an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self respect of the victim both as an employee and as a human being.

[292] Arbitrators have accepted the clear connection between sexual harassment and abuse of power. (See *Algoma Steel Inc.*, 2021 CanLII 125729 (*Algoma Steel*)). In the post-secondary education sector, arbitrators have acknowledged that there is a profound power imbalance between faculty members and the students they teach and supervise. In *Vancouver Community College*, [1994] B.C.C.A.A.A. No. 297 at para. 158, Arbitrator Jackson found among other things, that unwelcome personal questions and remarks of a sexually suggestive nature, physical touching, and sexual importuning were misuses of power and authority

[293] In *St. Thomas University*, at p. 80, Arbitrator Outhouse observed that comments that were “inappropriate and demonstrate a pattern of over-familiarity and suggestiveness” are “not in

keeping with the normal student-professor relationship.” In that case, a faculty member made provocative comments about a student’s appearance, casually touched the student’s body and made sexually charged jokes para. Arbitrator Outhouse further found that “because of the power imbalance between professors and students, it is important for professors not to sexualize their relationship with students”.

[294] In *St. Clair College*, 2012 CanLII 61746, a post-secondary instructor physically touched a student without permission or cause, asked her personal and intimate questions without permission or cause, and made comments about her appearance. Arbitrator Parmar found that the instructor used his position of authority and that the student “regarded him as an authority figure to be treated with respect and therefore was unlikely to question or rebuff his comments”: (para. 77)

[295] The Association acknowledges the power imbalance between the Grievor and GS and the extent of her reliance on him. The Association also made a number of thoughtful submissions about the relevance of an imbalance of power in this case. There is no dispute that an imbalance of power makes it more difficult for a victim to come forward and puts the onus on the person in a position of power to be mindful of how they relate to those with less power. I agree that the existence of the power imbalance does not determine the nature of the attention in question in this case. The Association submits that the Grievor’s conduct in relation to the power imbalance was exemplary in the context of the professional support he provide to GS in his role as her supervisor. While she did not use the word exemplary, there is no dispute that even after the August 2018 meeting, GS felt positively about their working relationship with one another. The issue in this case is the relevance of the power imbalance to determining the allegations of inappropriate conduct, which also strike at the heart of his professional responsibility to support GS as she was striving to complete her Ph.D.

3) *Poisoned work and learning environment*

[296] In *Canada (Armed Forces)*, the Federal Court stated that if the trier is satisfied that the conduct at issue was objectively unwanted and sexual in nature, they should proceed to assess the persistence and gravity of the conduct. Some forms of conduct may be sufficiently severe to constitute sexual harassment even if they only occur once. However, where the conduct is less serious a greater degree of persistence or repetition will be required to constitute sexual harassment.

[297] In this regard, also at issue in this arbitration is whether the Grievor's conduct was sufficiently persistent and serious to create a poisoned work and learning environment, as the University argues is the case. The University submits that the case law recognizes that patterns of harassment and the insidious impact of a series of reportedly "minor" comments have become easier to identify. That an employee's harassing behaviour is made up of several comments made over a longer period of time will not result in each individual comment being examined in isolation as a minor incident. Rather, the University argues that employees who engage in such conduct are now properly characterized as having, through their repetitive conduct, created a poisoned work environment for their victims. See *Hydro One Networks Inc.*, 2015 CarswellOnt 15458 at para. 132 (OLRB).

[298] The parties agree that the legal test in determining whether conduct has created a poisoned environment requires evidence assessed objectively that "serious wrongful behaviour sufficient to create a hostile or intolerable work environment is persisted or repeated": *General Motors of Canada v. Johnson*, 2013 ONCA 502 (*General Motors*) at paras. 66-67. The non-exhaustive factors considered include: (a) the number of comments or incidents that are found to be discriminatory; (b) the nature and seriousness of the discriminatory comments or incidents; and (c) the cumulative effect of the discriminatory comments or incidents: See, *Iron Forming Inc. and Labourers' International Union of North America, Local 183*, 2023 CanLII 39143 (ON LA) (Steinberg) at para 120.

Summary of the Parties' Positions

[299] The Employer's position is that over nearly two years, GS was subjected to an escalating pattern of sexually-oriented or gender-oriented comments that the Grievor knew or ought to have known was unwanted and which poisoned her working and learning environment. Although GS met with the Grievor in August 16, 2018, drew her concerns to his attention and asked him to stop, the Grievor's conduct continued and intensified. This culminated in GS informing the Grievor that she could not continue working with him beyond the completion of her Ph.D.

[300] The Association's position is that the comments and conduct at issue do not constitute sexual harassment as defined by the *RWLEP*. Alternatively, the Association argues that in the event that any of the comments and conduct at issue are found to be sexual harassment, they are few in number, sporadic, and at the low end of the spectrum of severity, both individually and

collectively. The Association further argues that the comments and conduct were not discriminatory, nor did they create a poisoned work environment.

Determination

[301] Applying the principles and cases relied on by the parties about what constitutes sexual harassment, I have concluded that a reasonable person, apprised of all the circumstances and considering the factual findings in their full context, would conclude that the Grievor directed unwanted attention of a sexually-oriented or gender-oriented nature at GS, when he knew or ought to have known that his conduct was unwelcome.

[302] As I have previously indicated, the August 2018 meeting is a turning point in the Grievor's understanding of the impact of his conduct on GS. I accepted the evidence that GS shared all of her concerns, including specific examples, and specifically drew the Grievor's attention to the gendered nature of his conduct toward her.

[303] The incidents that occurred before the August 2018 meeting included that the Grievor recommending GS for a promotional video, describing her as a "gorgeous Australian". The Association submits that there is nothing problematic about using the term to identify GS, as it was an additional relevant factor that made GS especially well-qualified to be featured in promotional material. I disagree. Recommending GS for a promotional video in any part because of her appearance, blurs the professional boundary that should exist between a male supervisor and female graduate student. The Grievor also inexplicably told GS that he shared his thoughts about her attractiveness with the producer. Comments like this, would suggest to any female student in the same circumstances that the Grievor valued her attractiveness which has no place in their professional relationship.

[304] The Grievor did not give GS an occasional compliment during the Portugal conference. He persistently commented on her appearance, including her hair and attire throughout the conference. I accepted GS's testimony that the comments were more concentrated and frequent and began to feel like a pattern. The comment the Grievor made that "you should wear your hair out more often" is not the equivalent of "nice hair". It is a more intimate comment about GS's attractiveness as a woman when she is wearing her hair a certain way. Persistent comments of this nature, while they are away at a work-related conference, are sexually suggestive and gender-based.

[305] Following the Portugal conference, the Grievor often commented that GS looked "great", or "fantastic" and that "the running was paying off". I agree with the Employer's submission that the Grievor's comments began to centre on GS's physical appearance, particularly her body and how her increased fitness made her appearance more attractive. GS did not initiate discussions about her appearance and there was no evidence that she invited comments from the Grievor about her appearance. The frequency and nature of these comments and the fact that they were initiated by the Grievor, distinguish them from normal or collegial discussions exercise and weight loss. They were comments about her body, how diet and exercise were contributing to her losing weight and becoming more attractive.

[306] Following a meeting at a local pub, the Grievor told GS that his colleague, was looking at her the whole time, that he liked her and that she had an admirer. This statement was so inappropriate that GS openly disagreed with the Grievor and actively shut this conversation down. As I previously indicated, the clear implication of these statements is that the Grievor believed that Dr. C was looking at GS because of her gender and attractiveness. The Grievor made this connection himself in his suggestion to the investigator that perhaps GS felt that Dr. C showed interest or that she found him attractive.

[307] The Grievor escalated the frequency and nature of his comments at the San Diego conference. The comments became more personal and sexual in nature. During the conference the Grievor made comments about GS's attire like "nice top" and "great dress". However, he also commented, "I love the sway. Dresses don't sway like that anymore" as they were walking between conference events. He told GS she looked "stunning", "amazing", and "great", that she looked like a movie star and that her legs "looked great". The Grievor also commented on her appearance, openly in front of one of his male colleagues, for the first time.

[308] The Grievor also began touching GS in a way he had not before, intentionally guiding her ahead of him by touching or holding her lower back. It is significant that the first time the Grievor touched GS's lower back as he guided her up the escalator was after commenting "you look amazing". After that, the Grievor guided GS as she walked, touching or holding her lower back through doorways, into her seat, and up the escalator. This was persistent, unnecessary touching of a female graduate student's body by a male supervising professor. I disagree with the Association's submission it was a normal part of a collegial working relationship between colleagues and not an intimate form of contact and not sexually-oriented or gender-oriented.

[309] Also at the San Diego conference, the Grievor asked GS whether she bought a bikini or a one-piece swim suit in front of Dr. D. and persistently invited her to swim in the hotel pool even after she declined. The question about her swim suit was inappropriate and was directed to GS because she is a woman. The Grievor would not have asked a male graduate student, in front of a more senior colleague, whether he bought a speedo or as the Grievor put it, a "budgie smuggler". That question, combined with the persistent invitations to swim at his hotel, would raise a reasonable inference that the Grievor was interested in seeing GS in her swim suit. It is immaterial that the Grievor said, during the hearing, that he had no intention of watching her swim. The Grievor never provided that assurance to GS during the conference. GS felt objectified by his comments about her swim suit and about swimming at a conference which should have been regarded by the Grievor as an extension of their professional work together.

[310] A few months after the San Diego conference the Grievor mentioned the red swimsuit the Grievor had purchased and invited her to swim in his pool. This is an example of a seemingly benign invitation, which takes on a different nature, when the full context of the Grievor's persistent invitations to swim at the San Diego conference are considered.

[311] The Grievor continued his comments about GS's appearance and attempts at physical contact after the conference. Despite being fully aware that GS did not want to talk about her tattoos, he commented on the tattoo on her lower back when when it accidentally became visible.

[312] When the August 2018 meeting occurred, the Grievor had a choice. He could stop the conduct that GS specifically identified as gender-based and return to the overall more positive and collegial relationship they enjoyed earlier at Brock, or he could continue to push GS's boundaries.

[313] After the meeting, the Grievor stopped touching and guiding GS, but he persisted with inappropriate sexual and gender-oriented comments, albeit less frequently. The "donor" and "they would be lining up" comments were made after the meeting. While the Association accepts that this comment is objectively sexual in nature, given that it implies that multiple men would be interested in having sex with GS, it is appropriately characterized as reflecting a momentary lapse in judgment. I do not agree, particularly since the Grievor never specifically acknowledged making the comments. This was part of the Grievor's overall pattern of reckless, sexualized comments

which have no place in a supervisory relationship and which would form part of the overall context for the reasonable person's assessment of other aspects of the Grievor's conduct.

[314] The Grievor also continued making comments of a personal nature about GS's relationship with her current partner "getting serious" and that she must be "in love" in the context of work conversation. The Association acknowledges that these comments are gender-based, but appear to be isolated and aberrant incidents in what was otherwise a collaborative professional working relationship, not part of a pattern of behaviour that would constitute harassment.

[315] I also accepted GS's description of the Grievor asking if he should check her for frostbite. The Association submits that given that frostbite only occurs on the extremities, a reasonable person would not view this a sexual in nature. I disagree with this submission which represents a very narrow construction of the reasonable person test. I agree with the Employer that when it is considered in its full context, the only reasonable interpretation of this comment is that the Grievor was (jokingly or otherwise), offering to examine his female graduate student's body for signs of frostbite. The frostbite comment was made after GS had explicitly clear that she was not interested in comments of this nature.

[316] The Grievor's approach to GS in the pub on February 1, 2019, repeating the comment about her dress later at his home, and then confronting GS with the rumour that she had been "banging" BB, brought their relationship to a crisis point.

[317] The Grievor acknowledged that at the meeting on August 16, 2018, in addition to describing a male/female dynamic in their relationship with the Grievor, GS said, among other things, that she was not comfortable with the comments the Grievor made about her appearance, that she "didn't like or need compliments", and that she was not comfortable with his incursions into her personal space and time, like appearing to check up on her coffee breaks with BB. Whatever the Grievor thought of these concerns, he was clearly on notice to stop.

[318] Despite this, the Grievor chose to approach GS in a local pub, on a Friday night, while she was dining with her partner. Without introducing himself or asking if he was intruding, he admittedly touched GS's arm, felt the material of her dress, and said "Nice dress", in front of her partner. Shortly after that, he repeated the comment about her dress at his home, drawing attention to the light weight and body-conscious style of the dress by asking if she was "cold" in

that dress. He did this despite GS specifically telling the Grievor that she did not want the Grievor encroaching on her personal time and that she did not want him to touch her or to comment on her clothing. She could not have been more clear during the August meeting in labelling what then occurred at the pub as gender-based conduct. The Grievor knew that this type of comment and conduct was unwanted.

[319] When GS approached the Grievor to tell him that she could not work with him beyond the completion of her Ph.D, she fully intended to finish with the Grievor as her supervisor. The Grievor responded by telling her that everyone in the building thought she was having a sexual relationship with BB, using the word "banging". Despite clearly averting to a rumour about a sexual relationship in the materials he submitted in the investigation and in his direct testimony, the Grievor insisted in his cross-examination the rumour was not about GS's sex life, but about a non-sexual friendship with BB. It is clear from the evidence that the rumour was about GS's sex life, and the Grievor not only conveyed that to her, but had obviously participated in multiple conversations about it with various individuals.

[320] The Association submits that a reasonable person, fully informed of the relational context in which the last incident occurred, would conclude that this was not sexual. It argues that advising GS that there is workplace gossip about her relationship with BB and that that this gossip is quite possibly, or even likely the reason for BB withdrawing from that relationship is not sexual or gendered in nature, even if that information is conveyed in crude or vulgar language. I disagree.

[321] These incidents constitute serious conduct of a sexual or gender-oriented nature that the Grievor knew was unwanted. Even if that is incorrect, the Grievor ought to have known by any standard, that commenting that sperm donors would be lining up for GS, insinuating that he would inspect GS's body for frostbite, his approach to GS in the pub and touching her and commenting on her dress, and his revelatory comment that the rumours were circulating about a possible sexual relationship with BB, were unwanted. Even if these were the only incidents following the August 16, 2018 meeting, they are serious enough on their own to breach the *RWLEP* and attract a disciplinary response.

[322] The Association submits that there are few, if any, events which the reasonable person in the circumstances would view as sexual in nature. It argues that the comments the Grievor made at the Portugal and San Diego conferences about GS's appearance and attire were in the context

of GS being dressed up for special occasions. Complimenting a change in hairstyle or clothing when they have dressed up is an ordinary social nicety. With respect to comments like "stunning amazing", the Association argues it is also entirely in keeping with prevailing social norms to pay someone a more general compliment on their overall appearance in these circumstances. The Grievor's comments about diet and fitness would not be viewed as sexual, nor would responding to someone who just bought a swim suit by asking what kind they bought. With respect to the swimming invitations, only a small portion of the pool would be visible and there was nothing to suggest that he would be present and watching her swim. Briefly touching someone's back to guide them past you or putting a hand on a colleague's shoulder, in view of other people, is not an intimate form of contact. These instances also do not involve a greater degree of intimacy than the hugs that they shared. The comment about the tattoo was not about GS's body but an observation on a piece of art she had chosen to place on it. I have addressed each of these either explicitly or implicitly in my description of these incidents.

[323] I also disagree with the Association's characterizations of how a reasonable person would view the Grievor's conduct. The test requires consideration of the full context, including the power imbalance between a male graduate supervisor and a female student, the facts that are admitted or substantiated, the impact on GS, her efforts to draw these concerns to the Grievor's attention and her decision not to work with him any longer. A reasonable person, would conclude that the full context reveals a serious, persistent and escalating pattern of sexually-oriented or gender-oriented conduct on the Grievor's part.

[324] The Employer's responsibility to provide a workplace and learning environment free of sexual harassment and gender discrimination includes the authority to establish standards of respectful conduct in the work and learning environment for the university community. This is particularly significant where a power imbalance may compromise the capacity of a student to object to a professor's conduct.

[325] In this case, the Employer has developed policies and practices to prevent behavior that is likely to undermine the dignity, self-esteem or productivity of any of its members which includes discrimination and harassment. The Grievor had a professional responsibility to abide by these policies, including proactively ensuring that his conduct did not risk undermining GS's efforts to complete her doctoral studies. This is an important part of the context in considering whether a

reasonable person would view the Grievor's conduct toward a female graduate student as unwanted.

[326] The Association recognized and articulated in its final submissions that there is a "heightened risk of inadvertent but real harm in the context of a relationship in which the parties have unequal power", and that this requires the Grievor to take "particular care in identifying and being especially scrupulous in maintaining appropriate boundaries and behaviours in that context". While the Association made this submission in the context of the Employer's ability to trust in the Grievor's capacity to abide by the university policies in the future, it is equally applicable to any graduate supervisor at any stage in their relationship with a graduate student. In my view, the Grievor's failure to establish and maintain appropriate boundaries with GS while he was supporting her academic achievements is of central importance in this case.

[327] There is no evidence of that kind of care and attention on the Grievor's part. A reasonable person would conclude that the Grievor knew or ought reasonably to have known that his conduct, as a male professor and supervisor towards a woman student was unwanted. A reasonable person would see this conduct as fundamentally incompatible with the mentorship and leadership responsibilities that faculty members who supervise graduate students are expected to exercise.

[328] Applying the test in *General Motors*, I agree with the Employer that the Grievor engaged in serious, persisted and repeated behaviour that ultimately created a poisoned work environment for GS. In this regard, I have found multiple instances of serious sexual or gender-based comment or conduct that constitutes harassment contrary to the *RWLEP*. Some of the behaviour at issue was overly sexual, some conduct has sexual undertones or innuendo, and much of the behaviour was sexual or gender-oriented related to GS's attractiveness as a woman. I have found that the Grievor's conduct was not isolated and episodic. Rather, much of it continued, even after GS specifically telling the Grievor that his behaviour was unwanted and unwelcome. The cumulative effect of the Grievor's behaviour was that GS's educational and professional relationship with the Grievor came to an end.

V. Discipline

[329] The Grievor's misconduct in breaching the confidentiality and sexual harassment provisions of the *RWLEP* supports the imposition of discipline. The issue is whether termination was appropriate in all the circumstances of this case.

[330] The reasons for termination are set out in the letter dated May 20, 2022. They include the findings that were substantiated during the investigation, the fact that the Grievor held a position of relative power and authority over GS that he neglected to fully recognize, and that GS approached him in August 2018 to express her discomfort with his gendered treatment toward her, but he continued to harass her. The letter also indicates that Dr. Wells relied on the prior discipline and the fact that the Grievor was warned about the consequences of a further breach of the *RWLEP*. The letter concludes that the University has lost any trust that the Grievor would not repeat his behaviour.

[331] Dr. Wells testified in detail about her review of the investigation report, the discipline process and the reasons for termination. She was concerned about the pattern of conduct identified by the investigation and noted that it did not stop even after the August 2018 meeting. She testified that the Grievor did not demonstrate an understanding of the inappropriate nature of his conduct and its impact on GS. He was in a position of power over GS as a woman and an international student and did not exercise his power professionally or responsibly. There was no evidence that the termination decision was not carefully considered before it was made. Dr. Wells was not required to review all of the investigations underlying materials before determining that she could rely on the investigation findings as the Association suggested.

[332] The parties agree that not every case of this nature requires a disciplinary response as significant as termination. The collective agreement requires that any disciplinary action be commensurate with the severity and frequency of the violation and with any aggravating and/or mitigating circumstances, and except in very serious instances, progressive discipline is required. (Article 9.03). Just cause is a defined term in the collective agreement. It requires proof of serious "misdeeds" that show a member is unfit or unwilling to discharge their responsibilities. (Article 9.14).

[333] In circumstances where arbitrators have substituted lesser disciplinary penalties for sexual harassment, discrimination, and a poisoned work environment, two key considerations emerge. The first is that the Grievor understood the inappropriate nature of his conduct. The second is that he can reasonably be expected to refrain from engaging in any further misconduct of this nature. (*St. Clair College*, paras 80 to 82).

[334] The Employer's position is that the Grievor's conduct was serious. He failed to fully acknowledge the power imbalance in his relationship with GS. Additionally, he continued his behaviour after GS approached him in August 2018 to express her discomfort with his gendered treatment of her. The Grievor's previous violation of the *RWLEP* in 2017 resulted in his removal as an academic administrator, and he was warned that any future contravention could lead to dismissal for cause. He also violated the confidentiality provisions of the *RWLEP* regarding the prior complaint. The Employer's position is that it cannot trust the Grievor to refrain from contravening the *RWLEP* in the future based on his behaviour and refusal to accept responsibility for his actions.

[335] The Association submits that in this case, the Grievor's alleged conduct falls on the less serious end of the continuum, and the Grievor has demonstrated remorse for his behaviour, justifying a lesser penalty. (*Professional Institute of the Public Service of Canada v. Communications, Energy and Paperworkers' Union of Canada*, Local 3011, 2013 ONSC 2725 at para 21; *Ontario Power Generation v The Society of United Professionals*, 2020 ONSC 7824 at para 38.)

[336] The Association relied on several cases in the University sector in which arbitrators have substituted less severe forms of discipline in relation to serious sexual harassment or sexual misconduct. (*Brandon University Faculty Association and Brandon University*, 1995 CanLII 17990 (MB LA) (*Brandon*); *Re Okanagan University College and Okanagan University College Faculty Association*, 64 LAC (4th) 416 (Lanyon) (*Okanagan*); *Memorial University of Newfoundland Faculty Association v. Memorial University of Newfoundland*, 2015 CanLII 154120 (NL LA) (*Memorial*); *Lethbridge College and Lethbridge College Faculty Association*, 2007 CanLII 91674 (AB GAA), *aff'd* 2008 ABQB 316 (*Lethbridge*))

[337] These cases did not assist in determining the matter before me. In *Brandon*, which was decided in 1995, the factors supporting a reduction in penalty included the lack of prior discipline and expert psychological testimony that explained the Grievor's conduct and provided insight into his commitment to change. In that case, the misconduct was limited in duration, although the arbitration board noted that the grievor would have been unable to continue in his job had his behaviour persisted. None of those factors are present in the case before me.

[338] Two of the cases relied on by the Association involved consensual sexual relationships between an instructor and student(s) in a context where the University had not yet established a

policy on relationships between instructors and students (*Okanagan* and *Lethbridge*). By contrast, Brock has a policy that supports a respectful work and learning environment, which the Grievor previously breached. In *Okanagan*, which was decided in 1997, the instructor had an “unblemished” disciplinary record and committed to improving his conduct by undergoing counselling and educating himself during the time between his termination and the hearing, factors which are not present in the case before me. In *Lethbridge*, which was decided in 2007, the grievor had no disciplinary record. He also had a diagnosed mental health condition, and expert testimony confirmed that it had impaired his judgment at the time of the misconduct. Again, these factors are not present in the case before me.

[339] The most recent case, *Memorial*, decided in 2015, did not address the factors to consider when rescinding a termination decision. The employer in that case opted for a 20-day suspension, and there was no mention as to whether the Grievor had a discipline-free record.

[340] The harassment GS experienced was prolonged, repeated, and increasingly explicit in nature and severity. The comments became increasingly personal and sexualized over time. Importantly, even after GS asked him to stop, the Grievor continued to make inappropriate comments, including that sperm “donors” would be “lining” up, making a sexual innuendo about inspecting her body for frostbite, that she was rumoured to be in a sexual relationship with a friend at the university and used the vulgar word “banging”, and interfered in her personal time and touched her arm, and the material of her dress, commenting “nice dress”. The impact of the Grievor's conduct imposed a significant burden on GS as she monitored the Grievor's behaviour and managed her own emotional responses, trying not to put her academic progress at risk.

[341] I disagree with the Association that all of the cases it relied on involved far more serious conduct than has been alleged or proven in this case. In any event, allegations of invasive sexual touching as well as overtly sexual comments or advances are not required to be present in every case where termination is upheld. In this case, the Grievor engaged in a pattern of over-familiar and sexualized conduct which by August 2018, made it nearly impossible for GS to deal with effectively, *however subtle or far between the events*. These words, which GS used in the August 15, 2018 email to the Grievor, capture the corrosive effects of his conduct over time, which ultimately caused her to decide that she could no longer work with him, no matter the consequences to her future academic career. The severity of the Grievor's conduct is also

compounded by his failure to respect GS's boundaries after the August 2019 meeting and the egregious nature of his conduct in the meeting with GS in February 2019.

[342] The Association submits that the primary mitigating factor is that the Grievor now fully appreciates the boundaries that faculty and members must maintain in their relationships with supervisees and other students, and can confidently be expected not to engage in anything like the conduct at issue here in the future. The Employer agrees that this factor is critical. Both parties relied on the observation by the Board in *St Clair College* at para. 82 that: "in cases where arbitrators rescinded dismissal, they were of the view that [the grievors] understood the inappropriate nature of their conduct and could reasonably be expected to not engage in such behaviour again".

[343] The Association submits that the Grievor has admitted many of the allegations and acknowledged responsibility for them. With respect to conduct and comments that he did not subjectively know were unwanted but that he now appreciates caused discomfort and distress, he has recognized and regretted the harm done - albeit inadvertently - and apologized. With respect to conduct and comments that he did subjectively know were unwanted, he corrected his behaviour immediately upon becoming aware of that fact.

[344] The award sets out in detail, the conduct the Grievor did and did not admit. He acknowledged a few comments, but only where they could be described as non-gendered social niceties. He did not acknowledge the inappropriate nature of his conduct approaching GS in a local pub, touching and commenting on her dress despite having been told to stop this behaviour in August 2018. He did not take responsibility for telling GS that there were rumours going around that she was involved with BB in a sexual relationship. He insisted that he was talking about a non-sexual relationship and referred to this as a lapse in judgment that he now regrets as opposed to an egregious breach of her personal boundaries.

[345] The Grievor met twice with the administration before the termination decision was made. The first meeting was held on April 14, 2022, and was attended by Ms. Villella, the Grievor's Dean and his Association representative, Dr. Braley-Rattai. Ms. Villella described the allegations that had been substantiated by the investigation. The Grievor prepared a statement which he read out during the meeting, and then forwarded a copy to Ms. Villella. The statement read:

Thank you all for making the time to meet today. I appreciate this and the opportunity to make a brief statement. There is no denying the seriousness of the complaint but I also suspect that we all also see the seriousness for both the same as well as different reasons.

Much if not all of the complaint has been based on the claim that the Complainant was somehow treated differently than others. I would like to be very clear that I am well aware of boundaries in terms of paying colleagues compliments in passing or being myself given compliments (you look great, nice haircut, great hat, and so forth) vs the untoward and unsubstantiated accusations that have been made. That is a line that I have never and will never cross, as can be attested to by colleagues, students, and associates both in Brock and the wider community.

That said, I freely admit that sometimes things get said in passing that are later realized as inappropriate. In the complaint for example, I make a reference to someone as a 'silly Dutchman'. While the investigator clearly understood and accepted my explanation for why that might have slipped out at that particular moment, I nonetheless take responsibility for that being inappropriate. As anyone who knows and/or has worked with me can attest to, I will always take full responsibility when I do something wrong. However, I will not accept responsibility for false accusations made against me. While I make no claims to being a faultless person, I am also most certainly not the person the Complainant has tried to paint me as.

Thus, I also freely admit that I broke confidentiality in terms of a previous investigation. I had been informed by HRE that details of the investigation could be discussed with family members. As is clearly noted throughout my response to the Complaint, during the period of time in question the Complainant was thought of and treated as a family member, and was deeply concerned about what was being done to me at the time. Again, I did not realize that sharing the limited information I did was a poor judgement on my part but rather it seemed, at the time, to fall within guidelines I had been informed of. Nonetheless, I do freely admit that I did break this confidentiality, regardless of believing at the time that it was an acceptable circumstance.

At this point, all I can do is sincerely apologize if I have on occasion made a passing comment that could have been better considered or was misinterpreted (or has since been reinterpreted), and for sharing some limited information about a previous investigation. I continue to take full responsibility for my actions when I have indeed done something untoward, but not otherwise.

Notably, however, when I agreed to take part in this process I was told there would be an investigation. Had I known that this would not be a thorough and proper investigation I would never have agreed to take part nor expended the enormous effort necessary to provide a deeply detailed rebuttal to the Complaint as well as answer other questions.

Despite this biased final report that I will ask my BUFA representative to respond to in more detail, there is also the very serious issue of the length of this process and the unmitigated pressure I have been placed under that has resulted in a major heart attack, long term unrelenting stress to me and my family, and my own ongoing depression. Nonetheless, I have always respected the necessity of HRE processes while also recognizing that these too are imperfect and must themselves be subject to balanced and unbiased review.

[346] On any plain reading of this statement, it reflects almost no responsibility on the Grievor's part other than that a passing comment might have been better considered. He also continues to suggest that his passing comments have been misinterpreted or "reinterpreted" which is a direct reference to his allegation that GS fabricated many of the allegations against him. Throughout the hearing of this matter, the Grievor maintained that what he learned from the previous violation of the policy, the loss of his decanal position, the training he took and the investigation of GS's complaint, was that "people can see things differently, claim to see things differently, interpret things, according to their own life experiences, and perhaps I didn't take that into account."

[347] The Grievor testified that one of the things that he took from the training he received was that GS needed to be aware that if there was anything in their relationship that made her feel uncomfortable - "if I've said anything - if I've done anything" - there were mechanisms she could access. He sent her an email in November 2017, while he was on leave, describing the recourse available to her if she was at all uncomfortable with their interactions. The Grievor did not believe at the time that there was anything to be concerned about and this is reflected in the email. He also suggested to GS that her own reputation could be affected by his reputation in having been removed from his decanal position. The fact that he did not raise this with GS at any time after this, including the August 2018 meeting, casts doubt on the sincerity of this as an example of what he learned as opposed to an effort to seek reassurance.

[348] I disagree that the evidence supports the Association's submission that the Grievor can reasonably be expected to refrain from engaging in further misconduct based on his response to the August 2018 meeting. Whatever his outward appearance during the meeting, we know from his written responses and his testimony that he was dismissive of the issues she was raising, and thought she was misinterpreting his conduct, making things up, or trying to create a male/female (meaning sexual) dynamic between them. The submission that he listened, stopped immediately and did not re-engage is not supported by the evidence.

[349] In addition, as I previously indicated, the Grievor's failure to establish and maintain proper boundaries with GS in his role as her graduate supervisor is central to this case. The Grievor's statement that he understands boundaries and the impact of even the appearance of impropriety is not supported by the evidence. Other than having the title "supervisor" he denied that there was a power imbalance between himself and GS. He demonstrated no understanding of gender-based

conduct and no willingness to accept GS's experiences in this regard. He had no appreciation of what it takes for a female graduate student to raise concerns of this nature with a male supervisor or what his responsibilities might be in response. His testimony that they concluded the August meeting agreeing to continue to interact in their "usual straightforward manner" and continue as they had in the past is devoid of any understanding of the need to adjust his own behaviour. Importantly, the Grievor minimized the nature of the conduct that GS was raising with him, by describing his understanding of boundaries in the context of casual compliments like "nice haircut" which belies both the nature and frequency of the comments that were directed at GS. Finally, despite expressing an understanding that even innocent comments can be misconstrued, the Grievor stood by the propriety of admittedly asking GS about her swimsuit in front of one of his male colleagues and telling her that she looked like a movie star. I was not persuaded by this evidence that the Employer can trust that he will not repeat the behaviour that gave rise to GS's complaint.

[350] I also agree with the Employer that the Grievor's length of service (6 years) is not a mitigating factor. His prior violation of the *RWLEP* was still on his record and properly relied on by the Employer as an aggravating factor. I have also previously addressed the seriousness of the breach of confidentiality which the Grievor admitted.

[351] The Association submits that there are two other important mitigating factors to consider. The first is the impact of the Grievor's termination on his career. The Association submits that there is very little, if any chance that he would be able to secure an academic appointment at this stage in his career. Upholding the termination would result in the loss of his job and his vocation. Second, and relatedly, upholding the termination would significant financial consequences for his family given the loss income and the impact on his pension.

[352] I agree that this is a very unfortunate outcome for the Grievor, his family and for GS, one that could have been avoided at several intervals along the path to this moment. The Grievor's long and prosperous career and his future research need not be defined by this experience, but the evidence was insufficient for me to find that the Employer made the wrong decision in attempting to discharge its institutional obligation to keep its work and learning environment safe.

[353] The Employer had just cause to terminate the Grievor's employment. The decision was made in a manner that was consistent with the collective agreement requirements, including the

severity and frequency of the conduct and the mitigating and aggravating factors. Given the Grievor's failure to demonstrate an understanding of his conduct and its impact on GS, there was a sound basis for the Employer's determination that it could not trust the Grievor to abide by the *RWLEP*, for issues of health and safety, and could not take the risk that he would violate the policy a third time. In accordance with Article 9.16 (d)(ii) just cause for dismissal has been shown.

VI. Anonymization

[354] The Employer requests that GS's name be anonymized in this award in a way that assures her identity will not be ascertainable. The Association responds that while it is sensitive to the individual and broader interests engaged in this request and recognizes that there are instances where anonymization is warranted, on the particular facts of this case those interests are not sufficient to outweigh the strong presumption in favour of open proceedings. The Association further submits that if protection of GS's identity is warranted, the Grievor should also be anonymized on the basis that this is necessary to protect GS's identity. The Employer objects to anonymizing the Grievor's name and in its reply submissions requests that the name of any individuals whose intimate and personal details might be addressed in this award be anonymized as well.

[355] For the reasons that follow, I have decided to anonymize GS and the Grievor in this decision.

[356] While there is a presumption in favour of the open court principle, an exemption may be warranted in cases of sexual harassment. Information which shows that an individual has been subjected to sexual harassment is by its nature sensitive information which, if exposed under the open court principle, could negatively impact the individual's human dignity. The privacy interests of a person who makes an allegation of sexual harassment is high, particularly as in this case she has not initiated the proceedings. (*Fedeli v. Brown*, 2020 ONSC 994 at para. 35).

[357] The Employer and the Association are in substantial agreement with respect to the law. They agree that the party seeking anonymization must demonstrate that the identifying information that is sought to be anonymized "is sufficiently sensitive such that it can be said to strike at the biographical core of the individual and, in the broader circumstances, that there is a serious risk that, without an exceptional order [of anonymization], the affected individual will suffer an affront to their dignity" (*Sherman Estate v. Donovan*, 2021 SCC 25 ("*Sherman Estate*") at para.

35). If this can be demonstrated, the party seeking anonymization must also demonstrate that the order they request is necessary to prevent the serious risk they have identified because reasonably alternative measures will not prevent the risk, and that the benefits of the anonymization order outweigh any negative effects. The question in every case is whether the information reveals something intimate and personal about the individual, their lifestyle or their experiences. (*Sherman Estate* at paras. 38 and 77).

[358] The Employer submits that the matters at issue in this case engage directly and acutely with information that is at GS's biographical core. The evidence in this proceeding details numerous instances of alleged sexual harassment that contains intimate details about GS's life and experiences. The Employer argues that there is no order, aside from one that fully anonymizes her identity, which can properly protect this important privacy interest. The strong interest in protecting the privacy of individuals who come forward with complaints of sexual harassment outweighs any interest that the public might have in learning GS's identity.

[359] The Association submits that applying a factually-specific rather than categorical approach to anonymization, the evidence in this proceeding does not satisfy the stringent test for the issuance of an anonymization order. The Association argues that by this point, the information engaged in this proceeding is well known, and in its submission it is not of such a highly sensitive nature that GS would suffer an affront to her dignity if the award were published without her being anonymized. Specifically, the Association argues that many of the comments and touching at issue was in the presence of others and/or in public or shared spaces. The Employer replies that the fact that some, but not all, of the incidents occurred in public or were observed by others does not impact the way they ought to be addressed under the *Sherman Estates* analysis. The Employer argues that the Association's argument downplays the seriousness of the Grievor's conduct and its impact on GS.

[360] With respect to the timing of the Employer's request, the Association argues that the issue of anonymization was not raised in advance of the GS's testimony. The Employer replies that the timing of an anonymization request is not determinative, and that GS provided personal and upsetting testimony regarding the Grievor's conduct without the promise of anonymization does not make her less deserving of its protection

[361] The Association also argues that she did not testify during her evidence that disclosure of her name or identifying details would cause additional pain and humiliation and result in her further victimization. The Employer responds that the fact that GS undertook the difficult task of providing deeply personal, upsetting testimony regarding the Grievor's conduct without the promise of anonymization does not make her less deserving of its protection.

[362] I have found that the Grievor engaged in numerous comments and conduct of a sexually or gender-oriented nature, in breach of the sexual harassment provisions of the *RWLEP* and that this conduct created a poisoned work and learning environment for GS. The Association recognized in its submissions that the sperm "donor" and "banging" comments were vulgar, overtly sexual, and related to intimate details of GS's life or experiences. I find that other comments and conduct that I have found breached the *RWLEP* are of a highly sensitive nature and related to intimate and personal details about GS and her experiences. I find that GS would suffer an affront to her dignity if this award were published without her being anonymized.

[363] With respect to the Association's submission that the Grievor's name should also be anonymized, the Employer submits that anonymizing the Grievor's name would provide no greater protection to GS than anonymizing her name alone and would only serve to conceal the Grievor's name and misconduct from the public.

[364] Having considered the unique and specific factual circumstances in this case, I find that anonymization of the Grievor is necessary to protect GS's identity. Specifically, GS was a visiting student at Brock, the Grievor's only doctoral student during the relevant period, and GS's publications are co-authored with the Grievor. The Grievor also made allegations against GS related to her character, temperament and behaviour, which were dismissed by the investigator, but were part of the factual matrix of this award. In this award, I have also removed identifying information about the Grievor's and GS's work together because otherwise GS would be readily identifiable.

VII. Disposition

[365] For those reasons, the Grievance is dismissed. I remain seized with respect to the interpretation and implementation of this award.



Leslie Reaume, Arbitrator
July 9, 2025¹

¹ The decision was released to the parties on May 12, 2025. Changes were made after the release date and finalized on July 9, 2025 on the consent of the parties to anonymize additional identifying information. These changes were not substantive and the reasons for decision were not altered.

APPENDIX A

Brock University

1. *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (Ont. C.A.)
2. *Visic v. Elia Associates Professional Corporation*, 2011 HRT0 1230
3. *Serco Canada Inc.* (2020), 318 L.A.C. (4th) 399 (Luborsky)
4. *Faryna v. Chorny*, [1951] B.C.J. No. 128 at para. 10 (C.A.)
5. *F. H. v. McDougall*, 2008 SCC 53
6. *Trillium Health Centre* (2001), 102 L.A.C. (4th) 48 (Surdykowski)
7. *St. Clair College*, 2012 CanLII 61746 (Parmar)
8. *St. Thomas University*, unreported, August 28 2018, Outhouse
9. *Algoma Steel Inc.*, 2021 CanLII 125729 (Stout)
10. *Highbury Cancoco Corporation*, 2020 CanLII 61597 (Johnston)
11. *Hydro One Networks Inc.*, 2015 CarswellOnt 15458 (OLRB)
12. *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252
13. *Vancouver Community College*, [1994] B.C.C.A.A.A. No. 297 (Jackson)
14. *Phipps v. Toronto Police Services Board*, 2012 ONCA 155
15. *General Motors of Canada v. Johnson*, 2013 ONCA 502
16. *George v. 1735475 Ontario Limited*, 2017 HRT0 761
17. *Iron Forming Inc.*, 2023 CanLII 39143
18. *Ontario Power Generation*, 2021 CanLII 125607 (Stout)
19. *Toronto Transit Commission*, 2020 CanLII 17116 (Slotnick)
20. *Sherman Estate v. Donovan*, 2021 SCC 25
21. *Fedeli v. Brown*, 2020 ONSC 994
22. *Ricard v. University of Windsor*, 2021 ONSC 5877 (Div. Ct.)

23. *Eckervogt v. British Columbia*, 2004 BCCA 398
24. *Canadian National Railway Company v. Canadian Transportation Agency*, 2021 FCA 173

Brock University Faculty Association

1. *Canada (Human Rights Commission) v Canada (Armed Forces)*, [1999] 3 FC 653
2. *S.S. v Taylor*, 2012 HRT0 1839
3. *De Leon v Tridim 2 Millwork*, 2006 BCHRT 6
4. *Canadian Union of Public Employees, Local 905 v Regional Municipality of York*, 2024 CanLII 4763
5. *Faculty Association of the University of St. Thomas and St. Thomas University*, 2018 CanLII 152726
6. *Regional Municipality of York Police Services Board v York Regional Police Association*, 2020 CanLII 25423 (ON LA)
7. *Kitchener (City) v Kitchener Professional Fire Fighters Association*, 2008 CanLII 1830 (ON LA)
8. *R v Chase*, [1987] 2 SCR 293
9. *Professional Institute of the Public Service of Canada v Communications, Energy and Paperworkers' Union of Canada, Local 3011*, 2013 ONSC 2725
10. *Ontario Power Generation v The Society of United Professionals*, 2020 ONSC 7824
11. *Memorial University of Newfoundland Faculty Association v Memorial University of Newfoundland*, 2015 CanLII 154120 (NL LA)
12. *Brandon University Faculty Association and Brandon University*, 1995 CanLII 17990 (MB LA)
13. *Re Okanagan University College and Okanagan University College Faculty Association*, 64 LAC (4th) 416 (Lanyon)
14. *Lethbridge College and Lethbridge College Faculty Association*, 2007 CanLII 91674 (AB GAA), aff'd 2008 ABQB 316
15. *Ontario Public Service Employees Union v Ontario (Health and Long-Term Care)*, 2017 CanLII 71798 (ON GSB)
16. *York University and York University Faculty Association*, 2022 CanLII 98502 (ON LA)

17. *British Columbia Public School Employers' Association v British Columbia Teachers' Federation*, 2018 CanLII 102019 (BC LA)
18. *Alberta Union of Provincial Employees v Alberta Health Services*, 2021 CanLII 78782 (AB GAA)

Brock University Reply

1. *Fleming v. Ricoh Canada Inc.*, 2003 CanLII 2435 (ONSC)
2. *Loiselle v. Windward Software Inc.*, 2021 BCHRT 7
3. *Calgary (City) v. CUPE Local 37*, 2019 ABCA 388
4. *Foerderer v. Nova Chemicals Corporation* 2007 ABQB 34