IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, DEPARTMENT OF PUBLIC SAFETY
Petitioner/Appellee,

v.

OFFICE OF THE CIVIL SERVICE COMMISSION,
Respondent/Defendant-Appellee,

v.

JOSE T. CHONG,
Respondent, Real Party-in-Interest/Appellant.

Supreme Court Appeal No. 02-028-GA
Superior Court Civil Action No. 01-0521E

OPINION

Cite as: ***Department of Pub. Safety v. Civil Serv. Comm'n (Chong),*** **2005 MP 6**

Argued and submitted August 14, 2003
Saipan, Northern Marianas Islands

Attorney for Appellant:
Brien Sers Nicholas, Esq.
Antonette R. Villagomez, Esq.
P.O. Box 502876
Saipan, MP 96950

Attorney for Appellee:
James D. Livingstone, Esq.
Assistant Attorney General.
Office of the Attorney General
2 Flr., Hon. Juan A. Sablan Bldg.
Caller Box 10007
Saipan, MP 96950

BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; ALEXANDRO C. CASTRO, *Associate Justice*; JOHN A. MANGLONA, *Associate Justice*.

CASTRO, Associate Justice:

¶1 Jose T. Chong (hereinafter Chong) worked for the Department of Public Safety (hereinafter Department) until he was fired for sexual harassment. Chong was reinstated by the Civil Service Commission (sometimes hereinafter referred to as the Commission) to a position where he would not come into contact with female employees. The Department requested judicial review of the Commission's Decision and Order (hereinafter Reinstatement Order) and, in its decision, the trial court reversed the Reinstatement Order. Chong timely appeals the trial court's September 12, 2002 Decision and Order claiming that the trial court lacked jurisdiction to hear the case and erred when it applied the substantial evidence standard.

¶2 We find that the trial court properly exercised jurisdiction to review the applicability of the Reinstatement Order, that the trial court did not err in its application of the substantial evidence standard, that there was substantial evidence to support the trial court's decision, and that the trial court's Decision and Order was not improperly based on the constitutional right standard pursuant to 1 CMC § 9112(f)(2)(ii). Accordingly, we affirm the decision of the trial court.

I.

¶3 This case involves the April 16, 2001 termination of Chong, a Department of Public Safety corrections officer, for sexual harassment. Following an internal investigation, the Department found that Chong's "conduct and actions amounted to sexual harassment and contributed to a hostile work environment." Excerpts of Record (hereinafter E.R.) at 4. Chong appealed the Department's action to the Office of the Civil Service Commission on May 7, 2001.

¶4 In July of 2001, the Commission held a hearing on Chong's appeal. On October 4, 2001, the Commission issued its Reinstatement Order, requiring the Department to "reinstate[1]" Chong to a position within the Department in which he would not interact with female employees. The Commission based the Reinstatement Order on the conclusion that Chong's supervisors had not provided adequate warning to Chong before termination and that a course of progressive discipline would have been a better course of action.

¶5 On October 5, 2001, the Department filed a petition for judicial review of the Reinstatement Order. On October 23, 2001, Chong filed a motion to intervene by a real party in interest that was granted.

¶6 The trial court held a judicial review on May 15, 2002, and on September 12, 2002, the trial court issued its Decision and Order setting aside the Reinstatement Order. The trial court found that the Reinstatement Order was not supported by substantial evidence and that it violated the constitutional rights of the Department's female employees respecting equal protection and employment opportunities under Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq*. (hereinafter Title VII), and Article 1, section 6 of the Commonwealth Constitution.

¶7 Chong timely appealed.

II.

¶8 We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution and 1 CMC § 3102(a).

III.

[1] We note that the Commission did not, in fact, reinstate Chong, but out of whole cloth fabricated an entirely new position for him that was segregated by sex.

¶9 The issues before us on appeal are whether the trial court had jurisdiction over this matter; whether the trial court erred, in reviewing the Reinstatement Order, by applying the substantial evidence standard pursuant to 1 CMC § 9112(f)(2)(v); whether there was substantial evidence supporting the Reinstatement Order; and whether the trial court erred, in reviewing the Reinstatement Order, by applying the constitutional right standard pursuant to 1 CMC § 9112(f)(2)(ii). The issues presented are reviewed *de novo*. *See Mafnas v. Commonwealth*, 2 N.M.I. 248, 256 (1991) (since standing is jurisdictional, the issue of whether a party had standing to bring an action is a question of law, reviewable *de novo*).[2]

A. Standing

¶10 Chong's termination at the Department arises under of the Commonwealth Civil Service Act, 1 CMC §§ 8101, *et seq*., (hereinafter CSA), which governs all aspects of the employment relationship between the Commonwealth, including its agencies and departments, and the majority of its employees. When a government employee is terminated, they have the right to appeal the termination to the Commission. 1 CMC § 8116(c) ("[the Commission shall] hear and decide appeals of employees for disciplinary actions, for suspensions of more than three working days, demotions and dismissals from the civil service."). Chong appealed his termination to the Commission, and was "reinstated to a position within the Department of Public Safety where [he would not work with female employees.]" E.R. at 5. The Department sought a judicial review of the Reinstatement Order.

¶11 A threshold issue before this Court is whether the Department had standing to petition the trial court for a judicial review of the Reinstatement Order. Chong argues that the trial court

[2] *See also In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37, 41 (1993) (NMI Supreme Court's review of administrative agency action is *de novo*); *In re San Nicolas*, 1 N.M.I. 329, 333-34 (1990) (appellate court's review of trial court's review of agency action *de novo*); *In re Hafadai Beach Hotel Extension* 4 N.M.I. at 41, (the Supreme Court's review of the Superior Court's application of a standard of review is reviewed *de novo*).

erroneously asserted jurisdiction over a petition for judicial review brought by the Department, an agency of the CNMI Government. Specifically, Chong attacks the Department's standing on two fronts: (1) the Department is not a person as defined by Section 9101(j) of the Commonwealth Administrative Procedure Act, 1 CMC §§ 9101, *et seq.* (hereinafter CAPA); and (2) the Department suffered no legal wrong.

¶12 May the Department, a party to the administrative hearing, request a judicial review of an agency order when that order would force the Department to violate the Constitution and laws of the Commonwealth of the Northern Marianas? We hold that CAPA allows two entities to request a judicial review, a person suffering a legal wrong, and a party to the administrative hearing. Since the Department was a party to the administrative hearing, it has a right to appeal if it was aggrieved.

1. Person Defined Under CAPA

¶13 "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action, is entitled to judicial review of the action within 30 days thereafter in the Commonwealth Superior Court." 1 CMC § 9112(b). CAPA defines "person" as "an individual, partnership, corporation, association, clan, lineage, governmental subdivision, or public or private organization of any character ***other than an agency***." 1 CMC § 9101(j) (emphasis added). "'Agency' means each authority of the Commonwealth government, whether or not it is within or subject to review by another agency. . .." 1 CMC § 9101(b). The CSA's clear language grants standing to Chong, or to other Department employees, to petition the trial court for a judicial review of the Commission's decision. But, Chong did not seek judicial review, the Department did. Chong argues that the Department did not have a right to appeal as a "person suffering a legal wrong." This argument is correct, the Department has no right to

appeal under Section 9112(b) because it is not, in fact, a person as defined by CAPA. The Department did, however, have a right to appeal under CAPA by virtue of the fact that it was a party to the administrative hearing.

¶14 CAPA gives the right of appeal to two groups, the "aggrieved party," 1 CMC § 9113, and "a person suffering legal wrong." 1 CMC § 9112(b). Recall that Section 9101(j) exempts an agency from its definition of "person," yet section 9101(i) defines "party" as "each ***person or agency*** named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding." 1 CMC §§ 9101(i) (emphasis added). These sections, however, cover different appeals. Section 9112(b) allows a "person" to appeal or seek judicial review of an adverse agency decision to a trial court. 1 CMC § 9112(b). Section 9113, however, lets a "party" appeal the trial court's ruling to the Supreme Court. 1 CMC § 9113. These two statutes and their defined terms create an unstable situation. Literally, agencies who are parties could seek an appeal from the trial court's ruling, but cannot initially appeal to the trial court for judicial review. We find this construction untenable.

¶15 Such an interpretation would have the unnatural effect of allowing some entities, specifically, any aggrieved "person" who was or was not a party to the hearing, the right to an initial judicial review but all parties the right to an appeal to this Court. *Id.* We do not think the legislature intended to restrict the appeals of parties at one level only to broaden them at another, especially when parties to an administrative hearing have traditionally had the right to appeal. *See Alabama Pers. Bd., v. Alabama Dept. of Mental Health and Mental Retardation,* 694 So. 2d 1367, 1374 (Ala. 1996).

¶16 Further, it is evident that the legislature intended to expand the right of judicial review in administrative proceedings to include nonparty entities. *See id.* at 1372-73 (interpreting similar

provisions of the Alabama Administrative Procedure Act). The defined term "person" is very broad in that it allows standing to a nonparty. Indeed, this expansion was an effort to address the standing issue regarding entities that were not involved in the agency decision but were nevertheless adversely affected by the agency's action. *Id.* Given the conflict in the terms between "party" and "person," we do not think that the legislature intended to constrict the right of judicial review to exclude party-agencies. *Id.* Rather, we believe the legislature intended to restrict non-party agencies from intervening into disputes in which they might have an interest, but were not a party.

¶17 Therefore, we reject Chong's argument that CAPA does not give a government agency or department a right to appeal an adverse administrative decision when it is a party to the dispute. We hold that the Department, as a party to the administrative hearing, was entitled to judicial review under CAPA. This ruling does not, however, expand standing to agencies who were not in fact parties to the underlying administrative dispute.

¶18 Chong points to *Pritchard v. Wyoming Division of Vocational Rehabilitation, Department of Health and Social Services*, a case in which the Wyoming Supreme Court denied an agency's ability to appeal an administrative decision based on the holding that jurisdiction was improper because the division was not a person aggrieved or adversely affected by the final decision of the council. *Pritchard v. Wyoming Div. of Vocational Rehab., Dep't of Health and Social Servs.*, 540 P.2d 523 (Wyo. 1975). The Wyoming APA definition of person uses similar language to CAPA and Alabama APA, as cited in *Alabama Personnel Board*. *Compare Pritchard*, 540 P.2d at 527 (citing § 9.276.19(b) of the Wyoming Administrative Procedure Act), *with Alabama Personnel Bd.*, 694 So. 2d at 1372 (citing § 41-22-20(a) of the Alabama Administrative Procedure Act) *and* 1 CMC § 9101(b). The *Pritchard* case is distinguishable

from our case and *Alabama Personnel Board,* as it does not address the conflict in our statute regarding the terms "person" and "party." Additionally, in *Pritchard,* the effect of the order appealed was to reinstate Pritchard to his original position and pay grade. Here, enforcement of Reinstatement Order would require the Department to fabricate a position for Chong while violating the Commonwealth Constitution, something it cannot do. We next turn to Chong's second argument regarding standing, that the Department suffered no legal wrong.

2. Legal Wrong

¶19 A petition for judicial review of an agency action must set forth specific harm to establish standing but that harm may include a legal wrong or an action that resulted in the party being adversely affected or aggrieved. *In re Ass'n of Bds. of Visitors of N.Y. State Facilities for the Menatlly Disabled v. Prevost*, 471 N.Y.S. 2d 342, 344 (N.Y. App. Div., 1983). Chong contends that the Department did not suffer a legal wrong[3] or an invasion of a legally protected right entitling it to seek judicial review of the Reinstatement Order. *See Kingman Reef Atoll Invs., LLC v. U.S. Dept. of Interior*, 195 F. Supp. 2d 1178, 1185 (D. Haw. 2002).

¶20 While a representative and agent of the CNMI government, Chong, among other lewd activities, requested fellatio from a coworker, rubbed a "headcount sheet" on his groin before handing it to a female employee, undressed another with his eyes, rubbed his groin against a coworker, and still found time to grab and pinch other female coworkers. E.R. at 2-3. Chong does not dispute these facts, or the fact that he engaged in this type of behavior over a period of years. E.R. at 2. He does, however, argue that the Reinstatement Order did not and would not cause the Department any harm or legal wrong.

[3] Chong's supplemental briefing focused on case law that required a party to suffer a specific legal wrong in order for a court to grant standing, but the cases cited dealt with motions to dismiss in cases where no further briefings occurred and may be distinguished from the present case in which a petition was filed and supplemental briefing was ordered and submitted to the trial court. *See In re Kirk v. Bahou*, 423 N.Y.S.2d 540, 541 (N.Y. App. Div. 1979); *In re Davidson v. Tapley*, 395 N.Y.S.2d 41, 42 (N.Y. App. Div. 1977)
.

¶21 Only a party willfully oblivious to the stipulated facts in this case would fail to realize the harm and legal wrong the Reinstatement Order caused the Department. Federal and local law, the CNMI Constitution, and public policy prohibit discrimination, including sexual harassment, in the Commonwealth. Article I, Section 6 of the Northern Marianas Constitution expressly prohibits discrimination based on sex "[n]o person shall be denied the equal protection of the laws. No person shall be denied the enjoyment of civil rights or be discriminated against in the exercise thereof on account of race, color, religion, ancestry, or sex." N.M.I. Const., art. I, § 6. Further, the Department has a duty to maintain a workplace of "equal opportunity for all regardless of . . . sex . . .," and to allow its employees to "hold their offices or positions free from . . . discrimination . . .." 1 CMC § 8102(a). Clearly, the Reinstatement Order interfered with the Department's ability to follow this anti-discrimination mandate and thwarted its ability to follow CAPA rules regarding the employer-employee relationship.

¶22 Specifically, the Reinstatement Order required the Department to appoint Chong to a new position in which he would not interact with female employees. That order is without legal basis as it violates both Title VII and Article 1, Section 6 of the CNMI Constitution, which provides protections to all employees, including current and prospective female employees, from unequal treatment including different treatment based on gender in the workplace. The Reinstatement Order created a dangerous precedent as it exposed the Department to civil liability under Title VII, removed the defense of appropriate remedial steps taken to mitigate harm and interfered with the Department's duties under the CSA.

¶23 The Reinstatement Order interfered with the Department's ability to administer its workplace in that it forced the Department to treat its female employees differently. The Department must manage its employees within the confines of the CSA. This includes "a system

of personnel administration based on merit principles and generally-accepted methods governing the classification of positions and the employment, conduct, movement, and separation of public officials and employees." 1 CMC § 8102. The Reinstatement Order would compel the Department to completely rearrange its daily operations including the segregation of its female employees from any position that involved contact with Chong. This, in turn, damaged the career paths of the Department's female employees by restricting interaction with a fellow employee. Because of such odd confines, it is unclear whether complying with the terms of the Reinstatement Order is even possible, but complying with it is certainly illegal.

¶24 The trial court concluded that judicial review was proper based on the Department having suffered a legal wrong and the trial court's grave concerns regarding violations of Title VII and Article 1, Section 6 of the Commonwealth Constitution. E.R. at 78. We agree. The Commonwealth courts cannot turn a blind eye to an agency order *requiring* the Commonwealth, through one of its departments or agencies, to violate its own Constitution and laws. Here, the Commission ordered the Department to discriminate against its employees by segregating some of them according to sex. This order required the Department to break the law and exposed it to legal liability. Therefore, we hold that the Commission's Reinstatement Order caused overwhelming harm to the Department, and thus the Department had standing to seek review of the applicability of the Reinstatement Order before the trial court. We now turn to the substance of Chong's appeal.

IV.

¶25 In reviewing the Reinstatement Order, the trial court applied the substantial evidence standard of review pursuant to 1 CMC § 9112(f)(2)(v). "Substantial evidence is such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Santos v.*

Nansay Micronesia, Inc., 4 N.M.I. 155, 167 (1994) (internal quotations and citations omitted). The possibility of drawing two inconsistent conclusions does not prevent an agency finding from being supported by substantial evidence. *Id.* The Commission held a formal hearing in which it imposed sanctions, thereby triggering application of 1 CMC § 9108. The substantial evidence standard is described in 1 CMC § 9112(f)(2)(v), which provides:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall:
>
> . . . .
>
> (2) [h]old unlawful and set aside agency action, findings, and conclusions found to be:
>
> . . . .
>
> (v) [u]nsupported by substantial evidence in a case subject to 1 CMC §§ 9108 and 9109 or otherwise reviewed on the record of an agency hearing provided by statute . . .

Chong contends that the substantial evidence standard only applies when the facts of a case are at issue. He asserts that the substantial evidence standard was inapplicable here because both parties stipulated to the facts. We disagree.

¶26 Chong misguidedly cites to *Painter v. Potlatch Corp.* in support of his argument that the trial court should not have applied the substantial evidence standard in a case where both parties stipulated to the facts. *Painter v. Potlatch Corp.*, 63 P.3d 435 (Idaho 2003). The *Painter* case is instructive in its definition of the substantial evidence standard but it in no way stands for the proposition that the substantial evidence standard of review only applies to cases in which facts are in dispute. Instead, *Painter* holds that facts will be upheld if supported by substantial evidence, not that substantial evidence review is only applicable if facts are in dispute. *Id.* Other cases cited by Chong further weaken his argument in that, when read carefully, they actually

stand for the proposition that even if factual findings are not at issue, a court may review an appeal of an agency action using the substantial evidence standard.[4]

¶27 Chong further argues that in a substantial evidence review, the test is not whether the agency made the correct conclusion but whether some reasonable basis exists in the record to support the agency's action. *See GTE S.W., Inc. v. Public Util. Comm'n of Tex.*, 102 S.W.3d 282, 294 (Tex. App. 2003). He argues that when reviewing an administrative agency's decision, courts are constrained to accept the factual findings of the agency if reasonable minds could possibly have reached the same conclusions based upon substantial evidence found in the record. *See Foss NIRSystems, Inc. v. Comptroller of Treasury*, 822 A.2d 1297, 1301 (Md. Ct. Spec. App. 2003). Applying the test from *GTE*, Chong claims that the Reinstatement Order was reasonable under the circumstance because it was supported by the testimony of witnesses, documentary evidence, and the proposed findings of fact by the parties. Chong also notes that this Court held that "[q]uestions of law under the substantial evidence or 'reasonableness' standard are examined to determine if 'the agency's conclusions are reasonable . . . .'" *In re Hafadai Beach Hotel Extension*, 4 N.M.I. 37, 44 (1993).

¶28 The Commission found that Chong's conduct amounted to sexual harassment but it also found that the Department failed to take appropriate actions to correct or discipline Chong prior to terminating him. Taking the lack of the Department's intervention, Chong's remorse, his promise to conduct himself appropriately, and his offer to attend counseling, the Commission decided to appoint Chong to a newly fabricated position that was segregated by sex. While we agree that substantial evidence must support a reasonable conclusion to a question of law, we disagree with Chong's conclusion that such a situation exists here, and find that the requirements

[4] It should be emphasized that the string of cases cited by Appellant to support its argument that only disputed facts may be reviewed under the substantial evidence standard do not stand for that proposition at all.

of the Commission order "reinstating" Chong were unreasonable given the substantial evidence before the trial court.

¶29 The Commission's conclusion of law that Chong be reinstated to a position where he would not work with females was contested by the parties and, in fact, was a key issue before the trial court. It was proper for the trial court to review (and eventually overturn) that issue even if the facts were not in dispute. The trial court properly applied the substantial evidence standard to reach its decision that there were insufficient facts to support the Commission's conclusions of law. Accordingly, the trial court acted properly in setting aside an agency action based on conclusions of law it found to be unsupported by substantial evidence.

V.

¶30 Based on the undisputed findings of fact, Chong argues that there was substantial evidence to support his suspension rather than termination. According to Chong, the Department bears the burden of proof to show that there was lack of substantial evidence to support the Commission's findings. *See* 1 CMC § 9109(i). Chong faults the actions of the trial court, as he argues that it improperly delved into the issue of whether Chong could hold a position within the Department where he would not work with female employees and found no evidence to support the finding that Chong could be segregated from female employees. In doing so, Chong claims that the trial court erroneously transferred the burden of proof from the Department to Chong.

¶31 We have held that "[t]he appellant bears the burden of proof as the proponent of an order of this Court setting the trial court's affirmance of the agency decision aside." *In re Hafadai Beach Hotel Extension*, 4 N.M.I at 45. The Department agrees with the trial court that the Commission's conclusions of law regarding Chong's sexual harassment were supported by evidence in the record but argues that that the Reinstatement Order was devoid of any factual

support. We agree. By not specifying a position Chong could fill, or describing how a position could be created for him, that did not violate Federal or Commonwealth law, the Commission failed to support its finding that Chong could be reinstated. The trial court was right to reverse a conclusion of law that had no legal basis and was not supported by *any* evidence, not to mention a substantial amount of evidence.

¶32 It is clear from the facts that the Commission exceeded its authority in ordering Chong's reinstatement because it was not, in fact, a reinstatement, but a transfer to a newly minted position that, in turn, would require the displacement of other Department employees. The term "reinstatement" is given specific legal meaning, namely placing the employee in the same position he occupied before the adverse action taken against him. *Department of Pub. Safety v. Civil Serv. Comm'n*, Civ. No. 01-0521 (N.M.I. Superior Ct. Sept. 12, 2002) (Order Setting Aside October 4, 2001 Civil Service Commission Decision and Order at 8-9) ("Order"), E.R. at 75 (*citing City of Jackson v. Martin*, 623 So. 2d 253, 256 (Miss. 1993). As used in the context of the Reinstatement Order, however, the term reinstatement meant that Chong would be placed in a new position as an officer with the same duties and same responsibilities but with no interaction with females. Order, E.R. at 76. Because Chong worked with several female officers before his termination, the Department would be required to transfer those female officers away from Chong to comply with the Reinstatement Order, and this we cannot allow. *See Berg v. Seaman*, 271 N.W. 924, 925 (Wis. 1937) (the bureau of personnel cannot order an institution to employ a discharged employee in another capacity where such entity is nowhere given authority for the position by statute and it cannot be implied). The Department rightly claims that the Commission had the power to reinstate Chong but not to reorganize his department or the entire operations of the Department.

¶33 The trial court did not err in rejecting the Reinstatement Order based on the undisputed findings of fact and substantial evidence before it.

VI.

¶34 Next we look at whether the trial court erred in applying the constitutional right standard pursuant to 1 CMC § 9112(f)(2)(ii). In its Order, the trial court noted that it was "gravely concerned that [the Commission's] order violates constitutional rights respecting equal protection and employment opportunities under Title VII." E.R. at 77. The trial court's analysis suggests that its equal protection concerns relate to prospective female employees of Department rather than current employees. The lower court, however, did not base its Order solely on the constitutional questions, as it found an alternate method under 1 CMC § 9112 to reverse Chong's reinstatement on nonconstitutional grounds. *Id.* Therefore, Chong's contention that the trial court erred in considering whether the Commission's order violated a constitutional right because it did not attach the equal protection concerns to any particular person is blind to facts readily apparent to this Court. *See in re Hafadai Beach Hotel Extension*, 4 N.M.I. at 44. Accordingly, we will not address, at length, Chong's argument that the trial court erred in applying the constitutional right standard pursuant to 1 CMC § 9112(f)(2)(ii). This is not to diminish the import of the facts under a Title VII or Equal Protection claim in this case and in fact it should be noted that constitutional rights, including freedom from sexual harassment and a hostile work environment, will be securely upheld and protected by the Commonwealth Courts.

¶35 Chong poses the question "[w]hose equal protection rights were violated by the Commission's Order?" We are compelled to respond in an effort to prevent future specious queries along these lines. Chong seems oblivious to the stipulated facts in this case. The Department's female employees are the parties whose equal protection rights were violated by

the Reinstatement Order. As previously noted, federal and local law, the CNMI Constitution, and public policy prohibit discrimination, including sexual harassment, in the Commonwealth. The United States Supreme Court eloquently addressed the issue of the insidious effect of sexual harassment by comparing it to racial harassment in *Meritor Savings Bank v. Vinson.*

> Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets.

477 U.S. 57, 67, 106 S. Ct. 2399, 2405, 91 L. Ed. 2d 49, 60 (1986). The Court went further into the issue, however, when it stated:

> Under Title VII of the Civil Rights Act of 1964, 'it shall be an unlawful employment practice for an employer … to fail or refuse to hire or to discharge an individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

Faragher v. City of Boca Raton, 524 U.S. 775, 786, 1185 S. Ct. 2275, 2282, 141 L. Ed. 2d. 662, 675 (1998) (*quoting* 42 U.S.C. § 2000e-2(a)(1))

¶36 Sexual harassment in the workplace is potentially harmful to more than the victims themselves, as the employer, in this case, the CNMI Government through the Department, is vicariously liable for Title VII claims when the harasser is a supervisory employee. *See Faragher*, 524 U.S. at 807, 1185 S. Ct. at 2292-93, 141 L. Ed. 2d. at 688-89. Moreover, the Commonwealth has a clear legal duty under Title VII to correct sexually harassing behavior when it receives complaints of actions by its employees. Failure to do so subjects the employer to liability when the employer knows or should have known of the harassment of its employees by fellow employees. *See e.g. Curry v. D.C.*, 195 F.3d 654, 659 (D.C. Cir. 1999); *Mikels v. City*

of Durham, N.C., 183 F.3d 323, 332 (4th Cir. 1999).

¶37 Employees in the Commonwealth are protected from sexual harassment in the workplace by the Commonwealth Code, the Commonwealth Constitution, and applicable provisions of Federal law and Constitution, and Chong's reinstatement through the Reinstatement Order was a clear violation of the constitutional protections of female Department employees. The trial court based its decision on 1 CMC § 9112 to reverse Chong's reinstatement on non-constitutional grounds and merely mentioned its grave concerns over the constitutional questions involved in enforcement of the order. Therefore, we reject Chong's claim that the trial court erred in considering whether the Commission's order violated a constitutional right because it did not attach the equal protection concerns to any particular person.

VII.

¶38 Requiring the Department to enforce the Reinstatement Order would have violated the constitutional protections of female Department employees. Therefore, the trial court properly exercised jurisdiction to review the Reinstatement Order. Further, we find that the requirements of the Reinstatement Order were unreasonable given the substantial evidence before the trial court, that the trial court's decision was reasonable in light of the substantial evidence before it, and that the trial court's Decision and Order was not improperly based on the constitutional right standard pursuant to 1 CMC § 9112(f)(2)(ii). Accordingly, the decision of the trial court is AFFIRMED.

SO ORDERED THIS 12TH DAY OF APRIL 2005.

/s/_____
MIGUEL S. DEMAPAN, CHIEF JUSTICE

/s/_____
ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE

/s/_____
JOHN A. MANGLONA, ASSOCIATE JUSTICE