Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2016 CHRT 12
Date: June 15, 2016
File Nos.: T1937/1713 & T1938/1813

Between:

Shelby Anne Opheim

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Gagan Gill

- and -

Gillco Inc.

Respondents

Decision

Member: Ricki T. Johnston

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[1] This is a decision regarding two consolidated complaints, the first dated July 28, 2011 against the individual respondent, Mr. Gagan Gill and the second dated June 16, 2012 against the corporate respondent Gillco Inc. The complaints were filed by Ms. Shelby Anne Opheim (the "Complainant") with the Canadian Human Rights Commission (the "CHRC") (hereinafter collectively the "Complaint"). The Complaint alleges the Respondents, Mr. Gagan Gill and Gillco Inc. (collectively the "Respondents") discriminated against the Complainant on the grounds of sex and age while she was in their employ. The Complainant alleges she was subjected to a series of harassing behaviours from Mr. Gill as a result of her sex and age, including the following unwelcome sexual conduct: a sexualized and demeaning work request, sexual comments, sexual requests and sexual touching. All the allegations arise from the Complainant's period of employment between May and June of 2011.

[2] On April 29, 2014, pursuant to s. 44(3)(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the "*CHRA*"), the CHRC requested the Chairperson of the Canadian Human Rights Tribunal (the "Tribunal") institute an inquiry into the Complaint.

[3] The Complainant filed a Statement of Particulars setting out the details of her Complaint. The Respondents, although given the opportunity to do so, provided no response to the Complaint nor any disclosure. The Complainant appeared on her own behalf at the hearing and gave evidence. Mr. Gill represented the Respondents at the hearing and gave evidence. Both the Complainant and Mr. Gill were able to provide helpful evidence at the hearing. No other witnesses were called. The CHRC did not attend the hearing and made no submissions.

I. Decision

[4] For the reasons set out below I have determined that the portion of the Complaint alleging sexual harassment as a discriminatory practice within the meaning of s. 14 of the *CHRA* has been substantiated. Further, for the reasons set out below, I have determined that the portion of the Complaint alleging discrimination based on sex in accordance with s. 7 of the *CHRA* has been substantiated. Finally, for the reasons set out below, I have

determined that the portion of the Complaint alleging discrimination based on age in accordance with s. 7 of the *CHRA* has not been substantiated and is dismissed.

II. Facts

[5] There were considerable challenges with regard to determining the facts in this matter. Credibility was a significant factor as the Complainant and the Respondents disagreed as to the occurrence of many of the events at issue. Also, as the Respondents failed to participate in the pre-hearing disclosure process, many of the records that may have assisted in determining the facts were not available. The Respondents made mention during the hearing of records which tended to support their position on the facts but failed to provide any such records for consideration. Based on all the testimonial evidence heard, on a weighing of the credibility of the two witnesses on various points as well as on a consideration of the documentary evidence presented by the Complainant, I have made factual findings that follow.

[6] On May 2, 2011, the Complainant was hired to work as a salesperson and a manager at the Mobilicity retail store owned and operated by the Respondents and located on 17th Ave. SE in Calgary, AB (the "Mobilicity store"). The Complainant began working there in that capacity on May 4, 2011. She was 18 years old at the time. In the time in which the Complainant was employed at the Mobilicity store, the individual respondent, Mr. Gill worked on the premises for 2 or 3 days each week. During much of the time that Mr. Gill was in the Mobilicity store premises, Ms. Opheim worked alone with him. However, in addition to Mr. Gill, Mr. Gill's wife, Jasmin Gill also worked in the Mobilicity store on occasions when both the Complainant and Mr. Gill were present.

[7] During the first two weeks of her employment, Mr. Gill began to make sexually explicit comments to the Complainant, including: "how's my sexy worker," "good morning sexy" and "you look hot today." These comments increased in frequency over those two weeks. The Complainant attempted to ignore the comments. However, the comments continued and their sexual nature intensified.

[8] Specifically, Mr. Gill and the Complainant were at the Mobilicity store on June 8, 2011 opening the store. The Complainant had recently been advised that the Mobilicity store would be hiring more staff, and she would therefore be expanding the managerial component of her job by supervising these employees. As a result, the Complainant asked Mr. Gill if she could have a raise. Mr. Gill responded: "as long as you give me a blow job." He then unzipped his pants and laughed. The Complainant declined and left the room.

[9] In addition to this unwanted sexual request on June 8, 2011, the sexual comments to Ms. Opheim by Mr. Gill increased and by early June 2011 began to include unwanted sexual touching, all while the Complainant was engaged in her employment for the Respondents. By this early June 2011 timeframe, Mr. Gill was grabbing at the Complainant's buttocks, slapping her buttocks, and attempting to grab her by the hips and pull her into his lap. She asked him to stop on each occasion and he laughed at her. This unwanted sexual touching continued and accelerated in severity, as Mr. Gill began forcing his hands up the Complainant's skirt and grabbing at her breasts.

[10] On June 25, 2011, the Complainant arrived at the Mobilicity store for work. The Mobilicity store was having a promotional sale that day. When she arrived, she was "dressed up" in anticipation of the promotional sale. This included wearing a skirt and high-heeled shoes. Instead of working in the store as she had anticipated, the Complainant was asked by Mr. Gill to walk up and down the street in front of the Mobilicity store with flyers advertising the sale. He advised that she would only receive commissions that day from customers responding to the flyers. This was despite the fact that she had told several Mobilicity customers she had previously dealt with to attend on that date to make purchases at the sale.

[11] The Complainant thought the decision to make her walk up and down the street was intended to make her look "cheap" and it made her uncomfortable, particularly given the fact that the street in question was fairly "rough" in her estimation, and given how she was dressed. She expressed her discomfort to Mr. Gill.

[12] There is some disagreement between the Respondents and the Complainant as to what happened at the end of the day on June 25, 2011, but it is undisputed that at some point during the day, Ms. Opheim went to her residence which was close to the Mobilicity store to change to more appropriate footwear, and that Mr. Gill took issue with this. Ms. Opheim gave evidence that she felt compelled to go home to change her footwear, as she could not walk up and down the street in her high-heeled shoes. Mr. Gill's evidence was that she had not been following his instructions about her work. At the end of the Complainant's work shift on June 25, 2011, it is clear the Complainant and Mr. Gill had a discussion in the Mobilicity store about her work that day, and her decision to leave to change her shoes.

[13] During this discussion, the Complainant had with her a datebook in which she recorded her hours worked. Mr. Gill requested that the Complainant leave her datebook with him so he could record her hours. She refused, stating that it was her personal property. The Complainant gave evidence that she quit her employment with the Respondents because, during this discussion on June 25, 2011, Mr. Gill threatened to fire her if she did not leave her datebook behind. The Respondents assert that Mr. Gill fired the Complainant during this meeting because of the issue regarding her change in footwear and her refusal to turn over the datebook.

[14] It is agreed by the parties that by the end of the meeting, the Complainant was no longer in the Respondents' employ. As it is not determinative of any issue whether the Complainant quit or was fired during that meeting with Mr. Gill, no determination has been made in this regard.

[15] Ms. Opheim testified that on her way out on June 25, 2011, she spoke to Mr. Gill's wife, Jasmin Gill, who was in the Mobilicity store at that time. The Complainant told her about the sexual comments, sexual requests and sexual touching to which she had been subjected by Mr. Gill. The Complainant then left the Mobilicity store. The Respondents did not call Jasmin Gill to give evidence in this matter or provide any explanation for her absence.

[16] At the time the Complainant was hired by the Respondents, it was agreed that she would be paid $10 per hour worked, up to 44 hours per week, that she would be paid time and half for hours worked each week beyond 44 hours, and that she would receive 10% commission on all sales she executed. These facts were undisputed.

[17] Each day when she arrived at the Mobilicity store, Ms. Opheim would prepare the store for opening and would also sign in to her computer, thereby signing in for the purposes of the business' payroll system. That system, run through R24 Software, is both the system by which hours owing were calculated based on the Complainant's logging in and out of her computer, and also the means for recording any commissions owing. The system creates a "Payroll Deductions Online Calculator Results" for the employee. In addition to the R24 system that the Respondents relied upon, the Complainant was also recording all her shifts as well as her regular and banked hours in a datebook that she disclosed in this matter. It is this datebook that was the subject of her dispute with Mr. Gill on June 25, 2011.

[18] In calculating her damages for lost wages, the Complainant relied on several records that she had produced, including; her datebook, the R24 record, copies of cheques she had received from the corporate Respondent, her bank statements, and 2 separate calculations of damages that she prepared for the hearing. The Complainant claimed to have worked 38.5 hours for which she was not paid. She described these hours as "banked hours." However, the Complainant gave no evidence as to what banked hours were, how they were earned, how they were intended (by either the Complainant or the Respondents) to be used, and the manner of compensation. The Complainant did give evidence that some of the banked hours were used in some way. But she gave no evidence to explain why she was claiming banked hours beyond the total hours worked that were identified in the R24 records.

[19] The documentary evidence, when considered as a whole, is insufficient to show amounts owing for any banked hours. The shifts that the Complainant recorded in her datebook for the entire period she was employed by the Respondents are consistent with the entries in the R24 record for which she was paid. The Complainant submitted documents prepared for this hearing in which she included calculations of amounts owing

to her as banked hours. These calculations cannot be reconciled with the evidence found in the datebook and the R24 records. The Complainant did not provide additional evidence substantiating the claim for banked hours. I therefore conclude that the Complainant was paid in full for all regular hours worked and commissions earned during her employ with the Respondents, and that there is insufficient evidence to conclude any further amounts are owing to her as banked hours.

[20] The Complainant's evidence, undisputed by the Respondents, was that following the end of her employment with the Respondents, she did not receive a Record of Employment and therefore could not apply for Employment Insurance, but was instead forced to borrow money from her family. The Complainant gave no evidence about the amounts she was compelled to borrow. The Complainant also gave evidence that she became depressed and anxious as a result of her experience with the Respondents, and went on anti-depressants in August 2011. Prior to commencing using anti-depressants in August 2011, the Complainant testified that she had not been able to return to work.

[21] In August 2011 the Complainant began to work for her family's company, earning $15 per hour but only working 10 hours per week. By November 2011, that position at $15 per hour had become full-time. The Complainant led no evidence as to why she was working less than full-time hours between August and November 2011, including no evidence regarding the potential impact of any medical condition. Although the Complainant provided financial records in connection with her period of employment with the Respondents, she provided no evidence - whether in the form of income tax returns or bank or other financial records - in support of her alleged loss of income between August and November 2011. Further, the Complainant led no evidence with regard to her efforts to find full-time employment between August and November, 2011.

III. Law

[22] According to s. 3 of the *CHRA*, sex and age are prohibited grounds of discrimination.

[23] Section 14 of the *CHRA* sets out the discriminatory practice connected with harassment of an employee. This section reads as follows:

> 14. (1) It is a discriminatory practice,
>
> […]
>
> (c) in matters related to employment,
>
> to harass an individual on a prohibited ground of discrimination.
>
> (2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination.

[24] In order to make out a *prima facie* case under s. 14 of the *CHRA*, the Complainant must establish that the individual Respondent sexually harassed the Complainant in matters related to her employment. The Supreme Court of Canada, in *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252, at 1284, described sexual harassment as follows:

> Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined 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. […] 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.

[25] The Federal Court expanded on the reasoning in *Janzen*, *supra*, in *Canada (Human Rights Commission) v. Canada (Armed Forces) and Franke*, 1999 CanLII 18902 (FC), [1999] 3 FCR 653. It held that for a sexual harassment allegation to be substantiated, the following must be shown:

> (1) The acts that form the basis of the complaint must be unwelcome, or ought to have been known by a reasonable person to be unwelcome;
>
> (2) The conduct must be sexual in nature;

> (3) Ordinarily, sexual harassment requires a degree of persistence or repetition, but in certain circumstances even a single incident may be severe enough to be detrimental to the work environment; and
>
> (4) Where the sexual harassment takes place in an employment context and the employer has a personnel department and an effective sexual harassment policy, the victim of the harassment must notify the employer of the alleged offensive conduct.

[26] Section 7(*b*) of the *CHRA* sets out another discriminatory practice connected with employment. This section reads as follows:

> 7. It is a discriminatory practice, directly or indirectly,
>
> […]
>
> (b) in the course of employment, to differentiate adversely in relation to an employee,
>
> on a prohibited ground of discrimination.

[27] In order to make out a *prima facie* case under section 7(*b*) of the *CHRA*, a complainant must establish that:

> (i) the respondent adversely differentiated in relation to the employee; and
>
> (ii) there is a connection between—on the one hand—the adverse differential treatment of that individual—and on the other—a prohibited ground of discrimination enumerated in s. 3 of the *CHRA* (See *Québec (C.D.P.D.J.) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (CanLII), at para. 52).

[28] In this last regard, it is not necessary that discriminatory considerations be the sole reason for the actions in issue for a complaint to succeed. It is sufficient that the discrimination be a factor in the employer's actions or decisions (*Ibid*; *Holden v. Canadian National Railway Co.* (1990), 14 C.H.R.R. D/12 (F.C.A.)).

[29] A *prima facie* case of discrimination is "…one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer." (*Ontario Human Rights Commission and O'Malley v. Simpsons-Sears*, 1985 CanLII 18

(SCC), [1985] 2 S.C.R. 536, at p. 558). Once a complainant establishes a *prima facie* case of discrimination, he is entitled to relief in the absence of justification by the employer (*Ontario Human Rights Commission v. Etobicoke*, [1982] 1 S.C.R. 202, at p. 208; *Lincoln v. Bay Ferries Ltd.*, 2004 FCA 204, at para. 18).

[30] The Supreme Court of Canada recently addressed the applicable degree of proof for the establishment of a *prima facie* case of discrimination in *Bombardier*, *supra*, in the context of Quebec's *Charter of human rights and freedoms*. The Court confirmed that the Complainant must satisfy the standard of proof on a balance of probabilities, and that the reference to a *prima facie* case did not indicate a lesser evidentiary burden:

> "[65] Thus, the use of the expression "*prima facie* discrimination" must not be regarded as a relaxation of the plaintiff's obligation to satisfy the tribunal in accordance with the standard of proof on a balance of probabilities, which he or she must still meet. This conclusion is in fact supported by the passage from *O'Malley* quoted above, in which the Court stated that the case must be "complete and sufficient", that is, it must correspond to the degree of proof required in the civil law. Absent an exception provided by law, there is in Quebec law only one degree of proof in civil matters, namely proof on a balance of probabilities: art. 2804 of the *Civil Code of Québec*; see also *Banque Canadienne Nationale v. Mastracchio*, 1961 CanLII 88 (SCC), [1962] S.C.R. 53, at p. 57; *Rousseau v. Bennett*, 1955 CanLII 84 (SCC), [1956] S.C.R. 89, at pp. 92-93; *Parent v. Lapointe*, 1952 CanLII 1 (SCC), [1952] 1 S.C.R. 376, at p. 380…."

IV. Issues

1. To what extent does the Complainant's evidence support a *prima facie* case of sexual harassment in matters related to her employment within the meaning of s. 14?

2. To what extent does the Complainant's evidence support a *prima facie* case of discrimination based on sex within the meaning of section 7(*b*)?

3. To what extent does the Complainant's evidence support a prima facie case of discrimination based on age within the meaning of ss. 7(*b*) and 14?

4. If there is a finding of discrimination, is the Complainant entitled to compensation pursuant to s. 53 of the *CHRA*?

    i) Is the Complainant entitled to compensation for wages of which she was deprived during her period of employment with the Respondents, pursuant to section 53(2)(*c*) of the *CHRA*?

    ii) Is the Complainant entitled to compensation for wages of which she was deprived after leaving the Respondents' employ, pursuant to section 53(2)(*c*) of the *CHRA*?

    iii) Is the Complainant entitled to compensation for medical expenses pursuant to section 53(2)(*d*) of the *CHRA*?

    iv) Is the Complainant entitled to compensation for pain and suffering pursuant to section 53(2)(*e*) of the *CHRA*?

    v) Is the Complainant entitled to compensation based on the Respondents' willful and reckless conduct pursuant to section 53(3) of the *CHRA*?

V. Analysis

A. *Prima facie* Case of Sexual Harassment

[31] The Complainant gave clear and specific evidence consistent with the allegations in her Complaint of sexual conduct to which she was exposed, both verbal and physical. This sexual conduct consisted of the following uninvited and unwelcome behaviour: sexual comments, sexual touching, sexual requests and the sexualized and demeaning work request that the Complainant walk up and down the street in front of the Mobilicity store. The conduct was both frequent and ongoing, throughout the period of the Complainant's employment with the Respondents. As well, on several occasions where the sexual conduct constituted an assault (including grabbing of the Complainant's breasts and buttocks and forcing a hand up the Complainant's skirt) it was severe enough to constitute

sexual harassment based on a sole occurrence. In this case, notification of the employer was not necessary as there is no evidence the Mobilicity business had either a personnel department or a sexual harassment policy. Nevertheless, I find that notification was clearly given as Mr. Gill was both the responsible employer and the harasser. He was clearly aware of the conduct that was taking place, and of the objections to that conduct expressed by the Complainant.

[32] The Respondents provided little substantive evidence to rebut the Complainant's testimony. The only evidence Mr. Gill gave in his examination-in-chief on this point was to state that there was "nothing sexual" with the Complainant and that he "never touched her." The Respondents did not challenge the Complainant's evidence in their cross examination of her. The Respondents did not address in their evidence any of the specific allegations of sexual comments or sexual requests, and Mr. Gill did not make specific reference in chief or in cross to the events the Complainant set out.

[33] Further, while the only other witness to these matters was the individual Respondent's wife, Jasmin Gill, the Respondents did not call her to give evidence. In particular, the Respondents did not call Jasmin Gill to dispute the Complainant's evidence that on June 25, 2011, the Complainant disclosed to Jasmin Gill all of the allegations of sexual conduct that form the basis of this Complaint.

[34] Finally, the Respondents provided no documentary evidence that would tend to refute the Complainant's allegations. At the hearing, the Respondents indicated that they had access to video-taped security footage from the Mobilicity store that would exonerate Mr. Gill, but they did not disclose this footage prior to the hearing and did not present it at the hearing.

[35] I find that the Complainant's evidence at the hearing was detailed as to the events in question and those details were consistent with details provided in her original Complaint and in her Statement of Particulars. I find that the Complainant's evidence was given in a forthright and straightforward manner, and that the Respondents raised only the most limited opposition to that evidence. Further, I have concerns about the Respondents' failure to call Jasmin Gill, the only other alleged witness in the matter, and their failure to

produce at the hearing the videotapes that they indicated would exonerate them in relation to the allegations. Given all of this, with regard to all the allegations of sexual harassment, including uninvited and unwelcome behavior consisting of sexual comments, sexual contact, sexual requests and the sexualized and demeaning work request, I prefer the evidence of the Complainant and find the individual Respondent committed a discriminatory practice in sexually harassing the Complainant. I further find that in accordance with s. 65 of the *CHRA*, the sexual harassment of the Complainant by the individual Respondent is deemed to be the act of the corporate Respondent.

B. *Prima Facie* Case of Discrimination Based on Sex

[36] The Federal Court of Appeal has indicated that in addition to any claims made in accordance with s. 14 of the *CHRA*, sexual harassment may constitute adverse differentiation based on sex under s. 7(*b*) of the *CHRA*: *Robichaud v. Brennan* [1984] 2 F.C. 799, rev'd on other grounds, [1987] 2 S.C.R. 84. Following *Robichaud*, the Supreme Court of Canada made it clear that sexual harassment constitutes discrimination based on sex (*Janzen v. Platy*, *supra*).

[37] For the reasons set out in the findings above with regard to s. 14, I find the Respondents' treatment of the Complainant also constitutes *prima facie* adverse differentiation in the course of her employment based on the prohibited ground of sex, in accordance with s. 7(*b*) of the *CHRA*.

C. *Prima facie* Case of Discrimination based on Age

[38] The Complaint also sets out that the discrimination as particularized above constitutes discrimination based on the characteristic of age. In her evidence, the Complainant has confirmed that she was only 18 years old at the time the harassment was taking place. However, other than stating her age at the time, the Complainant led no other evidence to suggest a connection between her age and any conduct of the Respondents. A statement of her age, on its own, does not constitute a *prima facie* case of discrimination in accordance with the standard of proof set out in *Bombardier*, *supra*.

The Complainant's allegation of discrimination based on the prohibited ground of age is dismissed.

D. Remedy

[39] Given the finding that the Complainant suffered the discriminatory practices of sexual harassment under s. 14, and adverse differentiation in the course of her employment based on sex under s. 7(*b*), the Complainant may be entitled to compensation. The Complainant claims a number of remedies. The first claim is for amounts owing to her as unpaid income during her period of employment with the Respondents. These amounts are not eligible for compensation as, on the facts, it appears that all amounts owing to the Complainant were paid to her by the time she left the Respondents' employ. Insufficient evidence was led to support any further claims for unpaid income during her employment.

[40] With regard to the Complainant's claims for amounts owing for loss of income in the period between June 25 and November 1, 2011, the Complainant has sought no particular amount. The Complainant also led no evidence as to her efforts to mitigate her losses by seeking full-time employment between August 2011, when she began working part-time, and November 1, 2011 when she obtained full-time work. The Complainant did give evidence, which I accept, that she had found the experience with Mr. Gill very difficult, and had been unable to return to work until she began taking anti-depressants in August 2011. However, the Complainant did not provide any evidence about why she was only working 10 hours per week between August and November 1, 2011. Specifically, she did not provide evidence that she was either unable to work full-time as a result of a medical condition (which will be discussed below), or that she was seeking full-time work but was unable to find any.

[41] In view of the above evidence, and the evidence presented indicating her previous earnings, the Complainant's compensation for lost wages, in accordance with s. 53(2)(*c*) of the *CHRA*, shall therefore be restricted to a one-month period immediately following the end of her employ with the Respondents. The Complainant is therefore entitled to

compensation from the Respondents for this one month period in the amount of $1,788.00.

[42] The Complainant gave evidence that she was depressed and anxious following the discrimination by the Respondents, and will be required to take anti-depressants for the rest of her life, at a cost of approximately $135 per month. She gave no evidence, however, that this medical condition in any way impaired her ability to work on a full-time basis after August 2011. Further, the Complainant gave no evidence as to the onset of this condition, the symptoms she experienced, whether and when she obtained a diagnosis in relation to the condition, and what its manifestation has been since the time of her employment with the Respondents. Further, the Complainant disclosed no medical documentation substantiating the diagnosis or the costs associated with the treatment for which she is claiming. A lack of medical documentation is not in and of itself fatal to a claim: see *Canada (A.G.) v. Hicks*, 2015 FC 599, para. 80. However, the scarcity of evidence supporting this allegation as a whole - including medical records substantiating the diagnosis and financial records substantiating treatment costs - is significant. I accept the Complainant's evidence that she experienced depression and anxiety as a result of this situation. However, the Complainant has provided insufficient evidence to support her claim of a permanent lifelong condition, and of the treatment costs associated with that condition. Moreover, there was insufficient evidence that the costs were and will continue to be incurred as a result of the discriminatory practice. Nor, as I have indicated earlier, was there sufficient evidence that the loss of income after August 2011 was a result of the discriminatory practice.

[43] I find that the Complainant is entitled to compensation from the Respondents under s. 53(2)(*e*) in the amount of $7,500.00 for pain and suffering. In ordering compensation in this amount I have considered first that, while the Complainant was unable to make out a case for the cost of her treatment for depression and anxiety, she clearly suffered from this condition as a result of the Respondents' conduct, and this contributes to the scope of compensation she is to be awarded under s. 53(2)(*e*). See on this point *Hunt v. Transport One* 2008 CHRT 23, paras 45-47. In addition, while the Complainant was unable to make out a case of discrimination based on her age, her very young age and resulting

vulnerability at the time of the events are relevant factors in awarding compensation for psychological damage in a case of sexual harassment. See *Bouvier v. Metro Express*, 1992 CanLII 1429 (CHRT), aff'd *Canada (C.H.R.C.) v. Canada (H.R.T.)* (1993) 72 F.T.R.

[44] The Complainant is further entitled to compensation from the Respondents under s. 53(3) of the *CHRA* in the amount of $12,000.00. Such damages are granted on the basis that the Respondents' actions, in repeatedly sexually harassing the Complainant and in discriminating against her based on her sex, constituted a willful and reckless discriminatory practice. In arriving at this decision, I have considered that the Respondents are not a large or sophisticated employer, and that the harassment took place over a relatively short period of time. On the other hand, I have also considered that the harassment was severe, and that it continued despite requests from the Complainant that it stop. See *Bushey v. Sharma*, 2003 CHRT 21, para. 145.

[45] Given my finding in accordance with s. 65 of the *CHRA* that the corporate Respondent is in this case responsible for the actions of the individual Respondent, both Respondents are jointly and severally liable for any and all forms of compensation awarded to the Complainant as per the above. On this point see *Bushey*, *supra*, para. 16; *Bouvier*, *supra*.

VI. Order

[46] Having found that the Complainant's allegations against the Respondents have been substantiated in part, in accordance with ss. 7(*b*) and 14 of the *CHRA* , the Tribunal orders pursuant to s. 53 that:

1. The Respondents shall pay to the Complainant $1,788.00 as compensation for lost wages;

2. The Respondents shall pay to the Complainant $7,500.00 as compensation for pain and suffering; and

3. The Respondents shall pay to the Complainant $12,000.00 as compensation for willful and reckless conduct.

Signed by

Ricki T. Johnston
Tribunal Member

Ottawa, Ontario
June 15, 2016

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T1937/1713 & T1938/1813

Style of Cause: Shelby Anne Opheim v. Gagan Gill & Gillco Inc

Decision of the Tribunal Dated: June 15, 2016

Date and Place of Hearing: January 21, 2016

Calgary, Alberta

Appearances:

Shelby Anne Opheim, for herself

No one appearing, for the Canadian Human Rights Commission

Gagan Gill, for himself and Gillco Inc.