

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2018 CHRT 33

Date: December 19, 2018

File Nos.: T2106/2215 and T2107/2315

Between:

N.A.

- and -

Complainant

Canadian Human Rights Commission

- and -

Commission

1416992 Ontario Ltd. and L.C.

Respondents

Decision

Member: J. Dena Bryan

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I. Introduction

[1] This is a decision regarding two consolidated complaints that are both dated June 4, 2014. The first complaint is against her former co-worker who is the individual Respondent. The second complaint is against her former employer, the corporate Respondent: 1416992 Ontario Ltd. o/a ATL Logistics. The allegations arise from the Complainant's period of employment between October 3, 2011 to January 25, 2012.

[2] The Complaint alleges the individual and corporate Respondents discriminated against the Complainant on the ground of sex while she was employed as an office clerk by the corporate Respondent. The Complainant alleges she was subjected to a series of sexually harassing behaviours from the individual Respondent, including unwelcome sexual comments and requests, which the Complainant perceived as intimidating, verbally abusive and offensive.

[3] The Complainant alleges she informed the corporate Respondent's office manager of the individual Respondent's offensive conduct toward her. The Complainant also alleges she informed the spouse of the owner of the corporate Respondent, of the individual Respondent's offensive conduct toward her. The Complainant alleges that following her complaints regarding the individual Respondent's offensive conduct toward her, the corporate Respondent did not investigate her complaint or stop the offensive behaviour. The Complainant alleges the corporate Respondent reduced her hours and changed her job duties.

[4] On January 25, 2016, the owner of the corporate Respondent held an office meeting in his office, which included the Complainant, the individual Respondent and other co-workers. The Complainant alleges the owner of the corporate Respondent inappropriately confronted her regarding her complaint against the individual Respondent, acted angrily and aggressively toward her, which made her feel embarrassed, humiliated and fearful. The Complainant alleges she fled the workplace after the meeting and waited to hear from the corporate Respondent that she could return to work in the main office building rather than work alone with the individual Respondent in the dispatch building.

[5] On August 25, 2015, pursuant to s. 44(3)(a) of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (the “CHRA”), the Canadian Human Rights Commission (the Commission) requested the Chairperson of the Canadian Human Rights Tribunal (the “Tribunal”) institute an inquiry into the Complaint.

[6] The Complainant filed a Statement of Particulars setting out the details of her Complaint. The Commission filed a Statement of Particulars setting out the details of the Complaint. The corporate Respondent filed a Statement of Particulars to respond to the Complaint and set out the details of its defense. The Complainant filed a Reply to the corporate Respondent’s Statement of Particulars.

[7] Ms. Warsame represented the Commission throughout the proceedings. The corporate Respondent participated, although sporadically, and had counsel for some Case Management Conferences. Immediately prior to and at the hearing the corporate Respondent was represented by the owner’s son. The Complainant was self-represented throughout the proceedings.

[8] The individual Respondent, although given the opportunity to do so, provided no Statement of Particulars and disclosure and did not file response to the Complaint or Statements of Particulars filed by the other parties. At times, the Registry did not have contact information for the individual Respondent.

[9] In light of the individual Respondent’s inconsistent and infrequent participation in Case Management Conference Calls, the individual Respondent was informed prior to the commencement of the hearing that if he did not provide the usual pre-hearing disclosure and documentation, prepare a witness list or indicate if he planned to participate in the hearing by calling witnesses or cross-examining witnesses, that his participation at the hearing may be limited to being a witness and making final submissions. The individual Respondent did not file any documents, disclosure or give notice of his intention to call witnesses, cross-examine witnesses.

[10] The corporate Respondent called the individual Respondent as a witness on July 27, 2016. The individual Respondent attended the hearing for some days of the hearing, arriving after the hearing was underway, sitting at the back of the room and left

before the days' testimony was complete. On one occasion, he arrived in the midst of the cross-examination of a witness and indicated he would like to cross-examine the witness. Since he had not been present for the witness' direct examination and cross-examination and had not notified the Tribunal of his intention to attend and participate that day, the Tribunal informed the individual Respondent his request for cross-examination could not be accommodated on short notice and would unreasonably prolong/delay the testimony of the witness. The individual Respondent informed the Tribunal he planned to give closing submissions on the final day of the hearing but he did not appear.

[11] Five days of hearings were held in Brampton, Ontario, from July 25 to 29, 2016. A total of nine witnesses were heard.

[12] For the reasons set out below the Tribunal has determined that the Complaints against both the individual Respondent and corporate Respondent alleging sexual harassment as a discriminatory practice within the meaning of s.14 of the *CHRA* have been substantiated.

II. Preliminary Matters

Request for the Exclusion of Witnesses

[13] In pre-hearing email exchanges, the corporate Respondent requested an exclusion of witness. The Commission and the Complainant did not object and so this request was granted.

[14] In the context of the discussion regarding exclusion of witnesses, the Tribunal advised the parties that unidentified members of the public would not be permitted to enter the hearing room unannounced and all parties agreed to this procedure.

Request for a Confidentiality Order

[15] In a pre-hearing case management conference call just prior to the hearing, the Complainant expressed concern that the Tribunal decisions are posted on the Tribunal's website and CanLII, and that her children and others could look up the decision and read

the graphic details of what she alleges the individual Respondent said to her. The Complainant requested the decision posted publicly not include her full name.

[16] At the commencement of the hearing, the Complainant's motion for a confidentiality order was discussed as a preliminary matter. The corporate Respondent had no objection and made its own request that reference to its operating name, ATL Logistics, not appear on the heading since it had sold the assets of the Company and the purchasers were using the operating name, ATL Logistics. The corporate Respondent retained the numbered company as Respondent in this complaint. The owner of the corporate Respondent also requested his initials be used. During the hearing, the owner's son, also requested his initials be used.

[17] The Complainant did not object to the corporate Respondent's request to remove the operating name "ATL Logistics" from the heading and to the use of initials for the owner of the corporate Respondent.

[18] The Commission did not object to the Complainant's request for initials and the corporate Respondent's request to remove the operating name "ATL Logistics" from the heading and to use the initials of the owner of the corporate Respondent.

[19] The individual Respondent was not in attendance for the commencement of the hearing but arrived before opening statements and was present for the discussion regarding the confidentiality order. He had no objection to the parties' requests to use their initials and confirmed he would like his initials used as well. The Complaint, the Commission and the corporate Respondent did not oppose the individual Respondent's request.

[20] At the hearing, I granted the parties request for a confidentiality order. These are the reasons for that decision.

[21] Section 52 of the *CHRA* provides that an inquiry should be heard by the Tribunal in public. Section 52 of the *CHRA* also provides that the Tribunal may, in very specific circumstances and if it is satisfied, take any measures and make any order that it

considers necessary to ensure the confidentiality of the inquiry. Those very specific circumstances are defined in s. 52(1) of the *CHRA*.

[22] Section 52(1)(c) of the *CHRA* stipulates that the Tribunal may take any measures and make any order necessary to ensure the confidentiality of the inquiry if the Tribunal is satisfied that there is a real and substantial risk that the disclosure of matters will cause undue hardship to the persons involved and that this outweighs the societal interest in a public hearing.

[23] The Tribunal also notes the decision of *A.B. v. Eazy Express Inc.*, 2014 CHRT 35, which confirms the Tribunal's authority to use initials to ensure confidentiality in this instance. In *Eazy Express Inc.*, the Commission requested the Tribunal use initials for the Complainant, a witness, and two additional persons preferably not their own, who did not testify. The Commission claimed that the personal matters discussed during the hearing that did not deal with discrimination, would create undue hardship for these individuals if the personal matters became public. The Respondent objected to the Commission's request.

[24] The Tribunal agreed that some of the personal matters discussed at the hearing could be potentially harmful to the Complainant and another witness should they be publicly disclosed. The Tribunal decided to anonymize the decision by using initials for the Complainant and one of the witnesses.

[25] Lastly, the Tribunal notes the decision of *Wall v. University of Waterloo* (1995), 27 CHRR D/44 (ON Bd Inq.). The individual Respondent requested a publication ban on the evidence that related to him. He was an elected official and did not want the allegations to have "undue impact on his public reputation". As a preliminary matter, the Tribunal imposed a publication ban on the individual Respondent's name pending the release of the decision.

[26] Subsequently, the Commission requested a publication ban of the Complainant's name and the respondent University also requested a publication ban of its name, arguing that it would be unfair to impose a publication ban for only one party and the ban should be available for each party who requested it. The Tribunal imposed the publication ban of the

parties' names until the decision was released because all parties had requested it. The Tribunal reviewed the authorities and provincial legislation regarding *in camera* hearings and publication bans.

[27] In *Guzman v. T*, [1997] BCCHRD No 1, 27 CHRR D/349, the Tribunal citing the legal principle that tribunals are masters of their own procedure and processes, including publication of identifying information (paragraphs 9 and 10).

[28] In the present case, none of the parties requested an *in camera* hearing or publication ban so the public interest in human rights hearings is respected. The Complainant requested her initials be used because the details of what she alleged the individual Respondent said and did to her had not been shared with her young daughters and she did not want them or other family and friends to read about the details on-line. The other parties did not object and requested the same use of initials in the public decision to protect their identities.

[29] In light of the agreement of the parties on the issue of confidentiality, and pursuant to paragraph 52(1)(c) of the *CHRA*, I am satisfied that the public disclosure of the more sensitive material could cause undue hardship to the Complainant, individual Respondent, and corporate Respondent. I thus find it appropriate to ensure the confidentiality of the parties as requested. Consequently, the individual Respondent is hereinafter referred to by his initials "L.C." The owner of the corporate Respondent shall hereafter be referred to as "the owner". The owner's son is hereinafter referred to as "A.S.". The corporate Respondent will be referred to as such throughout and the numbered company name used on the heading. The complainant is hereinafter referred to as "N.A."

[30] Having granted the parties' original request for confidentiality, the Tribunal on its motion has determined that all documents placed into evidence which make reference to the above-mentioned parties' names should also be redacted accordingly to give full and proper effect to the parties' original request for confidentiality.

III. Legal Framework

[31] The complaint is brought under two different sections of the *CHRA*, i.e., 7 and 14. Section 7(a) of the *CHRA* makes it a discriminatory practice to refuse to employ or continue to employ an individual, because of a prohibited ground of discrimination. Section 14(1)(c) of the *CHRA* makes it a discriminatory practice for an employer in matters related to employment, to harass an individual on a prohibited ground of discrimination. Section 14(2) of the *CHRA* states that sexual harassment is deemed to be harassment on a prohibited ground of discrimination.

A. Prima facie Case of Sexual Harassment

[32] The Complainant has the burden of establishing a *prima facie* case of sexual harassment. To establish a *prima facie* case under s. 14 of the *CHRA*, the Complainant must establish that the individual Respondent sexually harassed the Complainant in or related to the workplace.

[33] A *prima facie* case 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" (*Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC) at para. 28, herein "*Simpson-Sears*").

[34] The degree of proof required for to establish a *prima facie* case of discrimination was addressed in *Quebec (Commission des droits de la personne et des droits de la Jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2SCR 789, (herein "*Bombardier*") 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*, [1962] S.C.R. 53, at p. 57; *Rousseau v. Bennett*, [1956] S.C.R. 89, at pp. 92-93; *Parent v. Lapointe*, [1952] 1 S.C.R. 376, at p. 380....”

[35] Once a Complainant establishes a *prima facie* case of discrimination, the Complainant 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).

[36] In *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252, at 1284, the court 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.

[37] In *Canada (Human Rights Commission) v. Canada (Armed Forces) and Franke*, 1999 CanLII 18902 (FC), [1999] 3 FC 653, the court 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.

At page 662, the Court described the elements of “unwelcome” as follows:

[.....]

In order to determine if the conduct is welcome or unwelcome, the Tribunal will look to the complainant’s reaction at the time the incident occurred and assess whether she expressly, or by her behaviour, demonstrated that the conduct was unwelcome. If the evidence shows that the complainant welcomed the conduct, the complaint will fail.

[.....]

The degree of difficulty will depend on the type of activity involved: a pressing sexual advance will normally bring a quick refusal. More subtle solicitations or “verbal” innuendos may be ignored and as such simply endured by the complainant.

Thus, the proper inquiry will not require a verbal “no” in all cases. Nonetheless, the complainant must establish, for instance by her body language or by her repetitive failure to respond to suggestive comments, that she had in some way signalled to the harasser that his conduct was unwelcome. I leave the door open to certain limited circumstances which may force an employee to endure objectionable conduct, such as fear of losing a job. In these cases, the appropriate standard against which to assess the conduct will be that of the reasonable person in the circumstances.

At page 662, the Court described the elements of “sexual in nature”:

[...]

Sexual harassment is any sexually-oriented practice that endangers an individual’s continued employment, negatively affects his/her work performance, or undermines his/her sense of personal dignity. [...]

.....

Sexual harassment can manifest itself both physically and psychologically. In its milder forms it can involve verbal innuendo and inappropriate affectionate gestures. It can, however, escalate to extreme behaviour amounting to attempted rape and rape. Physically the recipient may be the victim of pinching, grabbing, hugging, patting, leering, brushing against, and touching. Psychological harassment can involve a relentless proposal of physical intimacy, beginning with subtle hints which may lead to overt requests for dates and sexual favours.

[...]

Sexual annoyance, the second type of sexual harassment, is sexually related conduct that is hostile, intimidating, or offensive to the employee, but

nonetheless has no direct link to any tangible job benefit or harm. Rather, this annoying conduct creates a bothersome work environment and effectively makes the worker's willingness to endure that environment a term or condition of employment.

The second subgroup encompasses all other conduct of a sexual nature that demeans or humiliates the person addressed and in that way also creates an offensive work environment. This includes sexual taunts, lewd or provocative comments and gestures, and sexually offensive physical contact.

[38] The Court stated that the Tribunal's determination of the behaviour or conduct alleged as "sexual in nature" and "harassing" or "annoying" should be conducted on a case-by-case basis, based on the objective test of the reasonable person in the circumstances and avoid gender-based stereotypes of what behaviour is acceptable or common in workplace dominated by one gender.

[39] In relation to "persistence and/or gravity of the conduct", the Court stated at page 665:

...harassment requires an element of persistence or repetition, although [...] a single incident may be enough to create a hostile work environment.

...some forms of sexual harassment, such as physical assault, may be severe enough to constitute, in themselves, sexual harassment. Such incidents would, because of their gravity, immediately create a poisoned work environment. [...] a crude sexual joke, although perhaps in poor taste, will not generally be enough to constitute sexual harassment and would rarely create a negative work environment.

I agree with the proportionality test proposed by M. Drapeau in *Le harcèlement sexuel au travail*:

[translation]

the more serious the conduct and its consequences are, the less repetition is necessary; conversely, the less severe the conduct, the more persistence will have to be demonstrated.

Again, in assessing whether the conduct is sufficiently severe or persistent to create a poisoned workplace, the trier of fact will apply the objective "reasonable person standard" in the context.

[40] In relation to the "notification of the employer", the Court stated at pages 665 and 666:

Although this was not an element considered by the Supreme Court in Janzen, I believe that fairness requires the employee, whenever possible, to notify the employer of the alleged offensive conduct.

.....in order for sexual harassment policies to work, the employee should inform the employer of any problems, in order to give [the employer] the opportunity to remedy them.

[...]

The goal of sexual harassment policy is to achieve a healthy workplace; and, therefore, the sooner action is taken to eliminate harassing conduct, the less likely it is that any such conduct will become detrimental to the work environment.

[41] Together, *Janzen* and *Franke* define the elements of sexual harassment that the Complainant's evidence must address to establish a *prima facie* case. If the Complainant establishes a *prima facie* case, the burden then shifts to the Respondents to establish on the balance of probabilities that there was no sexual harassment. In other words, casting doubt regarding the reliability or credibility of the Complainant.

[42] Pursuant to Section 65 of the *CHRA*, the employer is deemed responsible for the sexual harassment of its employees, unless it can be established pursuant to subsection (2) that the employer did not consent to the sexual harassment and exercised all due diligence to prevent the act or omission from being committed, or, if it occurred notwithstanding the employer's diligence, the employer took steps to mitigate or avoid the full negative effects of the sexual harassment on the employee.

[43] Section 65 of the *CHRA* states:

65.(1) Subject to subsection (2), any act or omission committed by an officer, a director, an employee or an agent of any person, association, or organization in the course of the employment of the officer, director employee or agent shall, for the purposes of this Act, be deemed to be an act or omission committed by that person, association or organization.

(2) An act or omission shall not, by virtue of subsection (1), be deemed to be an act or omission committed by a person, association or organization if it is established that the person, association or organization did not consent to the commission of the act or omission and exercised all due diligence to prevent the act or omission from being committed and, subsequently, to mitigate or avoid the effect thereof. (Emphasis added)

[44] This provision makes employers liable for harassment in the workplace, where the harassment involved one or more of the proscribed grounds enumerated in section 3 of the *CHRA*, unless the employer can satisfy the elements of the due diligence defence described in Section 65(2) of the *CHRA*.

[45] If there was sexual harassment, the corporate Respondent has the burden of evidence to establish on the balance of probabilities that it did not consent to the sexual harassment and exercised all due diligence to prevent the act or omission from being committed, or, if it occurred regardless of its diligence, it took steps to mitigate or avoid the full negative effects of the sexual harassment on the employee, pursuant to Section 65(2) of the *CHRA*.

[46] In *Robichaud v. Canada (Treasury Board)*, (1987) 2 SCR 84, (herein "*Robichaud*"), La Forest J., clarified at page 92, that the purpose of *CHRA* and the employer liability provision:

... is not aimed at determining fault or punishing conduct. It is remedial. Its aim is to identify and eliminate discrimination. At page 94, he continued: ...if the Act is concerned with the effects of discrimination rather than its causes (or motivations), it must be admitted that only an employer can remedy undesirable effects; only an employer can provide the most important remedy – a healthy work environment.

[47] In *Hinds v. Canada (Employment and Immigration Comm.)*(1988), 10 C.H.R.R. D/5683 (C.H.R.T.), at para. 41611, applying s. 48(6) of the *CHRA* [s. 65(2) as it then read], the Tribunal wrote:

Although the C.H.R.A. does not impose a duty on an employer to maintain a pristine working environment, there is a duty upon an employer to take prompt and effectual action when it knows or should know of co-employees' conduct in the workplace amounting to racial harassment...To avoid liability, the employer is obliged to take reasonable steps to alleviate, as best as it can, the distress arising within the work environment and to reassure those concerned that it is committed to the maintenance of a workplace free of racial harassment. A response that is both timely and corrective is called for and its degree must turn upon the circumstances of the harassment in each case.

[48] Included in this duty to mitigate is an examination of the steps taken by a corporate respondent to investigate, make findings and impose a resolution. In *Sutton v. Jarvis Ryan*

Associates et al., 2010 HRTO 2421, at paras. 130-33, the Human Rights Tribunal of Ontario dealt with a corporate respondent's duty to investigate a complaint of discrimination or harassment:

It is well established in the Tribunal's jurisprudence that an employer may be held liable for the way in which it responds to a complaint of discrimination.

[49] The rationale underlying the duty to investigate a complaint of discrimination is to ensure that the rights under the Human Rights Code of Ontario (the Code) are meaningful. As stated in *Laskowska v. Marineland of Canada Inc.*, 2005 HRTO 30 (CanLII) ("*Laskowska*"), at para. 53:

It would make the protection under subsection 5(1) to be a discrimination-free work environment a hollow one if an employer could sit idly when a complaint of discrimination was made and not have to investigate it. If that were so, how could it determine if a discriminatory act occurred or a poisoned work environment existed? The duty to investigate is a 'means' by which the employer ensures that it is achieving the Code-mandated 'ends' of operating in a discrimination-free environment and providing its employees with a safe work environment.

[50] The Tribunal's jurisprudence has established that the employer's duty to investigate is held to a standard of reasonableness, not correctness or perfection. In *Laskowska*, the Tribunal set out the relevant criteria for an employer to consider in its duty to investigate as:

1. Awareness of issues of discrimination/harassment, Policy Complaint Mechanism and Training: Was there an awareness of issues of discrimination and harassment in the workplace at the time of the incident? Was there a suitable anti-discrimination/harassment policy? Was there a proper complaint mechanism in place? Was adequate training given to management and employees;
2. Post-Complaint: Seriousness, Promptness, Taking Care of its Employee, Investigation and Action: Once an internal complaint was made, did the employer treat it seriously? Did it deal with the matter promptly and sensitively? Did it reasonably investigate and act; and
3. Resolution of the Complaint (including providing the Complainant with a Healthy Work Environment) and Communication: Did the employer provide a reasonable resolution in the circumstances? If the complainant chose to return to work, could the employer provide him/her with a healthy, discrimination free work environment?

Did it communicate its findings and actions to the complainant?

[51] The Tribunal in *Laskowska* also stated the following at para. 60:

While the above three elements are of a general nature, their application must retain some flexibility to take into account the unique facts of each case. The standard is one of reasonableness, not correctness or perfection. There may have been several options – all reasonable – open to the employer. The employer need not satisfy each element in every case in order to be judged to have acted reasonably, although that would be the exception rather than the norm. One must look at each element individually and then in the aggregate before passing judgment on whether the employer acted reasonably.

IV. Evidence at the hearing

[52] N.A. described the actions and comments she alleges L.C. directed toward her that she found offensive. N.A. worked alone in the dispatch building with L.C. so there were no witnesses to L.C.'s offensive behaviour toward her. She described the steps she took to deal directly with L.C., and her discussions with her supervisor and the owner's wife. N.A. stated that L.C.'s offensive behaviour did not stop. The corporate Respondent reduced her hours and asked her to do different job duties that she found difficult and demeaning, i.e., cleaning the bathroom and helping the mechanic in the truck yard.

[53] On the advice of the Ontario Human Rights Tribunal, N.A. wrote a letter to the owner, which she gave to Ms. Dinner on January 25, 2012 to give to the owner. The owner called a group meeting. N.A. asserts the owner angrily and aggressively confronted her about her complaint about L.C. with L.C. and other co-workers in the room, which she said made her feel frightened, humiliated and ashamed. N.A. left the premises after this meeting and did not return. N.A. said she hoped the corporate Respondent would contact her and agree to move her desk to the main office building. The corporate Respondent did not communicate with N.A. after the meeting regarding her complaint about the individual respondent or her request to move her workspace to the main office building. After a couple of weeks with no communication between N.A. and the corporate Respondent, the corporate Respondent issued a Record of Employment indicating N.A. quit her job since she had not returned since January 25, 2012.

[54] N.A. and the Commission called Ms. Janette Dinner, the office manager, of the corporate Respondent, and N.A.'s immediate supervisor, in relation to the manner in which N.A. reported the offensive conduct and the corporate Respondent's response. Ms. Dinner also recounted her own experience with L.C.'s conduct toward her that she found offensive, which occurred in private with no witnesses.

[55] L.C., the individual Respondent, was called as a witness by the corporate Respondent and denied all of the sexual comments and behaviour alleged by N.A. and Ms. Dinner. L.C. suggested N.A. and Ms. Dinner were lying and their false allegations were motivated by money and/or racial bias against him.

[56] The corporate Respondent believed L.C.'s denial of the offensive behaviour and comments toward N.A. and Ms. Dinner had occurred. The corporate Respondent suggested N.A. was lying and motivated by money. The corporate Respondent suggested Ms. Dinner's evidence was false and that she was improperly assisting N.A. The corporate Respondent suggested Ms. Dinner's motivation was racial bias toward L.C. and she bore a personal grudge against the corporate Respondent.

[57] The corporate Respondent's alternative position was that even if L.C. did behave toward N.A. in the manner alleged, that N.A.'s manner of dress and sharing of intimate personal details at work, may have invited and/or acquiesced to L.C.'s behaviour. The corporate Respondent also blamed Ms. Dinner for not addressing the situation sooner, for failure to provide a harassment free workplace and for failing to advise the owner properly with respect to the nature of N.A.'s complaint and how to respond to the complaint. In addition to L.C., the corporate Respondent called five witnesses.

[58] N.A.'s last day worked was January 25, 2012. The corporate Respondent issued a ROE on February 8, 2012, indicating she quit because she abandoned her job. N.A. denies she quit and claims she was constructively dismissed on or after January 25, 2012.

[59] In light of the fact that there were no witnesses to the alleged conduct by L.C. toward N.A. and Ms. Dinner and the evidence was contradictory regarding the manner in which N.A. reported the offensive conduct, if at all, and the corporate Respondent's knowledge of and response to the Complaint, if any, the Tribunal must weigh the oral

testimony of all witnesses and assess reliability and credibility of each witness and make findings of fact based on the assessments of credibility.

[60] In relation to assessing reliability and credibility of the witnesses, the Tribunal considered *Faryna v. Chorney*, [1952] 2 D.L.R. 354 (B.C.C.A.), regarding witness credibility and reliability. Mr. Justice O'Halloran stated at p. 357:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be 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.

- a. credibility can not be determined solely on the demeanour of the witness;
- b. acknowledge that a witness may be honest, and therefore credible, but mistaken in some evidence, and therefore the witnesses' evidence is unreliable in some respects;
- c. consider the opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what the witness has seen and heard; and,
- d. examine the witness' evidence in the context of the known and probable factors and circumstances so that a practical and informed person could assess the witness' evidence as reasonably reliable or credible in that place and in those conditions.

1. N.A. (Complainant)

[61] After being a homemaker for 15 years, N.A. accepted a part-time position at a coffee shop located within a Petro Canada service station near her home. The corporate Respondent was a trucking company operating nearby and was a regular customer of the Petro Canada service station. When the Petro Canada service station was sold, the owner of the corporate Respondent offered N.A. a job interview with his office manager, Ms. Janette Dinner.

[62] Ms. Dinner told N.A. the position for an office assistant, working Monday to Friday for the full day until 4:00 or 4:30. N.A. was interested in full-time employment but wanted to be available when her children got out of school. N.A. explained to Ms. Dinner that she

would need to leave at 3:30 or 3:45 each day and Ms. Dinner told her that was fine. N.A. testified that Ms. Dinner told her that after she completed the probationary period, the hourly wage would be reviewed and would likely increase to \$14.50 and employment benefits would be considered.

[63] N.A. was offered the job, commencing October 3, 2011. The employment offer is marked Exhibit HR1-Tab 3 and confirms N.A. was to report to Ms. Dinner, that she would be paid \$12.50 an hour for the 3 month probationary period and N.A. was to provide two weeks' notice if she quit. The offer mentions "lunches will be docked 30 minutes if working 5 hours or more."

[64] The offer does not confirm her hours of work, in terms of start and end time or length of a workday. N.A. testified her regular hours at the start were 8:30 a.m. to 3:30 p.m. Monday to Friday.

[65] Marked Exhibit HR1-Tab 4, page 1, is a photograph of two mobile buildings situated adjacent to one another so that the corners of the buildings are perpendicular to one another. In the smaller building, herein "the dispatch office building", N.A. worked alongside the L.C., the individual Respondent, who was the dispatcher (depicted Exhibit HR1-Tab 4, pages 4 and 5). The photographs show that N.A.'s desk was very close to L.C.'s desk. The drivers, staff, applicants and others, would frequently enter this building to use the washroom (depicted Exhibit HR1- Tab 4, page 5) and/or to deal with L.C. or N.A..

[66] In the larger building, herein "the main office building", Ms. Dinner and Ms. Bushra Mohammed, the owner's wife, had adjacent work desks (depicted Exhibit HR-1, Tab- 4, page 2) and the owner of the corporate Respondent had an office at the other end (depicted Exhibit HR-1, Tab 4, page 3).

[67] N.A.'s job duties began with basic reception duties, such as answering the phone and greeting visitors to the dispatch trailer. She gradually received training from the owner, his wife and Ms. Dinner, to enable her to cover dispatch for brief periods when L.C. was away, screen job applicants, create portfolios for each driver, pay the owner's visa bills, solicitation calls for businesses to advertise on the trucks and payroll.

(i) Conduct of L.C.

[68] N.A. testified that when she started work on October 3, 2011, L.C. was friendly and complimentary, telling her she was pretty. L.C.'s comments, demeanour, and behaviour quickly escalated to be offensive, demeaning, humiliating and intimidating to N.A. and she gave the following examples:

- he asked her if her breasts were real and if he could touch her breasts;
- he asked her if her vagina was neatly tucked away or if she had folds hanging on the outside;
- he would regularly simulate performing oral sex on a woman by inserting his tongue into a pizza pocket, while making satisfying sound;
- he asked her to give him back rubs and he repeatedly offered to give her back rubs, saying no one would see;
- he told her he used to discuss sex with her predecessor, Cassandra, who did not object to and participated in the discussion about sex;
- many Mondays, he told her he dreamt about her on the weekend;
- he bragged about his sexual performance while making erotic sounds;
- he described what he would do to her sexually. He was very explicit, saying he would hold her hips from behind, bend her over and slide his penis into her vagina slowly. He suggested doing that in the dispatch office washroom so no one would find out;
- he said he would love to have sex with Janette Dinner as well but her "behind was way too big";
- he asked her several times to go to a nightclub called Sugar Daddies, saying he would wear his hat and suit and they would look good together;
- in response to N.A. refusing to go out with him, he told N.A. she would be alone and miserable; and,
- he said that if N.A. was not so pretty, he would strangle her.

(ii) Reaction by N.A.

[69] N.A. stated she was not offended by L.C.'s comments made during her first week of work that she was pretty. She viewed them as a compliment, and she did not think he was hitting on her.

[70] N.A. stated when L.C. started to ask her to go out with him, she realized he was hitting on her, which made her very uncomfortable. She stated that at first, she calmly and politely told him "no" or "to stop". In response, his behaviour escalated to become offensive and aggressive, which N.A. found to be intimidating, deeply embarrassing and humiliating because his comments were so explicitly sexual and threatening. Milder comments were made in front of other staff. N.A. says she was so embarrassed and at a loss for words, she usually put her head down and ignored L.C. N.A. described how L.C.'s conduct toward her disgusted and outraged her, and she didn't know what to say or do to make L.C. stop. N.A. stated that L.C. complained that she was unwilling to discuss sex like Cassandra was, so L.C. knew N.A. did not want to hear this explicitly sexual talk from L.C.

[71] N.A. said L.C.'s behaviour toward her was making it difficult to come to work, knowing she'd have to be alone with him most of the day in the dispatch office. Despite receiving no encouragement or response from N.A. to the sexual propositions, innuendos and invitations to have sex, L.C. allegedly became more lewd and aggressive to the point of suggesting sexual assault or strangulation. N.A. said she thought the comment about strangulation was creepy.

[72] N.A. testified that L.C. once told her he had previously worked at an appliance centre as a dispatcher and a female complained that he harassed her. L.C. said his employer settled it out of court so there may be no record of it. N.A. testified that she believed L.C. knew his behaviour was offensive and harmful, because of the previous complaint. N.A. stated she pursued her complaint so that L.C. does not get away with it again.

[73] N.A. testified that L.C.'s conduct toward her made her feel bad about herself, she felt belittled. She felt very upset by the whole situation and it had a huge impact on her. N.A.'s children saw how it affected her but she could not open up to them and tell them what had happened. It took a while for her to get back on her feet.

(iii) Report to Employer and Employer's Reaction

[74] N.A. stated she hesitated to complain about L.C.'s behaviour at first because she was on probation and was afraid she might jeopardize her job by complaining about him. She tried avoiding him, telling him no or to stop or ignoring him first. L.C. did not stop, rather he escalated and persisted.

[75] N.A. first spoke with Ms. Dinner about L.C.'s behaviour toward her in mid-November, 2011. She told Ms. Dinner that L.C. was persistently asking her out and would not take "no" for an answer. She was shy to tell her the graphic details but trusted Ms. Dinner enough at that point to tell her L.C. was hitting on her. Ms. Dinner responded to say L.C. had asked her out a few times too and she suggested N.A. just ignore him.

[76] N.A. said when she raised the issue with Ms. Dinner, she wanted her to offer to move her desk into the main office building so she wouldn't have to be alone with L.C. in the dispatch building. But Ms. Dinner dismissed her concerns and the conversation did not go any further. Ms. Dinner did not tell N.A. she was going to do anything further and L.C.'s behaviour did not change.

[77] On Friday, January 13, 2012, N.A. said she was working late and everyone had gone except for Ms. Mohammed, the owner's wife. N.A. complained to her that L.C. was always talking about sex to her. Ms. Mohammed giggled and said that all men are the same and she continued to do her work.

[78] On Monday, January 16, 2012, Ms. Dinner told N.A. her hours were cut and, effective immediately, she would only be working on Mondays and Thursdays. The owner also met with N.A. on January 16th and told her he was unhappy with mistakes in her work. When N.A. asked him what mistakes, he pointed out minor punctuation errors. The owner told N.A. she would now be responsible to clean the bathrooms and help the mechanic in the yard. N.A. testified the owner was upset, aggressive and loud with her and the mistakes he pointed out to her were minor and petty.

[79] In the week previous to January 16th, the owner had shown N.A. bookkeeping he wanted done for his visa and requested it be done each Wednesday. However, N.A.'s hours were cut on Monday so she was not working on Wednesday, January 18th.

[80] When N.A. reported for work on Thursday, January 19th, the owner was very upset with her because she had not done the bookkeeping for his visa the day before. She described him as loud and aggressive toward her. The owner ordered her to go outside in the yard and help the mechanic and the drivers. N.A. testified that it was cold that day and she was not properly dressed to work outside and drive the trucks but she did as she was told.

[81] N.A. testified that after January 16th, she was not allowed to do her former duties such as answer the phones or use her computer. She was assigned all new duties, which were not office assistant duties, such as cleaning the bathrooms and working outside in the yard, moving trucks, preparing the trucks and helping the mechanic for which she was not properly dressed or had difficulty doing.

[82] N.A. testified that some time prior to January 19th, she consulted the Ontario Human Rights Tribunal or Commission regarding L.C.'s behaviour toward her and she received advice to prepare a brief letter to her employer to complain about L.C. At the end of the January 19th workday, N.A. told Ms. Dinner how she felt about L.C.'s behaviour toward her and said she'd bring a letter with her when she returned to work on Monday, January 23rd.

[83] N.A. testified that Ms. Dinner called her on January 20th to tell her that her hours had been further cut to Wednesdays for three hours. The next scheduled shift for N.A. was Wednesday, January 25, 2012.

[84] N.A. arrived for work on January 25th with two copies of her letter she prepared on the advice of the Ontario Human Rights Tribunal worker to complain about L.C., one for the owner and one for Ms. Dinner. Ms. Dinner told N.A. to leave the owner's copy on his desk. Ms. Dinner told N.A. that the owner must make the decision to move her desk/workplace away from L.C. and that she could not make that decision. N.A. testified that Ms. Dinner suggested she look for another job, but N.A. wanted to see if the owner

would accommodate her request to move into the main office building away from L.C. Ms. Dinner told N.A. to sit next to her at Ms. Mohammed's desk to wait for the owner to come in and Ms. Dinner gave her work to do. N.A. saw Ms. Dinner scan her copy of N.A.'s letter and email it to the owner.

[85] N.A.'s letter marked Exhibit HR1-Tab 7, reads as follows:

January 25, 2012

Dear Janette, as per our conversation on Thursday January 19, 2012, I do not feel comfortable working with [L.C.]. Recently he has taken photographs of me using his cell phone and I have asked him to delete them. I don't appreciate him introducing me as "a single lonely person" to males that enter our office. Including Victor from Super Deck Transportation and Steve the water guy who fills our tank and strangers who enter looking for parking vacancies. He has embarrassed me and makes me feel ashamed. Most days I leave work feeling upset. I am asking for an apology from [L.C.] and would like to be in a separate office away from him.

Thank you in advance,

[N.A.]

c.c. [owner of the corporate Respondent S.A.S]

[86] The exhibit has N.A.'s signature on it and Ms. Dinner's note and signature acknowledging receipt of the letter on January 25, 2012.

[87] N.A. testified that the owner arrived at 10:10 a.m. and slammed the door behind him. Ms. Dinner asked him if he had received the letter and he said "yes". N.A. said he was upset and aggressive. He went to the TV monitor of L.C. in the other building and pressed record. The owner was huffing and puffing, very agitated and very upset. N.A.'s knees were shaking. He turned the recorder off and started pacing.

[88] The mechanic, Mr. Mustafa Hussein, came into the main office and the owner took him down the hall into his office and slammed the door shut. N.A. testified that she understands a little Arabic and she believes she heard the owner yelling and screaming in Arabic. She believes she heard the owner tell Mr. Hussein that he was going to hold a meeting and Mr. Hussein was to obey him and do what the owner told him to do. After 10

minutes or so, N.A. saw Mr. Hussein come out of the owner's office and walk with his head down out of the main office.

[89] N.A. saw the owner and Ms. Dinner go into the kitchen area and slam the door behind them. N.A. could not hear what they were saying so she focused on her work. The owner's wife, Ms. Mohammed, arrived and was, as usual, friendly and cheerful.

[90] The owner came out of the kitchen and took his wife into his office. N.A. heard more yelling from the owner's office. The owner came out of his office and told N.A. he was calling an office meeting of all staff in his office.

[91] The owner gathered chairs into his office and N.A. sat down in his office while they waited for the rest of the staff to join them. N.A. testified that the owner started screaming at her asking her why she waited so long to tell him of L.C.'s behaviour. He asked N.A. if she wanted to see him turn into a lion and if she wanted to see how deep his claws can go into her back.

[92] The staff that joined them were Ms. Dinner, Ms. Mohammed, Mustafa, and L.C. By the time they all entered the office, N.A. was crying and the owner looked at N.A. and said to her in front of the others, that he didn't care if she was crying blood, that this was his kingdom and she had to abide by his rules. N.A. said the owner was screaming by this point, with his veins popping out on his neck and head.

[93] The owner asked N.A. for a document and accused her of stealing it. N.A. said she did not understand what document the owner was talking about. The owner talked about calling the police, but he did not do so. N.A. testified that the owner was looking around and under her chair for her purse. The owner said he wanted her car keys so she could not leave the premises. N.A. says she told him her purse was out by her desk but he wouldn't let her out of the office to get it.

[94] N.A. testified that the only discussion about her complaint was the owner telling her to look around, this was a male environment and if she didn't like it, she should go migrate elsewhere.

[95] N.A. said she had not seen him like that before and she was afraid. She did not believe the owner would let them leave if she wanted to. N.A. said she remained quiet and was shaking. She said everyone else remained silent as well.

[96] N.A. testified that the meeting lasted about 20 minutes and it ended when Ms. Dinner opened the office door and someone put their hand on N.A.'s back to usher her out. Ms. Dinner told her to take a deep breath, go home and rest.

[97] N.A. testified that she was very upset by the meeting, she felt hit by a brick and couldn't think straight. She said she felt verbally abused by the owner and was a mess. N.A. drove to a parking lot where she cried, feeling ashamed to even face her children. After she pulled herself together, she made notes of her memories of the day's events.

[98] N.A. identified her notes marked Exhibit HR1-Tab 5. According to her notes, the owner told her during the meeting that she cannot do her job, and mentioned the spreadsheet she prepared where she abbreviated JUL (July) instead of spelling it out with the month and a dash and then the year, e.g., July-12. Her notes indicate the owner told N.A. in the meeting he could not accommodate her request, that he only had one desk for her and it was beside L.C. N.A. testified the owner also said the two desks in the main office were for Ms. Dinner and Ms. Mohammed and he would not accommodate her request to move her desk to the main office.

[99] N.A.'s notes reference the owner's comments about turning into a lion and clawing deep into her back, that his business was his kingdom, he is the king and they were to obey him, that he accused her of stealing, that if she did not like the situation, she should immigrate to some other place. N.A.'s notes also reference the meetings the owner held with Mr. Hussein (about 15 minutes), Ms. Dinner (about a half hour) and his wife on January 25th when he first arrived and before he held the group meeting.

[100] In her notes and in her testimony, N.A. explained that she waited to make her complaint because she had been on probation and did not want to lose her job by complaining. She thought her first two efforts to discuss L.C.'s behaviour toward her with Ms. Dinner and Ms. Mohammed, would lead to a discussion to move her desk to the main office so she would not have to work beside L.C. alone in the dispatch building.

[101] N.A. testified that her intention in writing the letter on January 25, 2012 was to accomplish her goal of moving to the main office, that she needed the job and did not want to lose the job. N.A. testified that she did not think she would jeopardize her job by making the request or that the owner would react the way he did.

[102] N.A. testified that Ms. Dinner called her a couple of times during the evening of January 25th to ask if she was okay. N.A. thought she would hear back from Ms. Dinner, or Ms. Mohammed or the owner to confirm they were able to move her desk to the main office. N.A. did not hear back from anyone in the company after January 25, 2012. N.A. testified she was too afraid to go to the office or to call the office.

[103] N.A. said that after the meeting on January 25, 2012, she was afraid for her safety. After making her complaint about L.C. she was unwilling to work beside him. N.A. said she had no idea what job, if any, was there for her given the reduction in hours to 3 a week and change in duties from office clerical to janitorial and truck preparation, repair and driving.

[104] N.A. identified Exhibit HR1-Tab 10, as a letter dated February 8, 2012 from Ms. Dinner, enclosing a Record of Employment (herein "ROE"). Ms. Dinner's letter stated N.A. did not show up for work on February 1, 2012 and did not call. Ms. Dinner refers to a conversation with N.A. after February 1, 2012 in which N.A. advised she would attend work on February 8, 2012, but did not show up or call. The letter confirms the ROE states Code E for the reason, N.A. was no longer employed with the corporate Respondent as of February 8, 2012, which disentitled N.A. to employment insurance benefits.

[105] N.A. testified that the ROE marked Exhibit HR1-Tab 10, refers to her first day of work was January 9, 2012, which is incorrect because she worked for the corporate Respondent since October 3, 2011. There was an earlier ROE marked Exhibit HR1-Tab 9 dated January 1, 2012 that states her first day worked was October 3, 2011 and last day paid was December 23, 2011, with the final pay period ending December 31, 2011. Reason for issuing the ROE was code A, which means shortage of work.

[106] N.A. thinks she received the earlier ROE about a week before the February 8, 2012 ROE. She does not recall ever being told that she, or any other employee, was laid off

over the Christmas break, 2011/2012 or at any time during her employment or that there was any shortage of work. N.A. notes the two ROE's Exhibit HR1-Tab 9 (22237420) and Exhibit HR1-Tab 10 (22237421) are numbered sequentially so that there were no ROE's issued to any other employees between January 1, 2012 and February 8, 2012.

[107] N.A. denies she intended to leave her job as of January 25, 2012 up to February 8, 2012. She said she needed the job and looked forward to an increase in hourly wage and benefits. N.A. referred to her vacation request for the week of March 13 to 21, 2012, submitted January 9, 2012 (HR1-Tab 6) as evidence that she had no intention of leaving her job.

[108] N.A. confirmed in her testimony that she never saw the corporate Respondent's Harassment Policy that is marked Exhibit HR1-Tab 8.

[109] N.A. testified that to her knowledge the corporate Respondent never disciplined L.C. or addressed his offensive behaviour and the corporate Respondent continued to employ L.C. as a dispatcher, until recently. In her view, the owner needed L.C. as a dispatcher and so the easier route for him was to terminate N.A. rather than deal with L.C. or to accommodate N.A.'s request to move to the main office building.

[110] N.A.'s complaints against the Respondents to the Commission was prepared and signed by her on May 22, 2014 (see HR1-Tab 2). N.A. explained the delay in filing this complaint was a result of having first filed her complaint with the Ontario Human Rights Commission and it was only after months of procedure that she was told her complaint should have been filed with Commission.

(iv) Loss

[111] N.A. was unable to find full-time work in 2012 after leaving the corporate Respondent. Exhibit C1: 3 part-time jobs **1)** \$2,684.79; **2)** \$5,017.65; **3)** \$2,130.28 = \$9,832.72 + EI \$5,659.00 (doesn't include income from corporate Respondent which was \$910.78 for January, 2012)

[112] N.A. obtained another part-time job in 2013 so 4 part-time jobs, 3 of which were unionized positions: 1) \$5,978.90; 2) 2,327.10; 3) \$914.12; and, 4) \$412.24 = \$9,632.36.

[113] N.A.'s 2014 income from 4 jobs was \$23,332.68; and, in 2015, N.A.'s income from 4 jobs was \$22,901.54.

[114] N.A. testified she's doing the best she can to work and earn an income and she felt the financial pressure with 3 children and bills to pay. She sought full-time employment but, for now, all she had been able to get were 4 part-time jobs. The 3 unionized positions, will allow her to gradually increase her hours and hourly wage but they will never be full-time positions.

[115] N.A. was working between 35 to 38 hours a week at the corporate Respondent. She refers to Exhibit HR1-Tab 16, a CRA payroll deductions online calculation of income and deductions prepared by Ms. Dinner and enclosed with her paycheque. Exhibit HR1-Tabs 17 through to Tab 23 are her paystubs she received while working with the corporate Respondent, none of which confirm her hours worked, rate, or deductions, just the pay period and net pay.

[116] The corporate Respondent's payroll records marked Exhibit R1-Tab B provided her bi-monthly (paid on the 7th and 22nd of each month) hours, rate, deductions and net pay. Below is a re-creation of the information shown on the documents marked Exhibit R1-Tab B:

Pay Period	Hours	Rate	Gross	Taxes	CPP	EI	T. Ded	Net Pay
1 Oct – 15-11	62.50	\$12.50	781.25	55.94	31.45	13.91	101.30	679.95
16 Oct – 31-11	73.00	\$12.50	912.50	85.24	37.95	16.24	139.43	773.07
1 Nov – 15 Nov-11	76.25	\$12.50	953.13	95.27	39.96	16.97	152.20	800.93
16 Nov – 30 Nov 11	62.75	\$12.50	784.38	56.52	31.61	13.96	102.09	682.29
1 Dec – 15 Dec-11	73.00	\$12.50	912.50	85.24	37.95	16.24	139.43	773.07
16 Dec – 31 Dec-11	43.50	\$12.50	739.30	42.65	29.38	13.53	85.56	653.74

[117] The Tribunal notes the 2012 records are hard to read and the calculations appear to be a little off, in particular, it is difficult to make out the hourly rate and based on the gross pay and hours worked, it appears to be higher than \$12.50 an hour but below is what appears to be on page 2 of Exhibit R1-Tab B:

Pay Period	Hours	Rate	Gross	Taxes	CPP	EI	T. Ded	Net Pay
1 Jan – 15 Jan-12 1 Oct – 15-11	53.50	\$12.50	675.75	27.78	26.63	12.37	66.38	609.37
*** When doing her vacation pay for 2012 take out 14 hours \$175 as this is added in this pay for xmas and boxing day.								
16 Jan – 31 Jan-12	16.00	\$12.50	235.03	-	4.42	4.30	8.72	226.31

[118] N.A. testified that contrary to the ROE dated January 1, 2012, HR1-Tab 9, she was not laid off between December 23, 2011 and January 9, 2012 and the corporate Respondent's documents at R1-Tab B above indicate she worked between December 16, 2011 and January 15. The Tribunal notes the total hours during this period for which she was paid is 97, but 14 of these were holiday pay for Christmas and Boxing Day as per the note at Exhibit R1-Tab B.

[119] The Tribunal notes that on the face of Exhibit R1-Tab B, the assumption when these holiday hours were paid to N.A. was that the corporate Respondent considered her regular work day was 7 hours. Since N.A. at that time worked Monday to Friday, N.A. normally worked 35 hours a week as of late December, 2011 and early January, 2012.

[120] On Exhibit C-1, N.A. calculated her lost annual income by assuming she would work 40 hours a week, at \$14.50 an hour = \$30,160. N.A. then deducted her actual income from employment and EI and assessed her lost income as follows:

1. 2012 \$13,757.50
2. 2013 \$20,527.64
3. 2014 \$ 6,827.32
4. 2015 \$ 7,258.46

[121] In relation to pain and suffering, N.A. did not quantify the amount she is seeking. N.A. explained that as a lay person, with no experience in these matters, she does not know the appropriate sum to claim.

[122] N.A. testified that she experienced a lot of emotional pain and suffering. She felt humiliated by the Respondents. The complaint process took a lot of her time attending at the Tribunal and mediation, transportation and parking costs, that was for nothing since the Ontario Tribunal ultimately told her to proceed through the Commission. N.A. has been dealing with her complaint for 4 years now. N.A. testified that she thought the

Respondents were not honest enough or acting in good faith through the 4 years. She thinks they were viewing the process as a game. The fact that her complaint is public is something she'd like to fix for her daughters' sake. N.A. feels the Respondents have made fun of her.

[123] N.A. spoke to the owner and told him he should never treat anyone, especially women, as she was treated. She said she was put to shame and treated like a crumb under his shoe. N.A. said it was wrong to make her work alongside L.C. who wanted to have sex with her. N.A. said she was there to work not have sex with L.C.

[124] Under cross-examination by A.S., N.A. acknowledges she did not work as many as 40 hours in any single week throughout her employment with the corporate Respondent.

[125] N.A. denied that she ever spoke to L.C. in a sexually explicit manner or otherwise engaged in sexual banter or flirtation with L.C. N.A. denied ever sitting on L.C.'s lap. N.A. confirmed that at times she told L.C. to stop the offensive behaviour and other times, she ignored and avoided him.

[126] When asked by A.S., why she hadn't discussed L.C.'s offensive behaviour with the owner before January 25, 2012, N.A. explained that she felt more comfortable discussing the nature of the behaviour with the women, Ms. Dinner, her supervisor, and Ms. Mohammed, the owner's wife.

[127] N.A. also said that prior to January 16, 2012, she had not seen or interacted with the owner of the corporate Respondent at work, partly because he was often not in the main office and N.A. spent most of her working hours in the dispatch office.

[128] N.A. acknowledged that the first time she discussed L.C.'s offensive behaviour with Ms. Dinner is November, 2011, Ms. Dinner also said, "What do you expect?...he's (L.C.) black."

[129] N.A. was given the opportunity to read L.C.'s emails dated April 3 and 4, 2013 to the corporate Respondent's paralegal setting out his response to N.A.'s complaint about him, marked as Exhibit R1-Tab C. A.S. questioned N.A. about L.C.'s assertions in the emails. N.A. denied making personal calls during the day, while at work for the corporate

Respondent. She denied ever calling or texting L.C. outside of business hours. N.A. denied telling L.C. about any boyfriends, her husband or any men she was interested in or anything of a personal, sexual or intimate nature as alleged by L.C. in his emails. N.A. said she did not have the social life described in L.C.'s emails because her 3 children kept her very busy in the evenings and weekends. She said she had not even been on a date in the past 7 years.

[130] It became clear during A.S.'s cross-examination of N.A. that the file the owner of the corporate Respondent was asking N.A. to produce during the January 25, 2012 office meeting was the signed copy of her acceptance of the job offer (Exhibit HR1-Tab 3). N.A. said she had forgotten to return it to Ms. Dinner in October, 2011.

[131] While being cross-examined by A.S., N.A. acknowledged she left out 2 T-4's in her 2012 calculation of her income in Exhibit C1. The 2 T-4's were marked as Exhibits V1 and V2 in the corporate Respondent's Book of Documents. One is for \$98 from Zuchter Creative Caterers Inc. and the other is for \$366.48 from Balnet Management Group Inc. C.O.B. West. N.A. explained she overlooked them in error and denied she intentionally left them off her calculation to mislead the Tribunal.

[132] Although L.C. had not followed the pre-hearing direction in order to participate fully at the hearing, the parties did not object to L.C. being offered the opportunity to cross-examine N.A. The Tribunal confirmed L.C. was not to ask N.A.'s address since she did not want that disclosed, and gave the same direction to not be aggressive or argumentative with the witness.

[133] N.A. agreed with L.C. that when he asked her what kind of man she would be interested in, she told him she would be interested in an Italian man. N.A. acknowledged that she had called him from the office landline the day that he was out and she was covering dispatch. N.A. insisted she never called L.C. at any other time, or from her personal phone. N.A. denied she ever sat on L.C.'s lap or called or texted him from her cell phone.

[134] The Tribunal asked questions to clarify how N.A.'s hours fluctuated. N.A. explained that she would normally leave at 3:30 but if she had work to finish, she would stay up to

4:30 to finish it or as directed by Ms. Dinner. She was always home by 5:00 p.m. She worked through lunch and did not leave the premises so she was never docked pay for a lunch break.

[135] N.A. confirmed she had no idea what the employment benefits would be after her probationary period, other than 4% vacation pay. N.A. believed she was still experiencing financial loss having to work 4 part-time jobs at different locations to earn the income she would have earned at the corporate Respondent's business had she stayed working 35 hours a week at \$14.50 an hour plus vacation pay.

2. Janette Dinner

[136] Ms. Dinner's direct examination by counsel for the Commission and her cross-examination by N.A. and the owner's son, A.S., occurred on July 26, 2016. Ms. Dinner was recalled as a witness on July 27, 2016 in relation to the software installed on the dispatch computer and again by phone on July 29, 2016, in rebuttal to the evidence given by the owner on July 28, 2016.

[137] Ms. Dinner was hired by the corporate Respondent as the Office Manager starting September 20, 2010 and until March 16, 2012.

[138] Ms. Dinner testified that on paper, employees reported to her, but she did not have decision making authority, including discipline, hiring, firing, etc. Ms. Dinner would advise the owner of all issues raised by employees, the owner decided all issues and often instructed Ms. Dinner to communicate the decision or response to the employee. Ms. Dinner confirmed that the owner was L.C.'s supervisor and Ms. Dinner was N.A.'s supervisor so Ms. Dinner would bring up any complaints about L.C. to his supervisor, the owner.

[139] Ms. Dinner confirmed she wrote the offer of employment marked Exhibit HR1-Tab 3. Ms. Dinner confirmed N.A. was hired as a full-time employee and that usually after the 3 month probationary period, the hourly wage and benefits was reviewed, but she did not recall that N.A. was told what the hourly wage would be after the probationary period ended.

[140] Ms. Dinner explained the docking a half hour for the lunch break was a legal requirement to offer employees a half hour break per 5 hours of work. Initially, N.A. did not take a lunch break and left a half hour early to be home for her children after school. Later, the owner disagreed with the arrangement and insisted N.A. take a 30 minute lunch break, for which she was not paid.

[141] Ms. Dinner described N.A.'s job duties as making cold calls seeking advertising for the side of the trucks, making lists, filing, and simple invoicing. Ms. Dinner said N.A. performed her job duties in a satisfactory manner.

[142] Ms. Dinner recalled that about a month after N.A. started working for the corporate Respondent, N.A. told her that L.C. was saying inappropriate things to her. Ms. Dinner asked N.A. if she wanted her to speak to L.C. or tell the owner, and N.A. responded that she didn't want Ms. Dinner to do anything for now and that she was just letting her know of the situation. Ms. Dinner decided to speak to the owner about N.A.'s complaint about L.C. anyway, to give him a heads up. The owner told Ms. Dinner he would talk to L.C.

[143] Ms. Dinner confirmed she had three conversations with N.A. regarding L.C.'s offensive behaviour toward her: November, 2011, January 19, 2012 and January 25, 2012. Ms. Dinner confirmed that N.A. graphically described what L.C. said to her in their discussions prior to January 25, 2012.

[144] Ms. Dinner testified that she also told Ms. Mohammed what N.A. reported L.C. had said to her that she found offensive. Ms. Mohammed told Ms. Dinner that if N.A. dressed in a skirt and blouse showing cleavage, then she should be called whatever L.C. is saying to her. Ms. Dinner said she told Ms. Mohammed that she can't say that about N.A. She explained to Ms. Mohammed that even if a woman was walking around naked, a man had no right to behave toward her the way it was alleged L.C. had behaved toward N.A. Ms. Dinner said she believed that Ms. Mohammed would just never understand this because of her cultural beliefs.

[145] Ms. Dinner testified that when N.A. complained to her about L.C.'s behaviour toward her, she warned L.C. to watch what he was saying to N.A. because there would be negative consequences for him if he did not stop. Ms. Dinner testified that L.C. responded

to her by saying that three other women complained about his behaviour and nothing happened.

[146] Ms. Dinner recalled that after he was hired in September, 2011, L.C. told her that while he was employed at an appliance warehouse, a female employee complained about his behaviour toward her and he was let go. (see Ontario Human Rights Decision - Exhibit HR1-Tab 27)

[147] Ms. Dinner confirmed she did not witness L.C.'s alleged offensive behaviour toward N.A. She had already experienced similar comments from L.C. directed to her so there was no doubt in her mind that L.C. did what N.A. had alleged he had done. As an example, Ms. Dinner said L.C. told her he would like to rip off her skirt and perform oral sex on her, but using very vulgar, sexually explicit language. She testified that L.C. said this to her a couple of times and she told him she would tell the owner and his wife, if he kept it up. L.C. responded by saying he was just joking. L.C. said offensive things to Ms. Dinner when no one else was around, so the fact there were no witnesses to L.C.'s alleged behaviour did not cause Ms. Dinner to doubt N.A.'s allegations.

[148] Ms. Dinner testified that she tried to discuss L.C.'s offensive behaviour toward her with the owner but it was difficult because he wanted her to repeat what L.C. had said, which was embarrassing. Instead, Ms. Dinner told the owner's wife, Ms. Mohammed, what L.C. had said and asked her to explain what L.C.'s comments meant to her husband. Ms. Mohammed's advice to Ms. Dinner was to ignore L.C. and leave it to her husband to deal with L.C. Ms. Mohammed said she'd talk to her husband.

[149] Ms. Dinner recalled she told the owner herself that L.C. had been offensive toward her as well, but she isn't sure if this was before or after the January 25, 2012 meeting.

[150] Ms. Dinner testified that subsequently she didn't have many interactions with L.C., because her job did not require that she deal with him. She avoided going to the dispatch building when L.C. was working. If she had to go in the dispatch building, she entered before L.C. got to work, or waited until she saw L.C. go outside for a cigarette or into the yard area before entering the dispatch building.

[151] L.C. did not make any more offensive comments to her until her last day of work when he said that since she wasn't his manager anymore, he could take her out back and f*** her.

[152] In relation to the ROE marked Exhibit HR1-Tab 9, Ms. Dinner testified that she prepared and signed it. Ms. Dinner said she was instructed by the owner regarding the preparation of ROE's. She could not explain why the ROE was dated January 1, gave expected date of recall as January 9, 2012 or whether N.A. had actually worked between January 1, 2012 and January 9, 2012. Ms. Dinner confirmed no other employee received an ROE at that time.

[153] Ms. Dinner testified that she recalled the owner instructed her to prepare the ROE to lay off N.A. at some point so she could get employment insurance benefits rather than fire N.A. She testified that the owner's decision to lay off N.A. was related to N.A.'s complaints about L.C.'s behaviour. She testified that the owner hoped that if N.A. could get employment insurance benefits, she would not come back to him for anything else. It was unclear if this was the ROE marked Exhibit HR1-Tab 9.

[154] Ms. Dinner confirmed that she had a meeting with the owner prior to Monday, January 19th, and since she did not work on weekends, she thought it was probably late on Friday afternoon, January 13th. The owner was upset about the conflict between N.A. and L.C. and said he couldn't understand why N.A. and L.C. weren't able to get along with each other and just do their jobs. Ms. Dinner told the owner she thought there was a basis for N.A.'s complaint. The owner never said he didn't believe N.A. The owner's response was to say it was so difficult to get a dispatcher, and he needed a dispatcher to continue in business, whereas he could always get somebody else to do administrative work.

[155] The owner's decision was to reduce N.A.'s hours to 2 or 3 days a week, in the hope she would just leave and find another job so they wouldn't have to worry what to do with her or L.C. The owner directed Ms. Dinner to tell N.A. on January 19th, 2012 that her hours were reduced and no ROE or letter was prepared. Ms. Dinner confirmed no other employee's hours were reduced during the period N.A. was employed with the corporate Respondent.

[156] Ms. Dinner explained to the owner weeks before the January 25th meeting that if L.C.'s behaviour continued, it was going to bite the owner in the ass and that he would get into trouble for it. After the January 25th meeting, she told the owner again that L.C.'s behaviour was going to get the owner in trouble if he didn't fire him.

[157] Ms. Dinner testified that the only issue the owner raised with her regarding N.A.'s job performance was that she was not keeping up with the invoicing. Ms. Dinner explained there was a lot of invoicing and she did some every day to keep up with it. Ms. Dinner stated that if N.A. was not working every day, the invoicing would be piling up on her days off. Ms. Dinner did not recall an incident involving N.A. not giving a driver a folder containing his required paperwork for a route so that the driver was held up at the scale waiting for the folder to be delivered.

[158] Under cross-examination by A.S., Ms. Dinner confirmed that L.C.'s probation was extended because he sent a truck to the wrong location and that she signed the discipline letter to L.C. but clarified it was prepared at the direction of the owner. Ms. Dinner acknowledged that she recommended to the owner that Cassandra should be fired for poor job performance and the owner let her make that decision.

[159] Ms. Dinner confirmed that she, Ms. Mohammed and the owner had access to file cabinets. N.A. only had access to file cabinets if asked to pull a file. The drivers' files contained a lot of information that they were required to maintain. The non-driver employees' files contained their resume, letter of employment and any paperwork added during employment. Ms. Dinner stated that as far as she knew, N.A.'s file was only missing her letter of employment.

[160] Ms. Dinner said she never saw N.A. sent to yard to drive or move the trucks. She agreed that N.A. wasn't qualified to drive or move the trucks. If Mr. Hussein needed help with a diagnostic, she could see N.A. being sent out to help. Ms. Dinner went to help Mr. Hussein with the diagnostics and computer because he lacked computer skills. She agreed that sometimes Mr. Hussein needed someone to hold down a brake pedal to test the brake lights, or hold a signal light on.

[161] Ms. Dinner acknowledged the owner was aggressive toward his wife but she never saw him abuse her. She testified that once Ms. Mohammed didn't come into work for a week and when Ms. Dinner called her to ask why, Ms. Mohammed told Ms. Dinner her husband slapped her across the face during an argument.

[162] Ms. Dinner confirmed she met with federal government advisors after N.A. started working for the corporate Respondent in October, 2011 and that the training included sexual harassment. She said she understood the employer's responsibility to take action if a complaint is made. She understood how it was to roll out which is why she asked N.A. to write it down so she could give it to the owner.

[163] Ms. Dinner said she wasn't aware of the retaliation provision of the legislation. She didn't discuss retaliation with the owner, she just told him if he didn't get rid of L.C., something bad would happen.

[164] Ms. Dinner said she knew the January 25th meeting was wrong because she knew the complaint should be kept confidential and not shared with others. The owner should have met privately with N.A. to ensure he understood her complaint. The owner was angry and aggressive toward N.A., putting her on the spot and blaming her for the situation. Ms. Dinner said that she had not seen him that angry before.

[165] Under cross-examination by N.A., Ms. Dinner acknowledged the owner yelled and was aggressive when he was angry. She agreed it was the owner's temper and aggression during the January 25, 2012 meeting made everyone feel they could not leave.

[166] Ms. Dinner said that after the January 25, 2012 meeting, she told Ms. Mohammed and the owner, they should fire L.C. She also told them L.C. shouldn't have received a raise or employee benefits before his probation period was over, in light of the allegations against him. Ms. Dinner said she refused to do his payroll. The owner and his wife hesitated, made excuses and commented how hard it was to get a dispatcher and that L.C. was willing to work for a low income.

[167] Ms. Dinner acknowledged she felt unappreciated by the owner, because she covered the business 24/7 while the family went to Turkey, and when she asked for a raise

in 2012, the owner refused, telling her that if he paid her more, she wouldn't work as hard. Ms. Dinner said she quit in response to the owner's refusal to follow her recommendation that they fire L.C.

[168] Ms. Dinner said that once she gave her notice, the owner and his wife told her that if she stayed, she could fire L.C., if she wanted. Ms. Dinner told them it was too late, she'd lost faith in them. She gave them her six weeks' notice a couple of weeks after the January 25, 2012 meeting and her last day worked was March 16th, 2012.

[169] Ms. Dinner acknowledged she told Ms. Mohammed that if they ever fired L.C., she'd come back to help them because her issue wasn't with she and the owner, it was L.C. and their refusal to deal with L.C..

Ms. Dinner recalled on July 27, 2016 regarding the K9 software installation on the dispatch computer.

[170] Ms. Dinner explained that within a couple of weeks after L.C. was hired, the owner was upset if either of them were on Facebook or social media, so the owner wanted to be able to block these sites. She did a google search and found the K9 software to download.

[171] When L.C. was not at work, Ms. Dinner and the owner reviewed the browsing history of the computer L.C. used to select the sites to block with the K9 software. The browsing history included Facebook, MSN, U-porn, and normal news sites. The owner was upset about the browsing history and he wanted everything blocked.

[172] Ms. Dinner confirmed she installed the K9 software on L.C.'s dispatch computer and had the password. Ms. Dinner explained that because the software blocked most internet sites, L.C. had trouble using google maps so that's when A.S., the owner's son, got involved to fix that issue. A.S. installed the K9 software on her computer as well and changed the password.

[173] A.S. asked Ms. Dinner if she and the owner discussed letting L.C. go after seeing the browsing history on his computer. Ms. Dinner said she didn't recall. She did recall that

it was very difficult to find a dispatcher so the owner wanted to deal with problems but keep the dispatcher.

[174] Ms. Dinner agreed it was her job to advertise for and hire a dispatcher. L.C. was the only applicant at the time. The weekly wage was noted in the job posting and L.C. was the only applicant.

[175] Ms. Warsame asked her if the owner said anything when she clicked on the U-porn website. Ms. Dinner said there was an awkward moment when she clicked on the webpage, then she shut it down and neither she nor the owner said anything.

[176] L.C. asked Ms. Dinner if she could tell how many visits had been made to the U-Porn website. Ms. Dinner said she didn't know. L.C. suggested other people used the dispatch computer. Ms. Dinner said she never saw anyone else at his computer, which had a password to access.

Ms. Dinner recalled on July 29, 2016 by phone in response to the testimony of the owner on July 28th that he was not aware of the sexual nature of L.C.'s behaviour toward N.A. before the January 25, 2012 meeting.

[177] Ms. Dinner says that within a month of when N.A. started she spoke to the owner and his wife about N.A.'s complaint to her to give them a heads up:

“So I explained to them what it was and then (the owner) asked me to explain it better because I used the terms that (L.C.) used. So he didn't understand what it was. So I said I'm a little bit uncomfortable telling the owner what it is. So I explained it to Bushra with (the owner) standing there and I even pointed and then she explained it to him and then he got upset. That's when (the owner) said okay I'd better talk to him about this.”

[178] Ms. Dinner said when N.A. came to her the second time in January to complain about L.C.'s behaviour toward her, she went to the owner and his wife and told them that N.A. complained again about L.C.'s behaviour because it was continuing. Ms. Dinner said she asked the owner if he spoke to L.C. and he said he had and he said he would speak to him again. Ms. Dinner confirmed that the owner told her he spoke to L.C. twice about his behaviour toward N.A. that N.A. found offensive. She confirmed she was not present when the owner had these discussions with L.C. so she does not know what was said.

[179] Ms. Warsame asked Ms. Dinner if the reason she explained to Ms. Mohammed was because she speaks better English than the owner. Ms. Dinner explained that she just felt more comfortable speaking to Ms. Mohammed about what L.C. was saying and doing to N.A. The owner was present throughout and Ms. Dinner confirmed her belief that the owner understood what L.C.'s comments meant.

[180] A.S. asked Ms. Dinner if she explained the consequences of L.C.'s actions. Ms. Dinner responded that she told the owner and his wife many times that what he's doing is wrong and they were going to get in trouble for L.C.'s behaviour if they didn't stop it or fire him. Ms. Dinner confirmed she told the owner and his wife this before and after the January 25, 2012 meeting.

[181] A.S. questioned Ms. Dinner regarding the sexual harassment training she received from the federal government representatives. Ms. Dinner's recollection was that they came to the premises just before she gave her notice. The harassment policy posted in the offices was obtained from the government website shortly after she began working for the corporate Respondent in September, 2011. In her previous job with a large company, she worked in accounting, not human resources, so she was aware of harassment policies generally but had no training or experience in harassment.

[182] Ms. Dinner referred to the issues regarding N.A., L.C. and herself in her resignation letter. Ms. Mohammed wanted to talk to her about it so they met at Tim Hortons. Ms. Mohammed asked Ms. Dinner if they fired L.C., would she come back. Ms. Dinner said no, because L.C. was still with the company and she didn't want any part of the problems he was going to cause the company.

[183] Ms. Dinner agreed with A.S. that the owner and his wife would miss her service to the company, but in her view, they valued a dispatcher over her and N.A. and Ms. Dinner said Ms. Mohammed could do many aspects of her job.

[184] Ms. Dinner left her resignation letter on the owner's desk after she spoke with Ms. Mohammed. The following workday, they discussed it. They said don't worry, we'll figure things out. Not once in that meeting did they say that they would fire L.C..

[185] Ms. Dinner said that later, the day she was going on vacation, Ms. Mohammed called her and begged her to come back to the company, promising her everything would be okay and they would figure it out. Ms. Dinner said she told her she could not come back because L.C. was still there and she didn't want to deal with L.C. anymore.

[186] When questioned by A.S. about other conversations with Ms. Mohammed after she left the company, Ms. Dinner acknowledged Ms. Mohamed came to her house months after she left. Ms. Mohammed told her they didn't like her replacement and wanted her back and promised they would fire L.C.. Ms. Dinner said she also went to the office one day when the owner was not there to talk to Ms. Mohammed.

[187] A.S. asked Ms. Dinner if she ever offered to Ms. Mohammed to come back to the company even if L.C. was there because Ms. Dinner thought she could deal with L.C. Ms. Dinner said she couldn't be sure if she said that to Ms. Mohammed.

[188] A.S. challenged Ms. Dinner's view that L.C. had the upper hand in the company when she disciplined him over an email. Ms. Dinner responded to say that she disciplined L.C. on behalf of the owner and that she never wrote a document without the owner's request or direction. She gave an example, when L.C. and N.A. requested vacation, she went to the owner for approval.

[189] A.S. read portions of messages between N.A. and Ms. Dinner discussing her human rights complaint against the corporate Respondent. A.S. suggested to Ms. Dinner that she helped N.A., gave evidence and provided information, while at the same time, maintaining a friendship with Ms. Mohammed, in order to harm Ms. Mohammed and the owner. Ms. Dinner acknowledged she thought the owner and his wife made the wrong decision to not fire L.C. when she asked them to and before she resigned.

The Corporate Respondent's Witnesses

3. Mahir (Mark) Marson

[190] Mr. Marson owned and operated the Petro Canada Service Station in Vaughn, Ontario, which included a coffee shop called "Neighbours Café". Mr. Marson employed N.A. part-time in the coffee shop.

[191] Mr. Marson testified that his Petro Canada location supplied the diesel fuel for the corporate Respondent's trucks. The owner came in to Mr. Marson's gas station every day to pay for his drivers' fuel purchases. Mr. Marson testified that the corporate Respondent was one of his biggest customers and he believes his staff knew this and recognized the corporate Respondent's owner when he came in to pay for the fuel purchases.

[192] Mr. Marson testified that he did not have many conversations with N.A. while she worked with him. A.S. asked him what other people in his business told him N.A. had talked to them about, but the Tribunal reminded A.S. about the hearsay rule. Mr. Marson confirmed his knowledge of N.A.'s conversations with others at his business were reported to him by his nephew, whom he didn't name, and that he had not heard the comments himself. Notwithstanding the explanation and caution regarding hearsay, Mr. Marson testified that his nephew told him N.A. said she was looking for a rich guy so she wouldn't have to work anymore.

[193] When Mr. Marson learned the owner planned to hire N.A., Mr. Marson told the owner that near the end of N.A.'s employment with him, she was not performing her best. He warned the owner that he heard she was looking for a rich guy and to just be careful of her work ethic.

[194] Under cross-examination by N.A., Mr. Marson acknowledged that he had no specific knowledge or information to confirm what, if anything, N.A. knew about the owner or his business while she worked for Mr. Marson. Mr. Marson acknowledged that he assumed all of his employees knew who the owner was because he came in daily to pay for fuel, buy food and coffee.

[195] Mr. Marson agreed with N.A. that she would sometimes work the drive-through window located at the back of the store, which had its own cash register and did not have a view of the diesel gas pumps. Mr. Marson agreed that the Petro Canada gas sales had a separate area and cash register where the owner would come in to review and pay for his fuel charges. Mr. Marson agreed with N.A. that N.A. did not work in the Petro Canada gas sales area or its cash registers.

[196] Mr. Marson could not remember how many hours a week N.A. worked in the Café, just that it was part-time hours. N.A.'s suggested to Mr. Marson that she worked 2 or 3 times a week for no more than 8 months for Mr. Marson. Mr. Marson had no recollection that her term or hours were any different than as suggested by N.A.

[197] Mr. Marson agreed with N.A. that she did not quit her job. Mr. Marson's lease for the premises expired and he was moving to the airport. He offered all of his staff a position at the airport location, including N.A. He acknowledged that N.A. declined the offer because it was too far for her to travel. Mr. Marson agreed that he was concerned about all of his staff and if they were unwilling or unable to work for him at the new location, he referred them to others for employment, for example, Patricia was referred to the owner of the corporate Respondent to work as his housekeeper. N.A. was referred to the corporate Respondent's trucking business.

[198] Ms. Warsame had Mr. Marson draw a map depicting the layout of the Petro Canada business as it was when N.A. worked for him. It is marked as Exhibit A1.

[199] In rebuttal evidence, N.A. said she worked for 8 months or so for Mr. Marson, well beyond a three-month probationary period. She believed she was a good employee. Mr. Marson's recollection of her circumstances was wrong, for example, she had 3 children, not 2, and she was not separated when she started working for him and she is not divorced.

[200] N.A. explained that there was a large expanse of land between Neighbours Café and the corporate Respondent's business so she couldn't see much of its business activity from the drive through window. She only noticed the customers that came to her service counter for coffee. She did not pay attention to customers at the car wash, gas pumps, or to other service counters in the store.

[201] In relation to L.C., N.A. said that she initially thought L.C. would stop making offensive comments to her if she told him the comments were disgusting and asked him to stop because he feared she would complain about him. But he didn't stop, so she talked to Ms. Dinner because she trusted her. The next time, she talked to Ms. Mohammed because she was kind and open and she thought she would be much easier to talk to than

her husband, the owner. N.A. does not recall planning to talk to Ms. Mohammed on January 13th about L.C. and she thought she probably did because L.C. made an offensive comment to her that day and she did not recall seeing Ms. Dinner in the office that day.

4. Mustafa Hussein

[202] An official interpreter was utilized for Mr. Hussein's evidence. Mr. Hussein worked for the corporate Respondent during the period N.A. was employed with the corporate Respondent. Mr. Hussein's job was primarily as a mechanic but he did any other task the owner requested of him, such as plumbing, electrical, carpentry, etc.

[203] Mr. Hussein stated that N.A. helped him test the brake lights in a truck once. He remembers changing the drive belt on N.A.'s vehicle and maybe an air filter, but he wasn't sure about the air filter.

[204] Mr. Hussein stated that the owner held the January 25, 2012 meeting in his office, which was small, and the owner remained standing throughout. Mr. Hussein thought he also remained standing in the doorway. Ms. Mohammed and N.A. were in the meeting. He doesn't remember the door being closed, in fact his recollection was he was standing just outside the open doorway throughout the meeting. Mr. Hussein said the owner was yelling at N.A., and N.A. cried. Mr. Hussein didn't understand everything that was said because it was in English and he is not fluent in English. Mr. Hussein said he was very uncomfortable being present because he felt embarrassed for N.A. and he just wanted to leave.

[205] After the meeting, Mr. Hussein asked the owner why he would treat N.A., a woman, like that. The owner told him he didn't know what he was talking about and that was exactly how you deal with such people. Asked what the owner meant by "such people", Mr. Hussein said he didn't know.

[206] A.S. asked Mr. Hussein if he ever walked into the dispatch office and saw N.A. sitting on L.C.'s knee. Mr. Hussein responded by complaining that before the hearing, the owner contacted him because he wanted their answers to questions asked by the judge to be the same, L.C. contacted him to say N.A. had brought his name into this matter.

Mr. Hussein was upset and said he felt intimidated by the owner and L.C. contacting him. Mr. Hussein said N.A. also left a message for him that she wanted his help but he did not respond. He said did not feel intimidated by her message.

[207] Mr. Hussein said that he remembers walking into the dispatch office and seeing N.A. sitting close to L.C., in front on L.C.'s computer. Mr. Hussein acknowledged he asked L.C. if N.A. was sitting on his leg when Mr. Hussein saw N.A. sitting next to him and L.C. confirmed she was. Mr. Hussein later told the owner he saw N.A. sitting on L.C.'s leg but this was only because L.C. told him that she was. Mr. Hussein says he really doesn't know if N.A. was sitting on L.C.'s leg or not.

[208] Mr. Hussein says he was paid a salary but was expected to work long hours on weekends and holidays. The owner said only Canadians got statutory holidays off with pay. He asked to be put on hourly wage and the owner refused and told him to quit. After he was injured, he told the hospital he was a friend, not employee and the owner canceled his health benefits without notice.

[209] Mr. Hussein said he complained to Ms. Mohammed about the way her husband, the owner, treated him but he did not think she had any control over the owner so he did not blame her for the actions of her husband.

[210] Mr. Hussein said some drivers came to him with the problems they were having with the owner and when he told the owner and his wife, the owner reduced the driver's working hours.

[211] Mr. Hussein is from the same country and cultural background as the owner and he said the owner knew better than to treat a woman the way he treated N.A. during the January 25, 2012 meeting. He said that women should be taken care of and he was astonished by the way the owner treated N.A..

5. L.C. (individual Respondent)

[212] L.C. agreed with A.S. that he warned N.A. about her job performance many times because she spent a lot of time texting on her phone while at work. L.C. said he learned the details of N.A.'s personal life because she openly talked about her personal life.

[213] A.S. asked L.C. leading questions regarding N.A.'s work ethic, time spent on personal issues during the work day, etc. as follows:

A.S.: "In terms of (N.A.'s) work ethic and use of time at the company did you notice that she was using company time for other things outside of her work?"

L.C.: "Oh absolutely, and I did speak to her about that on a few occasions, the first week she was actually there she spent most of her time looking for a jacket for her daughter in the US. So instead of making the phone calls necessary to make, I guess she was doing some type of sales or advertising at the time."

L.C.: "She would be calling around to find this jacket, specific goose jacket, \$500 jacket for her daughter and this is what she spent – any time she came over to that office that's basically what she did the first week. "

A.S.: "On her break?"

L.C.: "That was definitely during company hours because at times she would come over for lunch, wouldn't eat and just be on her phone. But then most times when it's outside of lunch meaning early in the morning, but it will be basically because she indicated she had no work to do."

[214] A.S. asked L.C. leading questions in relation to his assertion that N.A. sat on his lap as follows:

L.C.: "So we were there one day and N.A. asked me to help her with the spreadsheet. She came over to my desk, for some reason she decided to pop herself on my lap. At that time...."

A.S.: "Lap or leg?"

L.C.: "In the lap leg area, so her buttocks basically was on my leg. Mustafa walked in and asked what was going on, then she got up. It was mere basically seconds, it just so happened that he walked through that door, surprising like he testified, that he does not ---he didn't see anything."

A.S.: "Did you bring this up to the (owner) at the time or did you just dismiss it?"

L.C.: "I actually dismissed it somewhat, I was offended by it first of all. This, I can't put a date on it but I could tell you that it was well into, close to, at least in mid November, at least, it was there a while (sic), at least, I would say at least two months into her employment."

[215] A.S. questioned L.C. about an occasion when a driver was stranded at a scale in London, Ontario without the folder he needed to carry on to deliver his goods and someone had to drive 2 hours to take the driver his folder. L.C. stated the folder was left on N.A.'s desk and it was N.A.'s responsibility to give the folders to the driver.

[216] L.C. testified that Ms. Dinner was his superior and that she wrote the memos/letters on behalf of the company. L.C. agreed with A.S.'s suggestion that Ms. Dinner wouldn't let any complaint or objection to his performance or behaviour go without a written reprimand and that most of the time he reported to Ms. Dinner and not the owner.

[217] Ms. Warsame referred to L.C.'s job offer marked Exhibit HR1-Tab 24, that states he will report directly to the owner and L.C. responded that 9 times out of 10 the owner was busy or away and Ms. Dinner was in the office every day so he ended up reporting to Ms. Dinner.

[218] L.C. denied ever saying anything offensive to Janette Dinner and said if he had, she would have terminated him immediately: "...she wrote me up, think about it, she wrote me up from just sending that – a silly incorrect email, she's going to accept me speaking in this manner to her?"

[219] L.C. denied Ms. Dinner ever spoke with him regarding a complaint by N.A. of his behaviour or that the owner ever discussed N.A.'s complaint(s) about him with him, before the complaint was actually received in the mail.

[220] L.C. stated that he believed N.A. was looking for another job while working at the corporate Respondent. He said she took off work one day for a meeting in relation to joining the police academy. He said N.A. called him on his cell phone to say she would be late arriving at the office because her meeting took longer than she expected.

[221] L.C. claimed N.A. called him more than once on his personal cell phone after working hours and not related to work. L.C. said N.A. would complain about Ms. Dinner. L.C. said that he and N.A. had no problems with each other until her hours were reduced. Once her hours were reduced, she no longer spoke to him.

[222] L.C. stated that he cleaned the men's washroom in the dispatch office. He agreed with A.S., that in the winter there were problems such as trucks getting stuck, trucks not starting because of extreme cold, air lines freezing, malfunctioning brakes due to the cold weather. He agreed with A.S. that the owner responded to calls from drivers outside of regular working hours, sometimes had to fill in for a driver if a driver couldn't make it to work and helped Mr. Hussein in the garage.

[223] L.C. denied he took cash from drivers to give them the best loads or that he ever asked a driver to pick him up coffee. Sometimes drivers called him on their way back to the yard and offered to bring him a coffee. L.C. denied viewing pornography at work.

[224] L.C. said that when the corporate Respondent sold the business, he went with the new owner. He testified he left the new employer in January, 2016 because they were bouncing cheques.

[225] The Tribunal gave L.C. the opportunity to read the complaint by N.A. and add anything to his testimony before he is cross-examined. After reading the complaint, L.C. stated:

“Okay. Well these allegations, they were made up. They were made up once her hours were reduced. She indicated she spoke to Janette in regards to it but she believed that I must have told (the owner) that she's not working. I explained to her that I don't need to tell him, there's a camera, that he can see what you're doing in that office on a daily basis. She refused to believe that, but that's why these allegations were made up. I never once said anything to her about anything sexually, any sexual conversation me and her had was basically her telling me about her escapades with her ex-boyfriend, what should she do, she was in love with this man, they had sex, he no longer calls her, what should she do. I gave her my point of view, I said right, move on. How do you feel about it, actually seemed concerned. Does she openly tell me these things. Many occasions she would ask me what was that guy's name that came into the office because I never introduced her to anybody, that's another fact that she put out. She would introduce herself, wanted to find out what they were worth, how much money they had and what they did for a living, what type of car do you drive because she only goes into certain vehicles.

With regards to the pizza pockets I always wondered why somebody would be watching me eat, pizza pockets were actually very affordable for me at the time, they come out of the microwave hot and the only thing I did with

those was blow inside of that to cool them down. And that is what she's indicating that I am using my tongue and all these other allegations.

In regards to introducing her as a single lonely woman, no, that is incorrect as well. She introduced herself, she mentioned a guy named Victor, I happened to be on the phone because that's what I do constantly, they were talking over me. I was sitting here, the door is over here, she's over there, I was on the phone, I was unable to talk to him at the time. He says "who are you?" and she introduced herself. He walked past my desk, sat down with her and started having a conversation but here she's indicating that I introduced her. The water guy, Steve, he came to the door one day, I guess it was her first week, he said, oh, who's the new girl, again the phone rang, I jumped on the phone because that's what I do and they again had their own conversation (inaudible) the water guy, et cetera, et cetera, it was never me introducing her to anybody.

In regards to her explaining her body parts, first of all that's very foul, it's disgusting, I've never ever once said anything about her body parts.

In regards to asking her out, I haven't been out to a club or been out since I was 19 years old, and if I were to go anywhere I would have to bring my wife with me. So there was no inviting on any dates, there was no inviting of any get-togethers. The only time we actually mentioned anything about going anywhere was her, Janette was actually there, and she said maybe we should get, maybe, that was the word, maybe we should all get dressed up one day and go out somewhere. There was no mention of where, there was no mention of Sugar Daddies, there was no mention of a club, just to go out. She indicated she would have to drive because at the time I was driving a little Yaris, I'm not sure what Janette was driving, but she had her beautiful BMW and that's the only thing that she could roll in is that high class vehicle."

[226] The Tribunal asked L.C. why he thought N.A. made up these allegations and he responded as follows:

"Her hours were reduced. She walked in on the 16th and said (to me), you said something to (the owner). I said I didn't say anything to (the owner) about her work ethics. So she was left basically entirely to do what she needed to do without anybody really over her head watching her. But she kept on indicating she had no work. So she believed that I told (the owner) that she was sitting there texting and doing other things besides her work where (the owner) don't have to ask me, I don't have to tell him because the camera was positioned above her desk and what she would do is actually hide in the corner where it's actually off camera so she could do her texting. This is where (the owner) couldn't see on the camera and this is what she spent most of her time doing when she was in our office. There wasn't much time for me to even have conversations with her because I'm

constantly making phone calls, you've heard about the load link, if you don't call in a split second you don't get that opportunity, that load because you're going to have 20 other people in front of you. So that was where my eyes were always geared to."

[227] The Tribunal asked L.C. what he thought N.A. had to gain by making up these allegations. L.C. responded:

"I believe it was for financial reasons. It was all about taking the next step to see what she can get. That she would be compensated in some form because she made the allegations. And then of course they did not terminate because, you know, she was the good worker."

[228] The Tribunal asked L.C. when he found out N.A. was alleging that he sexually harassed her and he responded as follows:

"That didn't come up until we received it in the mail, oh, I got a copy from, it was mailed to (the corporate Respondent) I believe. After she left the company. We talked every day besides that day on January 16th when she came in on the Monday and I guess it was around that time that she got her hours cut because she stormed in that morning, I'll never forget, she goes "you said something". I said I didn't say anything, like I told you I did not say anything. Otherwise we talked every day, good morning, good afternoon, she would need help with something, I would go and give her a hand and none of this came about until her hours were reduced, all of a sudden I became this villain from what she's saying."

[229] While being cross-examined by Ms. Warsame, L.C. denied any conflict or problems between he and N.A. until January, 2012, when she stormed into the dispatch office on a Monday because her hours were reduced and she said it was because of him. He stated:

"The only sexual talk that we've ever talked about was her and her intimacies and her escapades on weekends. Well she's had, we've had a few conversations where she used to work elsewhere part time at local, I think it's a wedding hall of some sort and she would come in and tell me how the men are drooling over her and that she's making x amount of dollars from the tips and things like that. And I said what do you do, are you sure you know what you're doing. She said oh yes, they're very friendly, you know, how they all want to marry her and take her to their country and basically these are the conversations that we would have."

[230] Asked by Ms. Warsame about N.A. sitting on his lap, L.C. testified that N.A. sat on his "...lap area, so basically, I can't remember, the leg area, so the upper leg, not down here, upper leg."

L.C. said:

“Yes, absolutely. Again she would need help, she (inaudible) she was a stay at home mom for many years so she had no – much experience of I’m sure, office work, I’m not sure what she did prior. So she would ask for help so that way she would be able to get her work done, she was unable to open little things like spreadsheets and things like that. And basically that particular day she asked for help, I wasn’t able to go to her desk, she came over to mine and all of a sudden without notice plopped on my leg. Like was literally sitting on my leg. That’s when (Mr. Hussein) walked in, opened the door, “what is going on here, and she got up. He closed the door, she said “nothing (Mr. Hussein), ha, ha, ha”, because to me at the time I didn’t take it as I should have taken it because it was something serious because if I knew it was going to come to this I would have run across and said hey (the owner), this is what happened, can you get it on video so I can have a copy. Because the office is recorded, so at that time when it happened as I said, I took it personally, I was offended but I didn’t think of anything to go to (the owner) to say (the owner), can you watch the video, she sat on my leg, in case something comes out of it. Now that I’m sitting here I should have done that, then we would have had the evidence, we would have had the video clippage for the court and everybody would have been able to see that they were both lying. There was a sitting on the leg incident. It wasn’t, maybe it wasn’t meant anything like sexual or it was just she sat down – and she was smiling, Mustafa walked in and she was smiling, but he testified he didn’t see.”

[231] L.C. denied telling N.A. she was pretty, or introducing her as a “hot chick”, asking her out or ever inviting himself and Mustafa to her place. L.C. stated N.A. was not a “hot chick by the way.” He denied ever saying N.A. would be miserable and alone – she had lots of men and dates from what she told him. He denied bragging about his sexual performance. He denied telling N.A. he missed her or dreamt. L.C. said if he licked his lips it was probably because they were dry. L.C. stated he used his camera phone to take pictures of google maps to text to drivers looking for directions and not to take pictures of N.A. L.C. stated that N.A.’s allegations are lies. He denied asking about her breasts, and if her pussy was tight. He denied saying he would hold her hips and penetrate her from behind. He denied ever saying he wanted to strangle her and said that’s a threat and if he said it, she would have called police.

[232] L.C. acknowledged he regularly takes pizza pockets for lunch. He blows on them to cool them and denied making sexually suggestive noises or tongue gestures re: pizza pockets.

[233] L.C. stated that he thought Ms. Dinner called him into the January 25, 2012 meeting and that he wasn't told what the meeting was about. He confirmed that he, the owner, Bushra Mohammed (the owner's wife), Janette, N.A. and Mustafa Hussein were present. L.C. stated the office door was not closed, because if it had been, it would have been too hot for him and he would have asked that it be left open. L.C. said he sat in a chair along the wall. L.C. says he never made any sexual comments to N.A.

[234] L.C. stated he recalled the owner said "we may have a problem or we have a few issues". A missing file was the first thing discussed. L.C. explained that the owner's language made it sometimes difficult to understand him. L.C. said he thought the owner said "we're a small company and if we have issues, we should be able to talk amongst each other." N.A. started crying and L. C. said he didn't know why she was crying. L.C. denied any voices were elevated. L.C. stated that Ms. Dinner opened the office door so N.A. could leave.

[235] L.C. said it is open to interpretation whether the owner was screaming. His voice was elevated and possibly he was angry. He remembers the owner asking N.A. why she didn't say anything earlier about his alleged sexual comments to her. L.C. thinks the owner asked him to respond and he denied there was any sexual conversation between he and N.A. L.C. said after N.A. left, there was no further discussion about her complaints about him with the owner or Ms. Dinner.

[236] Ms. Warsame referred L.C. to N.A.'s complaint marked Exhibit HR1-Tab 2 and asks him if every single allegation is a lie and he responded, that "absolutely – every single complaint."

[237] Ms. Warsame questioned L.C. about the complaint involving him when he worked at Appliance Canada (See Ontario Human Rights Decision Exhibit HR1-Tab 27). L.C. confirmed that he worked as a logistics manager at Appliance Canada and the complainant, Tamara Kennedy, was his employee for about 3 months. L.C. acknowledged

Tamara Kennedy filed a sexual harassment complaint against him, claiming she rejected his sexual advances. L.C. confirmed he was fired from Appliance Canada but says it was because Leon's Furniture purchased the company and fired all the managers.

[238] L.C. denied he sexually harassed Ms. Kennedy and said her allegation was false. He said she had a bad attitude. L.C. stated that N.A. and Tamara Kennedy are both lying about him and L.C. suggested their motivation for making false allegations was for money.

[239] L.C. gave an example of another female complainant who filed a human rights complaint seeking \$300,000 damages for her dog grooming business. L.C. was to interview the woman and when she arrived with crutches, he offered to meet with her on the first floor. The woman stated she couldn't take the job because it required her to work on the second floor. L.C. stated the company gave her \$3,000 to make the complaint go away. L.C. stated his belief that it was easy money for these people to make up stories about abuse and harassment.

[240] L.C. acknowledged the harassment policy was posted outside his office at the corporate Respondent's premises and that the owner and Ms. Dinner told him to read it. He acknowledged that he read and signed sexual harassment policies at previous jobs, that he received courses at Appliance Canada and that he is aware of what sexual harassment is. Ms. Warsame asked L.C. what he learned from his courses and he said: "That basically you can't say anything nice to a woman." "You can't say anything basically. You can't tell a woman if she's looking good, you can't comment anything about a woman's body, there's many things that I learned from that".

[241] The Tribunal asked L.C. about Ms. Dinner's complaints about his behaviour toward her and he stated: "Again it's all a fixed up plan that they have." The Tribunal asked L.C. if he thought Ms. Dinner was lying and he said: "Absolutely. Because if you have ---you're in a manager position and you allow anybody, anybody, to speak to you in any form, any manner, furthermore when was this conversation taking place, when did I make these comments to Janette?"

[242] The Tribunal asked L.C. what Ms. Dinner's motivation would be to lie about him and he responded that he didn't know. To support his theory that she was lying, he said:

“She had all the lawbooks with her. There’s no reason if I spoke to her in any sexual manner that she didn’t terminate me immediately. If you look at the evidence she wrote me up for sending an email incorrectly to a wrong customer. So if you just look at the facts there, if you’re going to write somebody up for a little mistake like that how are you going to tolerate somebody speaking to you in a form where you know it’s unprofessional, you know it’s unwelcome.”

6. Vivek Sharma

[243] Mr. Sharma owns and operates Superdeck and rented space from the corporate Respondent and he is known as “Vic” not Victor”. Mr. Sharma confirmed he never asked N.A. out and when the portions of N.A.’s complaint that refer to “Victor” were read to Mr. Sharma, he confirmed it was not him. N.A. questioned Mr. Sharma as to whether he recognized her, and he responded no. N.A. stated that she had never saw him before.

7. S.A.S, the Owner

[244] The owner described how busy he was operating his business and the demands for his time and attention. He explained that he was looking for an assistant he could train to look after things and not have to babysit them and this is what he expected of N.A. when he hired her.

[245] Ms. Warsame asked the owner if he hired N.A. full-time or part-time. The owner responded by saying that he wanted to hire N.A. on a one year contract. Ms. Dinner said something that made him decide not to go that route. He says there were 2 conditions to her employment: 1) she had vacation in March; 2) she might go work for the police and may not have to give 2 weeks’ notice if leaving. The owner stated that he had the impression N.A. wasn’t going to stay with him more than 6 months.

[246] The owner stated he thought N.A. was organized, smart because she looked smart and well-groomed. The owner testified that in the first couple weeks N.A. was perfect – more than perfect.

[247] After he hired her, he was disappointed in her as an employee. She didn’t work the hours he expected and she wasn’t accurate. He says he saw her talking to Janette while working and he worried she was not paying attention to her job and may make mistakes.

The owner became unhappy with N.A.'s job performance, for example, the drivers' files had pages are misfiled or mislabelled, driver's licenses misfiled. N.A. gave him the excuse that she was in a rush or her daughter called her. The owner denied he ever asked N.A. to drive a truck, work in the garage, or clean washroom.

[248] Under cross-examination by N.A., the owner stated he does not remember when he taught N.A. how to organize his visa statements. N.A. suggested to him it was December and the next statement would be for January, but she left the company before the January statement came in.

[249] The owner gave a disjointed, difficult to understand explanation about how he received a large fine/ticket because of a mistake made by N.A.. The owner did not provide the date or any paperwork regarding this error. The owner said the truck driver was meeting with L.C. in the dispatch office regarding his route. The owner gave the driver's paperwork to N.A. and told her to take it to the driver in the dispatch office. N.A. left the paperwork on her desk, did not give it to the driver, and the driver left the premises without the required paperwork. The owner stated that he watched the surveillance video of the dispatch office and saw N.A. leave the file on her desk and not give it to the driver.

[250] The driver arrived at the truck scale London, Ontario without the required paperwork for the load or truck. The driver waited 4 hours for the paperwork to be delivered to him and by that time, the driver had been on shift for 12 hours and could not drive on to his destination until the next day. This resulted in a substantial fine, added expense of a hotel for the driver and a missed load coming back.

[251] The owner testified that he personally overheard N.A. talking to Ms. Dinner and Ms. Mohammed about purchasing a Canada Goose jacket for her daughter for Christmas, 2011 and he was not happy that N.A. was spending time during the day with her personal shopping.

[252] The owner complained that N.A. would share personal, intimate details of her life, for example, she took a trip, her ex-husband followed and stayed in her hotel room. The owner said that when N.A. shared personal information with co-workers, he thought she was indicating "I'm open for everything."

[253] The owner said that before Christmas, 2012, there were no problems between N.A. and L.C. They had a very pleasant Christmas meal and exchanged gifts - everyone was happy. Came back after Christmas and there is fighting and hate.

[254] The owner acknowledged he reduced N.A.'s hours prior to January 25, 2012, for the following reasons: 1) it was a slow season; 2) N.A. made mistakes and the owner needed to review the situation to decide what kind of job N.A. could do; and, 3) N.A. asked that her desk be moved out of the dispatch office - there was no space for her in the main office and her desk, made of chip board, could not easily be moved without damage to it. The owner testified that he didn't want to lay off N.A. because he could not bring in another person to replace her.

[255] The Tribunal asked the owner why he reduced N.A.'s hours and he said because she asked to move from one trailer to the other. The owner said he didn't know about N.A.'s complaint about L.C. yet when he cut N.A.'s hours. The owner insisted he reduced N.A.'s hours after Christmas because nothing for her to do.

[256] In relation to the January 25, 2012 meeting, he stated he didn't have a clear idea how it happened. As is his usual routine, he starts his work day around 6:30, on the phone and running errands and gets into his office around 10:00 or 10:30 a.m. He recalled speaking with Ms. Dinner as soon as he arrived at the office, likely in the kitchen to ask her what to do.

[257] The owner initially said that Ms. Dinner didn't tell him what the problem was between N.A. and L.C. and that she told him we should have a meeting with everyone. When pressed by A.S., the owner was vague about what Ms. Dinner told him N.A. was alleging L.C. had done, saying: "I don't remember she told me that there is something as a sexual or something. But maybe she mentioned to me that probably N.A. she have a problem with LC." A.S. then suggested to his father that Ms. Dinner didn't explain the situation to him before the meeting and then once the meeting started, didn't try to intervene or interrupt him and the owner agreed with his son.

[258] The owner stated that his understanding of the complaint as of January 25th, 2012 was that N.A. and L.C. were talking to each other and N.A. did not accept it. Even after the

meeting on January 25, 2012, he thought L.C. made offensive joke(s) to N.A. and she didn't like it. He said he never really understood what sexual harassment was. The owner stated he didn't think he had to understand it because he had Ms. Dinner to deal with these complaints.

[259] The owner stated that it was Ms. Dinner's idea to call the meeting on January 25, 2012 and the owner was thinking he needed to ask for proof of the behaviour complained about. The owner stated that N.A. didn't give him a chance to understand where she was coming from.

[260] The owner held the January 25, 2012 meeting in his office, described as approximately 10ft x 10ft. The owner said his wife, Ms. Mohammed, sat in his chair behind his desk while he stood behind her. Ms. Dinner, L.C. and N.A. sat in chairs along the wall in that order. N.A. sat closest to the door and the door was open because it wouldn't close with the 3 chairs along the wall. Mr. Hussein stood near door with door behind him.

[261] The owner stated that he started the meeting by saying we are all here to work hard to make a living, not to fight or for personal things. He asked N.A. if it was true and N.A. responded by asking why he was talking to her. The owner turned to L.C. and asked him "is it true there was bad language between you guys?" L.C. said no. The owner asked N.A. if she had proof, for example the picture or message and she said no. The owner asked N.A. why she waited for 3 months before bringing up the problem and N.A. said because she was afraid of losing her job.

[262] The owner acknowledged that he said "this is my kingdom" and when he questioned N.A. about paperwork that should have been in her personnel file, he said "if we call the police now could you answer me where is that file is gone?". N.A. responded by saying she put it in a book and forgot it.

[263] The owner acknowledged that he yelled and screamed in the meeting. He explained that he yells when he talks and his family have told him this but if he doesn't yell, he feels sick, he feels pain in his chest.

[264] The owner denied he told N.A. she was fired or that she shouldn't come to work. He said Ms. Dinner told him she called N.A. and N.A. would probably be in tomorrow.

[265] Ms. Warsame asked the owner if he asked Ms. Dinner to call N.A. and he responded that he just left everything to Ms. Dinner. Ms. Warsame asked why the ROE says N.A. quit. The owner stated Ms. Dinner told him she N.A. didn't show up for work. The owner denied he would have fired N.A. if she tried to return to work.

[266] The owner testified that Janette was in charge of dealing with N.A. Ms. Dinner received the training on sexual harassment and he didn't want to pay her to teach it to him. The owner explained that Ms. Dinner was essential to his business. He said "...Janette very smart, good memory, helps him with English translation, saves him money."

[267] In response to his son's question, why did Ms. Dinner quit, the owner gives a long explanation of her starting wage \$600/week, then up to \$750/week within first year. After 1 year she asked for \$1,000 a week. He said he couldn't afford it, so he offered \$850/week plus a car, insurance and reduced rent. He asked her not to reduce her effort because he didn't agree to the weekly salary of \$1000. After awhile she quit. Bushra met with her at Tim Hortons to ask her why she quit and Ms. Dinner cried.

[268] The owner talked about Tiago, the dispatcher before L.C.. When Tiago left, the owner had no help and was extremely busy. Ms. Dinner hired L.C. and told the owner the only problem with L.C. is that he is black. The owner stated he thought this was wrong of Ms. Dinner to say this because no one chooses skin colour.

[269] The owner testified about a previous complaint by Bonnie, a dispatcher, about Iftar, a driver. Bonnie complained to Ms. Dinner and Ms. Dinner told the owner there was a problem. The owner testified he didn't really understand what harassment was then and he still doesn't. He said Ms. Dinner explained that Iftar got too close to Bonnie, making Bonnie feel uncomfortable. The owner said Ms. Dinner was right on top of it and sent Iftar home in the proper way.

[270] The owner acknowledged L.C. made lots of “mmm” noises and smacking/licking lips while eating, saying the food is good. Never saw it as sexual – just thought he was trying to lighten the mood, maybe be friendly.

[271] The owner acknowledged that it was possible that the allegations made by N.A. and Ms. Dinner regarding L.C.’s behaviour toward them were true.

[272] A.S. asked his father about when Ms. Dinner was checking the browser history of L.C.’s computer. The owner stated he was not next to her while she did this and he never saw L.C.’s browsing history.

[273] The owner confirmed he never knew about the previous complaint against L.C. while he worked at Appliance Canada. Ms. Dinner told him about it after the January 25th meeting, maybe close to March, 2012 about a week before she left.

[274] The owner stated that when Ms. Dinner quit she said she was not happy at work anymore because of the meeting on January 25, 2012 with N.A., and L.C. and how he dealt with her request for a salary increase. The owner stated that he told Ms. Dinner that if she had a problem with L.C. to tell him and he would fire L.C. but then Ms. Dinner would have to cover dispatch duties.

[275] The owner stated he thought the issues N.A. and L.C. were fighting about would blow over and they would be friends again, like the arguments between his truck drivers. The owner gave an example of getting an oil change at Canadian Tire and if he’s not happy with the service, he would ask for the manager and deal with it there and then in front of anybody. He can’t understand why N.A. didn’t deal with her issues in this way.

[276] The owner listed off other female employees, i.e., Cassandra, Tamara, Maria and Amanda, who also worked with L.C. but did not complain about him. Maria only complained L.C. was rude, not that he harassed her.

[277] Regarding Ms. Dinner’s warning that L.C. was taking money from drivers, the owner spoke to L.C. and the drivers first, and then they watched L.C. and did not observe him taking any money from the drivers.

[278] Regarding Mr. Hussein's complaints about him, the owner gave his version of the accident and how he treated him. The owner said Mr. Hussein is unfairly blaming him for his problems.

[279] The owner explained that when his land was expropriated for the highway, it was too expensive to move the business and rent from someone else so he sold the business.

[280] Ms. Warsame asked the owner when he first heard that N.A. was complaining that L.C. was making inappropriate, sexual comments to her. The owner said it was after N.A. left and he received a letter in the mail from Ontario Human Rights Tribunal referring to pizza pockets and tongues.

[281] Ms. Warsame asked the owner what he did after he got the Human Rights complaint and knew the details. The owner stated that he, his wife and their paralegal meet with L.C. to find out if the allegations were true or not. L.C. denied them. L.C. said there was back and forth discussion between he and N.A. The owner stated that he didn't believe him 100% but he didn't tell him he was a liar. They believed N.A. was looking for money.

[282] A.S. asks his father if he thinks Ms. Dinner is collaborating with N.A. in this case. The owner responds that he doesn't understand the word "collaborate", but yes he did they were working together although no one told him they were. A.S. suggested to his father that N.A. and Ms. Dinner were saying things that are false and the owner agreed with him.

[283] The owner says seeing the messages between N.A. and Janette Dinner make him think this complaint is racially motivated. The owner stated that N.A.'s evidence that he hired immigrants so he could take advantage of them, saying he mistreated staff, his wife, etc., all seem like personal attacks to extort money from him.

[284] A.S. suggested to his father that the female complainant's word carries more weight than the male complained about. A.S. also suggested racism is involved and he gives examples of comments made by N.A. that he considers disrespected his father. For example, his father doesn't speak English well, lived in what she described as European

neighborhood, and N.A. only remembered the English girl who was studying to be a doctor from Neighbours Café and not the immigrant, co-workers.

[285] The owner stated there is no “Islamic language”. Islam is a religion not a language. Iraqi Arabic and Egyptian Arabic are very different and the Arabic they speak is very specific to their region of Iraq, so if you weren’t from their region of Iraq, you would not understand much of what they said even if you understood “Arabic”. A.S. suggested that it was “Islamophobic” for N.A. to refer to their language as “Islamic Language”.

[286] Ms. Warsame asked the owner why L.C. was not disciplined. The owner says it doesn’t show on paper L.C. was disciplined or punished, but he was every day. L.C.’s end of the year bonus was reduced because of the problems. Or maybe the monthly bonus not given because of the problem. Ms. Dinner suggested extending his probation another 3 months and owner said he told her go ahead. The owner stated that if he told L.C. to stay home and not come to work, then his company suffers.

8. A.S., the owner’s son

[287] A.S. was a university student living in Ottawa and spent university breaks at his parents’ home in Scarborough. He believed that it was during the Christmas university break in 2011 to early 2012, that his father asked him to look at the office computers.

[288] A.S. stated that he noticed the block on L.C.’s dispatch computer and told his father he couldn’t fix the problem with the computers with the block in place. While discussing with his father how the K9 software came to be installed on the office computers, the owner indicated he wanted the K9 software on all the computers because N.A., whom he referred to as “that bitch”, was always on Facebook during working hours.

[289] A.S. said he chided his father for saying that. A.S. proceeded to install K9 software on all the computers and changed the password on L.C.’s because everyone knew it.

[290] A.S. also introduced into evidence 26 pages of text messages between his mother, Bushra Mohammed, and Ms. Dinner, marked as Exhibit R1 Tab AM.

V. Credibility and Findings of Fact

[291] The Tribunal finds that Complainant's and Ms. Dinner's testimony addressed the elements of sexual harassment as defined in *Janzen* and *Franke* and the complainant has established a *prima facie* case as per *Bombardier* that she was sexually harassed by the individual Respondent.

[292] The Tribunal finds the Complainant and Ms. Dinner's testimony established a *prima facie* case that the corporate Respondent did not act promptly, or appropriately to the Complainant's report of sexual harassment by the individual Respondent. Specifically, the corporate Respondent did not take steps to stop the sexual harassment to ensure the Complainant felt safe in her workplace.

[293] The manner in which the corporate Respondent addressed the complaint resulted in the Complainant suffering emotional trauma and further humiliation. Her work hours were reduced and ultimately she lost her job. The individual Respondent remained employed with the corporate Respondent.

[294] The Tribunal thus also finds that the Complainant's and Ms. Dinner's testimony established a *prima facie* case that the corporate Respondent discriminated against the Complainant based on her sex in by terminating her employment.

[295] The evidentiary burden thus shifts to the individual Respondent to establish on the balance of probabilities that there was no sexual harassment. The corporate Respondent also takes the primary position there was no sexual harassment. The Respondents' evidentiary burden is to prove on a balance of probabilities, after consideration of the testimony of all witnesses, that the Respondents' testimony is more credible than the testimony of the Complainant and Ms. Dinner.

[296] If there was sexual harassment, the corporate Respondent has the burden to prove on the balance of probabilities pursuant to section 65 of the *CHRA*, that it did not consent to the sexual harassment and exercised all due diligence to prevent the act or omission from being committed, or, if it occurred notwithstanding the employer's diligence, the

employer took steps to mitigate or avoid the full negative effects of the sexual harassment on the employee.

[297] In relation to assessing reliability and credibility of the witnesses, the Tribunal considered *Faryna v. Chorney*, [1952] 2 D.L.R. 354 (B.C.C.A.), regarding witness credibility and reliability.

[298] The Tribunal notes that the witness' demeanour is only one factor to consider in the context of the totality of the content of their testimony. The consistency with their previous actions and statements, the probability their statements are accurate or true and the comparison to the other evidence presented. A witness may be credible, yet unreliable, because of their memory, direct knowledge or sensory perception. A witness may also be intentionally and knowingly giving false or incomplete evidence to protect themselves or others from negative consequences.

[299] The Respondents' theory was that the Complainant and Ms. Dinner were both intentionally and knowingly lying. They suggested that the Complainant's motivation was retaliation against L.C. because she thought he told the owner she was addressing personal issues during working hours and to pursue a quick, easy settlement of money. The corporate Respondent suggested the Complainant was also motivated by racial bias toward the individual Respondent and cultural, religious bias toward the owner of the corporate Respondent.

[300] The Respondents did not suggest Ms. Dinner's motivation was financial since she made no financial claim against either of them. The individual Respondent suggested Ms. Dinner's motivation for lying about his sexually harassing her was because he was black and the corporate Respondent agreed. The corporate Respondent suggested Ms. Dinner was collaborating and helping the Complainant by giving false testimony because she bore a grudge against the owner and his wife.

[301] I assessed the Complainant's evidence in light of the Respondents' suggestions that she was outright lying and motivated to do so by racism and money.

[302] The Complainant's description of the sexual comments and behaviour she alleged the individual Respondent directed toward her were detailed and specific and were consistent from the original complaint made in 2012 to the Ontario Human Rights Tribunal to her testimony in July, 2016. Her testimony in July, 2016 was presented in a sincere, emotional manner, which is consistent with her allegation she was sexually harassed. The content of her evidence was detailed and consistent during her direct examination and cross examination and with her prior statements dating back to 2012.

[303] The Complainant repeatedly stated during the hearing that she was pursuing her complaint so the Respondents did not act this way toward another female. The Complainant works as an hourly wage employee. She is not paid for the time she spent pursuing her complaint with the Ontario Human Rights Tribunal or this Tribunal. She understands there are limits to the monetary awards under the *CHRA*. She is also aware that the corporate Respondent sold his business and the individual Respondent appears to have modest means so she may have some difficulty collecting an award and yet she persisted.

[304] The Tribunal finds the Complainant's evidence was truthful and accurate with respect to the core facts under adjudication. She may have some peripheral details wrong because of her focus at the time on the alleged sexual harassment and the passage of time but her inaccuracy regarding peripheral details does not cause the Tribunal to doubt her evidence regarding the core issues.

[305] The individual Respondent vehemently denied he said and did the things the Complainant alleges. There were no witnesses to the alleged conduct. The Tribunal considered whether it was possible the individual Respondent just did not remember the comments and behaviour or that he did not understand they were sexual in nature and unwanted by the Complainant.

[306] The individual Respondent very clearly addressed the detailed allegations and denied them outright so there is no chance that the Complainant and the individual Respondent are both telling the truth.

[307] The Tribunal finds that the individual Respondent was rambling and inconsistent in his testimony. Although, he denied the comments and actions, he denigrated the Complainant's work ethic and accused her of looking for a rich boyfriend or husband at work. He suggested she overshared personal details of her life and chose to sit on his lap. He did not clarify if he is suggesting the Complainant was engaging in sexual banter or inviting sexual banter from him or if he is impugning her character. The individual Respondent was not sincere and believable.

[308] Ms. Dinner testified that she also experienced sexual comments from the individual Respondent with no one else present that she found highly offensive. Ms. Dinner was sincere, detailed and consistent in her testimony. She is not a party and is not making any financial claim against the Respondents. The Tribunal finds Ms. Dinner was completely believable and there was no basis or motivation for her to lie.

[309] In relation to whether the individual Respondent sexually harassed the Complainant, the Tribunal finds that any doubt raised by the individual Respondent that the Complainant is lying is erased with Ms. Dinner's corroboration that the individual Respondent also made sexually offensive comments to her that she told him were unwelcome.

[310] The fact that the individual Respondent said and did these things when no one else was around, that he escalated his behaviour toward the Complainant in response to her requests he stop and her complaints to Ms. Dinner, the owner and his wife, and that he stopped with Ms. Dinner when he thought she might tell the owner and resumed on her last day, indicates to the Tribunal that individual Respondent was well aware his comments and behaviour was unwelcome and offensive. The individual Respondent behaved as if he was trying to see how far he could go and how much he could get away with. His final comments to the Complainant that he might strangle her constituted a violent threat. His final comment to Ms. Dinner on her last day that he could take her out back and have sex with her also constituted a threat of sexual assault.

[311] The Complainant does not assert the owner sexually harassed her. Her complaint against the corporate Respondent is that it failed to act pursuant to section 65 of the

CHRA and that as a result, she was further exposed to the individual Respondent's offensive and threatening behaviour toward her, she lost her job and experienced pain and suffering.

[312] As is typical, the Complainant does not know what was going on behind the scenes with the corporate Respondent in terms of addressing her complaint of sexual harassment. However, Ms. Dinner does.

[313] The owner of the corporate Respondent testified that he did not understand what sexual harassment was, he hired Ms. Dinner to handle such matters, and now that he realizes he is ultimately responsible for sexual harassment complaint, he stated that Ms. Dinner did not give him the information and advice he needed to properly handle the situation.

[314] The owner testified that he didn't understand why the Complainant couldn't just deal with the problem directly with the individual Respondent, that they got along fine before Christmas and then they fought after Christmas for no good reason that he could see. The owner testified that he did not understand why the conflict between them didn't just blow over. The owner testified that the Complainant gave off the message that she was open to anything by sharing her personal details. Ms. Dinner testified that the owner's wife said the Complainant's manner of dress invited the offensive sexual comments and behaviour from the individual Respondent.

[315] Ms. Dinner was very clear that she told the owner and his wife at least 3 times before the January 25, 2012 meeting what the individual Respondent was accused of doing to the Complainant, including that it was sexual in nature, offensive and unwanted.

[316] Based on the above-noted testimony, the Tribunal finds that the owner of the corporate Respondent was, at best, wilfully blind to the sexual harassment of the Complainant by the individual Respondent, and, at worst, untruthful about what he knew and understood before the January 25, 2012 meeting.

[317] The Tribunal finds that the owner of the corporate Respondent was informed of the Complainant's allegation of sexual harassment in mid-November, 2011 and that he had

the opportunity to properly investigate and either move the Complainant into the main office building so she didn't have to work alone with the individual Respondent in the dispatch building, or fire the individual Respondent. By at least December, 2011, the owner appeared to dislike and resent the Complainant when he called her "that Bitch".

[318] Between mid-November, 2011 and mid-January, 2012, when the Complainant reported the individual Respondent was still harassing her to the owner's wife, there is no evidence the owner took any steps to investigate and provide a harassment free workplace.

[319] When the Complainant made her second report to the owner's wife, the owner had the opportunity to investigate and provide a harassment free workplace and there is no evidence the owner did either. The owner responded by instructing Ms. Dinner to reduce the Complainant's hours, hoping the Complainant would quit and apply for EI.

[320] The owner claimed he reduced the Complainant's hours in mid-January, 2012, because she was doing personal things on company time, she made mistakes and had a poor work ethic. There was no documentation presented to confirm there was any basis to the owner's evidence in this regard. Ms. Dinner testified the Complainant completed her job satisfactorily and the only complaint the owner had about her work was that she wasn't keeping up with invoicing.

[321] The Complainant then consulted the Ontario Human Rights Tribunal and wrote a letter and gave it to Ms. Dinner on January 25, 2012. The owner of the corporate Respondent reacted in a rage, conducting a group meeting with the Complainant forced to sit next to the individual Respondent, where he yelled aggressively and angrily at the Complainant about her complaint. Ms. Dinner and Mr. Hussein both testified that the owner treated the Complainant very badly in this meeting. The Complainant testified that she was ashamed and frightened by the owner in this meeting.

[322] The owner and Ms. Dinner testified that it was very difficult to get a dispatcher to work for the wage the owner was willing to pay. Ms. Dinner testified that even after January 25, 2012, the owner refused to provide a harassment free workplace for female employees by firing the individual Respondent. Ms. Dinner believed the reason was the

owner valued the male employee doing the dispatcher's job more than he valued the female employees doing other work.

[323] The above-noted testimony of the sequence of events indicates to the Tribunal that the owner of the corporate Respondent was angry and resentful toward the Complainant for making her complaint against the individual Respondent because the owner didn't want to have to fire the individual Respondent.

[324] Based on the evidence of what the owner called the Complainant, what he was told and how he addressed the issue, the Tribunal finds that the owner of the corporate Respondent refused to acknowledge or accept any responsibility to provide a harassment free workplace for the Complainant. The Tribunal thus ultimately finds 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 and thus the corporate Respondent is found equally liable for the individual Respondent's discriminatory acts.

VI. Conclusion

[325] In relation to the s.14 complaint against the individual Respondent, the Tribunal concludes the complainant is substantiated. The Tribunal accepts the Complainant's description of the conduct. The Tribunal finds the individual Respondent knowingly, and intentionally escalated his conduct notwithstanding the Complainant repeatedly told the individual that his conduct was unwelcome and reported the behavior to the owner. The individual Respondent acted in an exploitive and predatory manner toward the Complainant. By January 25, 2012, the individual's conduct toward the Complaint had become menacing and threatening. The Tribunal finds that the individual Respondent's sexual harassment of the Complaint was severe and just short of hands on sexual violence.

[326] In relation to the s.14 complaint against the corporate Respondent, the Tribunal concludes that corporate Respondent has failed to establish that it did not consent to the sexual harassment and exercised all due diligence to prevent the act or omission from being committed. The corporate Respondent was informed of the Complainant's allegation

of sexual harassment and that had the opportunity to properly investigate and either move the Complainant into the main office building so she didn't have to work alone with the individual Respondent in the dispatch building, or fire the individual Respondent. The corporate Respondent was also repeatedly advised to fire the individual Respondent and simply refused to fire the individual Respondent or provide a harassment free and safe workplace for employees. Thus, 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 and thus the corporate Respondent is equally liable for the individual Respondent's discriminatory acts.

[327] In the alternative, the Tribunal finds that the complaint against the corporate Respondent alleging discrimination based on sex in accordance with s. 7 (a) of the *CHRA* is substantiated.

[328] In light of the evidence, the Tribunal finds that it is clear that there is a connection between the sexual harassment and the prohibited ground (sex). It is also clear that there is a connection between the sexual harassment and the employer's decision to effectively terminate the Complainant's employment.

[329] As aforementioned, when the Complainant made her second report to the owner's wife. The owner responded by instructing Ms. Dinner to reduce the Complainant's hours, hoping the Complainant would quit and apply for EI.

[330] The owner and Ms. Dinner also testified that it was very difficult to get a dispatcher to work for the wage the owner was willing to pay. Ms. Dinner testified that even after the meeting on January 25, 2012, the owner of the Corporate Respondent refused to provide a harassment free workplace for female employees by firing the individual Respondent. Ms. Dinner believed the reason was the owner valued the male employee doing the dispatcher's job more than he valued the female employees doing other work. The above-noted testimony of the sequence of events indicates to the Tribunal that the owner of the corporate Respondent was angry and resentful toward the Complainant for making her complaint against the individual Respondent because the owner didn't want to have to fire the male individual Respondent. The Tribunal therefore finds that the Complainant's

gender played a role in the employer's decision to terminate the employment of the Complainant.

VII. Remedy

[331] Having concluded that the Respondent sexually harassed the Complainant and 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, I must now determine what remedy, if any, is appropriate. The Tribunal's remedial jurisdiction is set out in s. 53 of the *CHRA*, which contemplates the imposition of remedies designed to prevent future discrimination as well as to compensate individual victims. The goal of compensation is to make the victim whole for the damage caused by the act that is the source of the liability. Only the part of the loss that is reasonably foreseeable is recoverable.-(See *Canada (Attorney General) v. Green* (2000), 38 C.H.R.R. D/1 at para. 142 (F.C.T.D.)

A. Lost wages

[332] The Complainant is seeking compensation for the wages that she lost due to the termination of her employment contract (s. 53(2)(c) of the *CHRA*).

[333] In calculating the Complainant's lost wages, the Tribunal finds that the Complainant's average biweekly income up to December 15, 2011 was \$868.75 based on the average of 69.5 hours @ \$12.50/hour. After December, 2011, the evidence indicates her hours and income was reduced because of her complaint. Based on her average weekly income up to December, 2011, the Complainant would have earned \$22,600 a year, solely from the corporate Respondent. The Complainant had other income from working jobs on the weekends in catering/hosting events. Based on the T-4's from these weekend jobs, the Tribunal estimates she would earn at least \$3,000 a year working weekends in addition to her weekday job with the corporate Respondent, for a total income of \$25,600.

[334] Based on Exhibit C1 and the testimony, the Complainant's lost wages are calculated as follows:

2012: She earned \$10,297.20 from other part-time jobs. The \$910.78 paid by the corporate Respondent in January, 2012 and her EI is not considered. Her loss in 2012 is $\$25,600 - \$10,297.20 = \$15,302.80$.

2013: She earned \$9,632.36 in 2013. Her loss in 2013 is $\$25,600 - \$9,632.36 = \$15,967.64$.

2014: She earned \$23,332.68 in 2014. Her loss in 2014 is $\$25,600 - \$23,332.68 = \$2,267.32$.

2015: She earned \$22,901.54 in 2015. Her loss in 2015 is $\$25,600 - \$22,901.54 = \$2,698.46$.

[335] To the end of 2015, the Tribunal finds the Complainant's lost wages totals \$36,236.22.

[336] Although it was the corporate Respondent who terminated the Complainant's employment, the Commission requests that the Tribunal order both the individual and corporate Respondents to jointly and severally pay the Complainant compensation for lost wages.

[337] This raises the following issue: although the individual Respondent was not directly involved in the corporate Respondent's decision to terminate the Complainant's contract, can the termination nevertheless be indirectly linked to his discriminatory conduct?

[338] The Tribunal notes that a similar issue arose in *Nkwazi v. Correctional Service of Canada*, D.T. 1/01, 2001-02-15, par.234. The complainant in that case, claiming that her manager had harassed her, complained to higher management, whose reaction, in turn, was to retaliate against the complainant and not renew her casual contract. The Tribunal came to the following conclusion:

In cases of discrimination, the goal of compensation is to make the victim whole, subject to principles of foreseeability, remoteness and mitigation. In this case, I am satisfied that there is a causal connection between the original discriminatory practices and the loss of Ms. Nkwazi's job: had Ms. Neufeld not treated Ms. Nkwazi in a discriminatory fashion, Ms. Nkwazi would not have complained about her to RPC management, and the

retaliation would not have occurred. In other words, the damages that result from the non-renewal of Ms. Nkwazi's casual contract are damages flowing from Ms. Neufeld's original breach of the *Act*, and may be considered from the perspective of remedy.

[339] The Tribunal also notes *Woiden v. Lynn*, 2002 CanLII 8171 (CHRT) where the Tribunal stated the following with regards to the Tribunal's remedial powers to order lost wages against the employer and individual Respondent:

[118] Paragraph 53(2)(c) of the *Act* provides that if a Tribunal member finds that a complaint is substantiated, he or she may make an order *against the person found to be engaging or to have engaged in the discriminatory practice* and include in the order a requirement that the person compensate the victim for any and all wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice. This provision does not specify that this type of remedy can only be used against the employer. The goal of the compensation provisions of the *Act* is to make whole the victim of the discriminatory practice. I see no reason why the perpetrator of the practice should not be obliged to compensate a victim for an actual loss suffered by her as a direct consequence of that act, when the result in so doing would indeed be to make that victim whole.

[340] In the case at bar, the Tribunal is satisfied that there is a causal connection between the original discriminatory practices of the individual Respondent and the loss of the Complainant's job: had the individual Respondent not sexually harassed the Complainant, the Complainant would not have complained about the sexual harassment to the corporate Respondent, and her firing would not have occurred.

[341] It is true that the corporate Respondent was negligent in its handling of the matter and ultimately failed provide a harassment free and safe workplace for other employees. However, the individual Respondent was untruthful to his employer when he denied that the sexual harassment ever occurred. If the individual Respondent had been truthful about the events, it would be unlikely that the corporate Respondent would have acted in the same manner and terminated the Complainant's employment over maintaining the individual Respondent's employment.

[342] In essence, the damages that result from the termination of the Complainant's employment are damages that flow from the individual Respondent's original breach of the *CHRA*, and may be considered from the perspective of remedy. In keeping with s.53 (2)

(c) of the *CHRA*, I find that the individual Respondent is also obliged to compensate the Complainant, a victim for an actual loss suffered by her as a direct consequence of his discriminatory act, and only this result will make that victim whole.

[343] Accordingly, I find that the Complainant's loss in wages arising from the corporate Respondent's decision to terminate her employment are linked to the individual Respondent's discriminatory conduct.

[344] In light of the above, the Complainant is therefore entitled to damages from the individual and corporate Respondents, for her lost wages. Both the individual and corporate Respondent's bear an equal share (50% each) of the Complainant's lost wages which totals \$36,236.22. (\$18,118.18 each). In accordance, the Tribunal awards the Complainant compensation for lost wages against the corporate Respondent for the sum of \$18,118.18 and against the individual Respondent for the sum of \$18,118.18.

B. Pain and Suffering Compensation

[345] Section 53(2)(e) of the *CHRA* provides that a person found to have engaged in a discriminatory practice may be ordered to compensate the victim, by an amount not exceeding \$20,000, for any pain and suffering that the victim experienced as a result of the discriminatory practice. The Commission in the present case is requesting that the Respondent and Corporate Respondent be ordered to pay compensation for pain and suffering.

[346] The Tribunal finds that the individual Respondent's sexual harassment of the Complainant was just short of hands on sexual violence and fairly severe. The Complainant was subjected to the escalating sexual harassment from October, 2011 to January, 2012, approximately 3 months.

[347] Although no medical evidence was provided, the Complainant was traumatized by the sexual harassment. She lost her job and professional reputation, felt shamed and threatened and was humiliated. The unresolved complaint process has continued to make her feel mocked and belittled by the Respondents. It took a while for the Complainant to

get back on her feet however; she seems to have resumed her personal and employment functioning by the end of 2015, which is when she had the ability to work 4 part-time jobs.

[348] The Tribunal notes its finding 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. With that said the Tribunal finds that the corporate Respondents actions have also caused the Complainant pain and suffering. Moreover, the Complainant was publicly humiliated, belittled and traumatized by the owner of the corporate Respondent's handling of the matter and in particular the meeting on January 25, 2012.

[349] In accordance with the above and the following cases, *Bushey v. Arvind Sharma*, 2003 CHRT 21, *Naistus v. Chief*, 2009 CHRT 4 the Tribunal awards the Complainant pain and suffering compensation against the individual Respondent in the sum of \$10,000. The Tribunal also awards the Complainant pain and suffering compensation against the Corporate Respondent in the sum of \$10,000.

C. Wilful and Reckless Compensation

[350] The Complainant and the Commission are also seeking the maximum award available under s. 53(3) of the *CHRA*. This provision states that a person who has wilfully or recklessly engaged in the discriminatory practice may be ordered to pay to the victim compensation in an amount not exceeding \$20,000.

[351] There is overwhelming evidence of reckless conduct on the part of the individual Respondent. The individual Respondent is no stranger to facing accusations of having sexually harassed women in the workplace. The individual Respondent also acknowledged the harassment policy was posted outside his office at the corporate Respondent's premises and that the corporate Respondent and supervisor told him to read it. He acknowledged that he read and signed sexual harassment policies at previous jobs, received harassment sensitisation in his former job and that he is aware of what sexual harassment is. The individual Respondent was consequently in a position to fully comprehend that his behaviour was unacceptable, not to mention illegal. Yet, the individual Respondent took the unreasonable risk of engaging in unwelcome conduct of a

sexual nature towards the Complainant. Moreover, the individual Respondent continued harassing and even intentionally escalated his conduct against the Complainant in the face of repeated requests and instructions that he stop.

[352] While the Tribunal notes that pursuant to Section 65 of the *CHRA*, it has deemed the corporate Respondent responsible for actions of the individual Respondent, it finds that the corporate Respondent has also exhibited reckless conduct. The corporate Respondent's handling of the matter was egregious because notwithstanding the repeated advice of Ms. Dinner, the owner of the corporate Respondent simply refused to fire the individual Respondent or provide a harassment free and safe workplace for other employees, especially females. The owner of the corporate Respondent failed to understand the basis for human rights protection – so that women could participate in the workplace free of harassment and feel safe. Rather, the owner of the corporate Respondent expressed that if women decided to work, they needed to protect themselves and not do anything to invite male attention.

[353] In accordance with the above and the following cases, *Bushey v. Arvind Sharma*, 2003 CHRT 21, *Naistus v. Chief*, 2009 CHRT 4 and *Canada (Attorney General) v. Johnstone*, 2013 FC 113, the Tribunal awards the Complainant wilful misconduct and reckless compensation against the individual Respondent in the sum of \$20,000. The Tribunal also awards the Complainant wilful misconduct and reckless compensation against the corporate Respondent in the sum of \$20,000.

VIII. Order

[354] Having found the s.14 Complaints of N.A. against L.C. and 1416992 Ontario Ltd. are substantiated, the Tribunal orders pursuant to s.53 of the *CHRA* that:

Compensation

- a. L.C. shall pay the Complainant compensation for pain and suffering for the sexual harassment in the amount of \$10,000 and compensation for wilful or reckless discrimination in the amount of \$20,000;

- b. L.C. shall pay the Complainant compensation for lost wages in the amount of \$18,118.18;
- c. 1416992 Ontario Ltd. shall pay the Complainant compensation for pain and suffering in the amount of \$10,000 and compensation for wilful or reckless discrimination in the amount of \$20,000;
- d. 1416992 Ontario Ltd. shall pay the Complainant compensation for lost wages in the amount of \$18,118.18.

Interest on Compensation Awards Payable by the Respondents

[355] Simple interest, calculated on a yearly basis, and at a rate equivalent to the Bank of Canada rate (monthly series), shall be awarded on all compensation ordered. The interest period shall run from the date of the filing of the Complainant's *CHRA* complaint with the Commission to the payment of said compensation awards with respect to the "harassment" findings of liability. With respect to the compensation for "retaliation", the interest period shall run from the date of the granting of the motion to amend the Complaint to include allegations of retaliation to the payment of said compensation award.

Confidentiality

[356] The request from the Complainants to initial her name is granted. The title of proceedings and the decision issued to the public will be amended and redacted accordingly. The Tribunal also orders that all documents placed into evidence be redacted accordingly.

[357] The request from the owner of the corporate Respondent to be referred to as "the owner" is granted. The decision issued to the public will be amended and redacted accordingly. The Tribunal also orders that all documents placed into evidence be redacted accordingly.

[358] The request from the son of the owner of the corporate Respondent to initial his name is granted. The decision issued to the public will be amended and redacted

accordingly. The Tribunal also orders that all documents placed into evidence be redacted accordingly.

[359] The request from the corporate Respondent to remove the operating name of the entity is granted. The title of proceedings and the decision issued to the public will be amended and redacted accordingly. The Tribunal also orders that all documents placed into evidence be redacted accordingly.

[360] The individual Respondent request initial his name is granted, and the title of proceedings has been amended accordingly. The title of proceedings and the decision issued to the public will be amended and redacted accordingly. The Tribunal also orders that all documents placed into evidence be redacted accordingly.

Retention of Jurisdiction

[361] The Tribunal shall remain seized to deal with issues regarding the implementation of remedies awarded in this decision for a period of three months from the date of this Order.

Signed by

J. Dena Bryan
Tribunal Member

Ottawa, Ontario
December 19, 2018

Canadian Human Rights Tribunal

Parties of Record

Tribunal Files: T2106/225 and T2107/2315

Style of Cause: N.A. v. 1416992 Ontario Ltd. and L.C.

Decision of the Tribunal Dated: December 19, 2018

Date and Place of Hearing: July 25 to 29, 2016

Brampton, Ontario

Appearances:

N.A. for herself

Ikram Warsame, for the Canadian Human Rights Commission

A.S. for Respondent 1416992 Ontario Ltd.

L.C. for himself