

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES  
DROITS DE LA PERSONNE

MELISSA KHALIFA

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

INDIAN OIL AND GAS CANADA

Respondent

DECISION

MEMBER: Athanasios Hadjis 2010 CHRT 21  
2010/08/24

I. WHAT FACTS DOES MS. KHALIFA ALLEGE IN HER COMPLAINT? 1

II. WHAT IS THE LAW REGARDING MS. KHALIFA'S CLAIM OF

DISCRIMINATION WITH RESPECT TO HER DISMISSAL? 7

A. Has Ms. Khalifa established a *prima facie* case that IOGC committed a

discriminatory practice pursuant to s. 7 of the *CHRA*, in terminating her

employment on August 2, 2005? 8

B. Has IOGC provided a reasonable explanation for the otherwise discriminatory

behaviour? 9

(i) What were Ms. Khalifa's alleged shortcomings regarding her

attendance and punctuality? 11

(ii) What were the indicators of Ms. Khalifa's declining work performance? 17

(iii) How did Ms. Khalifa develop a tense relationship with, and show disrespect

towards, Ms. Murphy? 22

(iv) What is IOGC's explanation regarding the termination of Ms. Khalifa's contract? 23

(v) Did Mr. Currie and Ms. Murphy discuss Ms. Khalifa's family status with her

and was it a factor in their conduct and decisions regarding her? 25

(vi) Is IOGC's explanation reasonable or just a pretext for otherwise discriminatory practices?

27

III. WHAT IS THE LAW REGARDING MS. KHALIFA'S CLAIM OF HARASSMENT? 32

A. Has Ms. Khalifa established all of the conditions needed to make out a case of harassment?

32

[1] Melissa Khalifa alleges that due to her family status as a single mother of four children, Indian Oil and Gas Canada (IOGC) treated her differently in the course of her employment, and ultimately terminated her. She also alleges that she was harassed during her employment on the same discriminatory basis.

[2] In the decision that follows, I initially set out the facts as alleged and presented by Ms. Khalifa and find that she established a *prima facie* case that her termination was discriminatory under s. 7 of the *Canadian Human Rights Act (CHRA)*. I then deal with IOGC's explanation, which I determine to be reasonable and not pretextual. Finally, I address Ms. Khalifa's harassment complaint, under s. 14 of the *CHRA*, and find that the incidents she raises do not constitute harassment within the meaning of the *CHRA*.

#### **I. WHAT FACTS DOES MS. KHALIFA ALLEGE IN HER COMPLAINT?**

[3] IOGC manages and administers oil and gas resources that are found on Indian reserve lands. It is a special agency within the Department of Indian and Northern Affairs. Ms. Khalifa worked in various capacities at IOGC's offices south of Calgary, from October 25, 2002, until August 2, 2005. Throughout this period, however, she was never formally an employee of IOGC, but rather an employee of a staffing agency named Spirit Staffing and Consulting Inc. (Spirit Staffing).

[4] IOGC informed the Tribunal at the hearing that it was not claiming that Ms. Khalifa's employment arrangement ousted the Tribunal of its jurisdiction to hear the complaint. I understand IOGC's position to therefore mean that it accepts Ms. Khalifa's relationship with IOGC as constituting "employment" within the meaning of ss. 7 and 14.

[5] Spirit Staffing had a standing offer with Public Works and Government Services Canada to provide temporary help services to the Government of Canada. Accordingly, government agencies, such as IOGC, had the authority to "call-up" temporary help services from Spirit Staffing on an as-needed basis.

[6] Ms. Khalifa's first assignment at IOGC was as a receptionist within IOGC's Professional and Corporate Services Division. IOGC renewed her initial call-up and she was eventually asked to replace the Production Division's administration officer, who had transferred to another job. The Production Division was headed by the General Manager of Production, Bill Currie.

[7] In 2004, Mr. Currie was named Acting Chief Executive Officer (CEO) of IOGC, a position that came within the agency's Executive Division. The CEO position was already staffed with an administration officer. According to Ms. Khalifa, Mr. Currie nevertheless

"had [her] moved over", on October 12, 2004, to the Executive Division, to work under the supervision of another manager. She was assigned tasks relating to communications, the production of annual reports as well as any other sundry tasks that Mr. Currie also may have asked of her.

[8] Early in 2005, Mr. Currie returned to his position as General Manager of Production. In February 2005, he interviewed and hired, as a full-time IOGC employee, his new administration officer, Laurie Murphy. Ms. Khalifa testified that although Mr. Currie now had a full-time administration officer in the Production Division, he nonetheless again arranged to have Ms. Khalifa return to work for him in the division as well, commencing April 1, 2005. This contract or "call-up" was scheduled to end on August 19, 2005. Her designated supervisor, according to the contract, was Ms. Murphy.

[9] Ms. Khalifa testified that she questioned at the time whether her services were needed in the division, given the tasks that Ms. Murphy was already performing, but Mr. Currie advised Ms. Khalifa to continue working under the new call-up just the same. She took his advice and was pleased to discover that she was being assigned projects she enjoyed doing. Furthermore, aside from her Production Division tasks, Ms. Khalifa was also being given overtime work from the Executive and Land Divisions, which she found very satisfying as well.

[10] In contrast, Ms. Khalifa claims to have observed, by the end of April 2005, that Ms. Murphy was unhappy in her position and the rather mundane administrative tasks she was being assigned, such as making travel arrangements for Mr. Currie. According to Ms. Khalifa, Ms. Murphy was envious of the tasks being given to Ms. Khalifa, and began expressing her disgruntlement through discriminatory statements directed at Ms. Khalifa, relating to her family status. Ms. Khalifa was a single parent of four children, three of whom were minors at the time. Issues relating to their schooling or health would occasionally arise, resulting in her having to be absent from work. In addition, one of her children had a learning disability, which required that she sometimes take him to appointments with various specialists.

[11] One day in late April 2005, Ms. Khalifa was called away from work to take care of a matter at school regarding one of her children. She testified that when she subsequently informed Ms. Murphy (whose office was in the cubicle adjoining hers) about this situation, Ms. Murphy responded by telling her that as a single parent, she should consider looking for work elsewhere, in a place that is "better suited for a single parent".

[12] Ms. Khalifa claims that she was so "shocked" by this comment that she immediately rose from her work desk and walked over to the office of Darryl Jaques, who was a senior engineer with IOGC. His office was situated across the hall from hers. Ms. Khalifa closed the door and told him, "Would you believe what Laurie Murphy just said to me?", and recounted to him Ms. Murphy's statement. Ms. Khalifa testified that Mr. Jaques suggested she take her concerns directly to Mr. Currie.

[13] Ms. Khalifa called Mr. Jaques as a witness at the hearing into her complaint. He recalled Ms. Khalifa complaining about the "hard times" she was having with Ms.

Murphy as her supervisor, but did not recall her having mentioned any remark by Ms. Murphy relating to Ms. Khalifa's single parent status.

[14] Ms. Khalifa testified that a day or two later, she spoke to Mr. Currie about Ms. Murphy's remarks and was "flabbergasted" by his response. She claims that Mr. Currie suggested to her that perhaps Ms. Murphy was looking out for Ms. Khalifa's best interests and that "looking for a job elsewhere" may be more suitable to her "family situation". Ms. Khalifa was also unhappy to hear Mr. Currie then ask her what kind of child care arrangements she had planned for the upcoming summer. She explained to him that she was extending her existing afterschool child care to the full day. She testified that she was unhappy that Mr. Currie did not satisfactorily address her objections to Ms. Murphy's remarks during the meeting.

[15] Ms. Khalifa contends that after her discussion with Mr. Currie, she began to get a sense of the "tone" and direction of his attitude with respect to her family status. She was surprised by this as there was never any concern expressed about her being a single parent prior to Ms. Murphy's comment.

[16] In the months following Ms. Murphy's comment, Ms. Khalifa observed that when she would bring up some activity regarding her children, Ms. Murphy would breathe a heavy sigh or roll her eyes. In June, 2005, after one of those sighs, Ms. Khalifa challenged Ms. Murphy. She pointed out that Ms. Murphy also had a child and asked why her situation should be treated any differently. Ms. Murphy allegedly replied that in her own case, it was acceptable for her to work because she had a husband's support, whereas Ms. Khalifa did not.

[17] Ms. Khalifa indicated in her testimony that on another occasion, Mr. Currie invited her into his office, though her evidence regarding this meeting was not very clear. She seemed to suggest that Mr. Currie asked her personal questions on this occasion, including where she was living, and commented that he knew how hard it was to be a single parent.

[18] After this conversation, Ms. Khalifa apparently met with Susan McCurdie, who was IOGC's human resources advisor. Ms. Khalifa was not always certain in her testimony about the sequence of events, so it may well be that this meeting took place prior to this last-mentioned conversation with Mr. Currie. Ms. McCurdie's responsibilities included dealing with human rights and harassment issues arising at IOGC. Ms. Khalifa told her about the comments and questioning she had been getting from Mr. Currie and Ms. Murphy, and asked to file a harassment complaint. Ms. McCurdie told her that she could not accept a complaint from her because she was not an IOGC employee, but rather a temporary staff person employed by Spirit Staffing. Ms. McCurdie nonetheless listened to the details provided by Ms. Khalifa. According to Ms. Khalifa, Ms. McCurdie replied that Mr. Currie, as a manager, should have known that it is a "big no-no" to allow the kind of comments being made by Ms. Murphy and to be raising the types of personal questions that he had been asking Ms. Khalifa.

[19] Ms. McCurdie also suggested that if Mr. Currie were to pose such questions again, Ms. Khalifa should tell him that she is uncomfortable answering and that he should

refrain from asking them. On Ms. McCurdie's suggestion, Ms. Khalifa also spoke to Bryan Potter, who was IOGC's manager of contracts and administration, and therefore responsible for the contracting of temporary staff like Ms. Khalifa. Mr. Potter concurred that Ms. McCurdie was not authorized to receive a harassment complaint from Ms. Khalifa. He suggested to Ms. Khalifa, however, that if she was having these difficulties with her supervisor, she could consider seeking work elsewhere within IOGC.

[20] Ms. Khalifa testified that Ms. Murphy's attitude with respect to her family status became so upsetting that on July 22, 2005, she went to Mr. Currie in tears and told him she could no longer take the situation anymore and wanted to leave. The "insinuations, comments and questioning" about her children were getting to her. She began doubting whether indeed she could cope with working and being a single parent. It was becoming apparent to her that she could not perform properly because of her family needs and was feeling uncomfortable. However, she also testified that the source of her problems was Ms. Murphy's "blowing things out of proportion" with respect to her inability to meet her work requirements. Mr. Currie urged her during their meeting to be patient. He was leaving on vacation the next day but assured her that he would deal with her concerns upon his return.

[21] On August 2, 2005, which was Mr. Currie's first day back at work after his vacation, he invited Ms. Khalifa into his office for a meeting. It was a short conversation. According to Ms. Khalifa, he told her that being a single parent "interfered" too much with her work and that her contract was therefore being terminated that day, seventeen days prior to the scheduled end of her call-up (August 19, 2005). She claims she was asked to "pack up her stuff and leave". She testified that she then returned to her office cubicle in a state of shock. While she began to collect some of her belongings, she noticed Mr. Currie walking back and forth outside her cubicle, looking in. She found it difficult to stay any longer, so she left IOGC's offices with only a few of her things. She had intended to return and collect the rest of her items, but could not bring herself to do so, so she sent her daughter to pick them up instead.

[22] Ms. Khalifa testified that her work performance at IOGC was always satisfactory or better. Mr. Jaques gave evidence at the hearing that there were no issues with her performance to his knowledge, having always found her "helpful". He sometimes served as Acting General Manager of the Production Division, though he had little recollection at the hearing of having supervised her.

[23] Mr. Potter, for his part, testified that Ms. Khalifa had worked within his division when she first came to IOGC as a receptionist. In his view, she had provided excellent service while employed in that position. Ms. McCurdie was Ms. Khalifa's supervisor for about eight of the weeks when Ms. Khalifa was employed at reception. Ms. McCurdie testified that she had no concerns with respect to Ms. Khalifa's performance, punctuality or attendance at the time.

[24] Alexandra Steinke is a communications officer at IOGC who worked within the Executive Division at the same time as Ms. Khalifa. Ms. Steinke testified that Ms. Khalifa was able to deal with any task assigned to her and did a "really good job". Ms.

Steinke did not apprehend any attendance problems regarding Ms. Khalifa and, based on her perception, believed that Mr. Currie "thought the world" of Ms. Khalifa.

[25] The owner of Spirit Staffing, Janice Larocque, also testified that IOGC had never complained to her about Ms. Khalifa's performance or attendance. She noted that according to Spirit Staffing's standing offer with the Government of Canada, a temporary staffer cannot be called up for a period in excess of six months. Ms. Khalifa worked at IOGC continuously for almost three years, on a series of different call-ups, which is the longest period that any of Spirit Staffing's employees has ever worked at one employer. Ms. Larocque surmised therefore that Ms. Khalifa's performance must have been good. Since June 2007, Ms. Khalifa has been working within Spirit Staffing's own offices as a receptionist as well as a recruiter. Ms. Larocque testified that Ms. Khalifa is one of the most dedicated employees the firm has ever had, often working overtime and through her lunch hour. There are no issues regarding her attendance or punctuality at work.

[26] During the last call-up prior to the termination of her contract, Ms. Khalifa claims that the services she was providing greatly exceeded what was expected of her. She produced the timesheets that she was filing with Spirit Staffing indicating the numbers of hours worked. Spirit Staffing would pay her remuneration for the services rendered based on these timesheets. The timesheets indicate that during 13 of the 18 weeks that Ms. Khalifa worked in the Production Division in 2005, she also filed timesheets relating to overtime services provided to the Land, Executive and Communication Divisions, ranging in most weeks from 16 to 30 hours per week. This overtime work was in addition to the weekday work.

[27] Ms. Khalifa testified that she had a reasonable expectation of continued employment at IOGC, beyond the expiry of the April to August 2005 call-up, having been told by a representative of the accounting section of the Professional and Corporate Services Division (whose name Ms. Khalifa does not recall) that her services had been budgeted for the remainder of the fiscal year, although the call-ups would still have to be renewed every 20 weeks.

[28] Ms. Khalifa therefore submits that given her more than satisfactory work performance, the only conceivable explanation for the early termination of her call-up must be related to Mr. Currie's and Ms. Murphy's attitude with respect to her family status as a single mother of minor children. She also contends that their behaviour constituted harassment within the meaning of s. 14 of the *CHRA*. I will deal with each of these two alleged discriminatory practices separately.

## **II. WHAT IS THE LAW REGARDING MS. KHALIFA'S CLAIM OF DISCRIMINATION WITH RESPECT TO HER DISMISSAL?**

[29] It is a discriminatory practice under the *CHRA* to refuse to continue to employ a person on the basis of her family status (ss. 3 and 7(a)).

[30] A complainant must first establish a *prima facie* case of discrimination (*Ont. Human Rights Comm. v. Simpsons-Sears Ltd.*, [1985 CanLII 18 \(S.C.C.\)](#), [\[1985\] 2 S.C.R. 536 at para. 28](#) ("*O'Malley*"). A *prima facie* case, in this context, is one that covers the allegations made and which, if the allegations are believed, is complete and sufficient to

justify a verdict in the complainant's favour, in the absence of an answer from the respondent. Once the *prima facie* case is established, the onus then shifts to the respondent to disprove the allegations or provide some other reasonable explanation.

[31] It is not necessary that discriminatory considerations be the sole reason for the actions at issue in order for the complaint to be substantiated. It is sufficient that the discrimination be one of the factors in the employer's decision (*Holden v. Canadian National Railway Company* (1991), 14 C.H.R.R. D/12 at para 7 (F.C.A.); *Canada (Attorney General) v. Uzoaba*, [1995 CanLII 3589 \(F.C.\)](#), [1995] 2 F.C. 569 (T.D.)).

[32] In *Basi v. Canadian National Railway Company* (1988), 9 C.H.R.R. D/5029 at para. 38481 (CHRT), the Tribunal stated that discrimination is not a practice that one would expect to see displayed overtly. A tribunal should therefore consider all circumstances to determine if there exists a "subtle scent of discrimination".

**A. Has Ms. Khalifa established a *prima facie* case that IOGC committed a discriminatory practice pursuant to s. 7 of the CHRA, in terminating her employment on August 2, 2005?**

[33] I am satisfied that Ms. Khalifa has established a *prima facie* case that her termination was discriminatory. The evidence adduced by her, in support of her allegations, if believed, would be complete and sufficient to justify a verdict in her favour, absent an explanation from IOGC.

[34] She was terminated 17 days prior to the scheduled end of her employment and she alleges that based on her more than satisfactory performance since joining IOGC, as well as the information she had received that her salary had been budgeted for until March 31, 2006, it was reasonable to expect that she would again be called up to work for IOGC after the expiration of the then current call-up.

[35] She testified, in addition, that Mr. Currie openly stated, in their final meeting, that the reason for her termination was the impact her commitments as a single mother were having on her work. His comments were along the same lines as his remarks during their prior meetings, regarding the care of her children. Based on the foregoing, Ms. Khalifa's evidence, if believed, is sufficient to establish *prima facie* that her family status was a factor in the decision to pre-emptively terminate her contract.

**B. Has IOGC provided a reasonable explanation for the otherwise discriminatory behaviour?**

[36] IOGC contends that Ms. Khalifa's family status was never a factor in the termination of her contract. Rather, IOGC explains that her call-up was ended because of:

- a) her shortcomings with respect to punctuality and attendance,
- b) her declining work performance, and
- c) the tense relationship that developed with IOGC's permanent staff (namely her supervisor, Ms. Murphy) and the disrespect she showed towards her.

[37] Mr. Currie testified with respect to Ms. Khalifa's April 1, 2005, call-up to work at the Production Division. Her previous call-up was to come to an end on March 31, 2005. He had no intention of using any temporary staff at the Production Division. He testified, however, that a number of people from the other divisions for whom Ms. Khalifa had been providing services wanted to continue using her temporary services but lacked room in their budgets to fund her continued employment. So these individuals asked Mr. Currie to call up Ms. Khalifa through his Production Division, which had a larger available budget than the other divisions, and effectively fund her activities through his budget. Mr. Currie, in fact, asserted in his evidence that but for his consenting to allocate his division's funds for the performance of work principally for other divisions, her call-up would not have been renewed and her services for IOGC would have ended on March 31, 2005.

[38] Ms. Khalifa's new contract was prepared in writing and indicated that its term ran from April 1, 2005, until August 19, 2005, a total period of 20 weeks. Her rate of pay was shown to be \$21.75 per hour, for a total of 37.5 hours per week. Mr. Currie testified that he had expectations that Ms. Khalifa would be able to complete the work for the Production and other divisions within the "normal course of a business day", starting at a "reasonable time of 8 to 9 o'clock". These expectations were conveyed to her along with an understanding that there would be some "flexibility" extended as to the start and end of the work day.

[39] When Mr. Currie executed the call-up for Ms. Khalifa, he had concerns regarding his division's ability to monitor her time. He was worried that given his extensive duties as General Manager, he would be unable to supervise Ms. Khalifa sufficiently. Staff who had worked more closely with her in the past had advised Mr. Currie that they had had some difficulty monitoring her time and performance, and that her attendance and work habits were "very fluid". He testified that this was the "background information" that he had regarding Ms. Khalifa's potential performance.

[40] He acknowledged that when Ms. Khalifa had previously provided temporary services, he found her work performance satisfactory. He highlighted, however, that when he served as Acting CEO, he had a full-time administrative officer to handle any administrative tasks. So his interaction with additional staff, including Ms. Khalifa, was minimal during the period that preceded her call-up to the Production Division in April 2005.

[41] Since Mr. Currie was too busy, as General Manager of Production, to monitor Ms. Khalifa's activities directly and keep track of her time, he assigned the task to Ms. Murphy. He met with her on April 11, 2005, and asked that she supervise Ms. Khalifa's hours of work and report to him on the status of her performance of assigned tasks. He explained to her that he had concerns about Ms. Khalifa's work schedule and hours of work. In an effort to ensure that the work was done according to the contract, Ms. Murphy was directed to monitor Ms. Khalifa's hours to ensure that she performed her work and to report back weekly to Mr. Currie on the status of Ms. Khalifa's work performance.



**(i) What were Ms. Khalifa's alleged shortcomings regarding her attendance and punctuality?**

[42] Ms. Murphy testified that early in her career, she had established a practice of always maintaining a diary in which she would jot down activities from her personal and work-related life, on a daily basis. Ms. Murphy filed in evidence the excerpts from her diary for the period that she worked with Ms. Khalifa, in 2005. Following her meeting with Mr. Currie on April 11, Ms. Murphy began noting in her diary Ms. Khalifa's attendance and the times when Ms. Khalifa would arrive and leave work each day. Ms. Murphy pointed out that her main objective in recording this information was not to verify whether Ms. Khalifa was arriving at a specific time in the morning (be it, for instance 8:45 or 9:00 a.m.), but more importantly to monitor if she was working the full 7.5 hours daily expected of her (37.5 hours per week).

[43] On April 12, which was the very next day after her meeting with Mr. Currie, Ms. Murphy wrote in the diary that Ms. Khalifa did not come in to the office at all, and did not call in during the morning to explain her absence. Later in the day, Ms. Khalifa telephoned to explain that her car had a flat tire and she would not be coming in. On April 18, Ms. Murphy wrote in her diary that although Ms. Khalifa arrived at 8:45 a.m. that day, she left at 2:00 p.m., having worked only 5.25 hours. On April 19, Ms. Khalifa arrived at work at 2:00 p.m., having explained that she again had had tire problems with her car.

[44] On April 25, Ms. Murphy recorded that she had to speak to Ms. Khalifa about a discrepancy in her timesheets. Although Ms. Murphy's records were showing that Ms. Khalifa had only worked 32.5 hours the previous week (April 18 to 22), Ms. Khalifa had filled out her timesheets to show that she had worked a full 37.5 hour week. After Ms. Murphy spoke to her, Ms. Khalifa amended the document to reflect the corrected number of hours worked.

[45] Ms. Murphy testified that she brought this incident to the attention of Mr. Currie who requested that she continue keeping track of Ms. Khalifa's hours, stating that if similar problems continued to arise, he would have to address the matter.

[46] On April 27, Ms. Murphy noted in her diary that Ms. Khalifa was not in her office and that no notice or explanation for the absence had been provided to Ms. Murphy. Ms. Murphy does not recall if an explanation was ultimately given or if Ms. Khalifa's absence lasted all, or just a portion, of the day.

[47] On April 28, Ms. Murphy wrote in her diary that she spoke to Mr. Currie about the "supervision issue". She told him that with the repeated absences and late arrivals, she was finding it uncomfortable supervising Ms. Khalifa. Mr. Currie replied that he would speak to Ms. Khalifa directly about the problem. Ms. Murphy testified that Ms. Khalifa's personal life or family status were not raised at all during this conversation.

[48] Following up on his conversation with Ms. Murphy, Mr. Currie invited Ms. Khalifa to his office the following day (April 29), in order to discuss the attendance and timeliness issues brought up by Ms. Murphy. According to Mr. Currie, Ms. Khalifa complained during the meeting about Ms. Murphy's "close supervision" of her. Mr.

Currie testified that he believed Ms. Khalifa had never been so closely supervised at IOGC before.

[49] Mr. Currie also confirmed that during the meeting, Ms. Khalifa expressed her objections to Ms. Murphy's alleged comments that Ms. Khalifa should work elsewhere, where her schedule would be more flexible and more accommodating to her family-related needs. After the meeting, Mr. Currie testified that he asked Ms. Murphy if she had said anything suggesting (or which could be interpreted as suggesting) that she work elsewhere, as related to him by Ms. Khalifa. Ms. Murphy replied that she had not.

[50] Ms. Murphy was asked in cross-examination if her conversation with Mr. Currie included a discussion about Ms. Khalifa being a single parent and that she should seek employment elsewhere because of her family status. Ms. Murphy testified that she did not recall any such conversation with Mr. Currie. She recollects Mr. Currie's telling her that Ms. Khalifa had expressed resentment towards Ms. Murphy's close supervision of her work. Mr. Currie testified that during this meeting with Ms. Murphy, she stated that Ms. Khalifa had also brought up a matter relating to another IOGC employee, who had obtained employment at a different government agency. This former employee had called Ms. Khalifa to inform her that his new employer may have a job available for her. Ms. Murphy recalled this latter discussion in her evidence as well, although she believed that it took place in June 2005. She remembers having told Ms. Khalifa that if this was an opportunity she wished to pursue, she should consider it.

[51] Ms. Murphy testified that after the April 29 meeting with Mr. Currie, Ms. Khalifa returned to her office cubicle and told Ms. Murphy in an angry and loud voice that if she had a problem with her, she should have brought it up directly, rather than raise it with Mr. Currie. Ms. Murphy recalls Ms. Khalifa noisily pushing things around her desk. In her diary for that day, Ms. Murphy recorded, "Discussion with Bill re: MK [Melissa Khalifa], Angry response from MK".

[52] Following up on Ms. Khalifa's reaction, Ms. Murphy testified that she went to Mr. Currie's office to discuss how to deal with the issue. Mr. Currie explained that Ms. Khalifa had displayed resentment to Ms. Murphy's tight supervision of her hours and work performance. Ms. Khalifa was experiencing some "scheduling difficulties". To address this issue and afford her some flexibility in her scheduling, Ms. Murphy suggested to Mr. Currie that Ms. Khalifa be offered the opportunity to enter into a "Compressed Work Schedule Agreement" (also known as a "flex time agreement") with IOGC. Flex time agreements allow employees to work an extra half hour per day, thus enabling them to gain 13 "compressed work days off" per year. Essentially, for every 19 days worked, the employee gets a day off (with one additional day off per year). IOGC's policy made flex time agreements available only to its indeterminate employees and term employees of six months or longer, not to temporary staff like Ms. Khalifa. Nevertheless, Mr. Currie accepted and approved Ms. Murphy's suggestion, and agreed to offer the option to Ms. Khalifa later that same day (April 29th). It was hoped that Ms. Khalifa might welcome the ability to have these extra days off from work, which would perhaps enable her to fulfill some of her personal commitments, such as taking her children to medical appointments or attending their school activities.

[53] According to Ms. Murphy, Ms. Khalifa told her that she appreciated the opportunity being afforded to her. The agreement was prepared and signed by Ms. Khalifa, Ms. Murphy (as supervisor) and Mr. Currie (as Divisional General Manager) later that day. The agreement was filed in evidence. It provided that Ms. Khalifa's work schedule would run from an 8:45 a.m. start to a departure time of 4:45 p.m., a total of 8 hours per day. This information was filled in by Ms. Khalifa herself, who testified that she did not insert any stipulation for a noon-hour break, since she rarely left the office for lunch. She usually ate while working at her desk. Ms. Murphy testified that she advised Ms. Khalifa that she could nonetheless take a half hour lunch if she chose to, provided she extended her working day accordingly, i.e. to a total of 8.5 hours including lunch. IOGC produced a copy of the policy regarding flex time agreements. It specifies that the starting and quitting time of an employee must respect the organization's "core hours" of activity, which are defined as 8:30 to 11:30 a.m. and 1:30 to 3:30 p.m.

[54] Ms. Murphy testified that despite the implementation of the flex time agreement, Ms. Khalifa continued to have difficulty being punctual in arriving to work and maintaining her attendance. There were also discrepancies between the work times entered by Ms. Khalifa in her timesheets and those observed by Ms. Murphy. In her testimony, Ms. Murphy listed a series of dates where she had recorded some of these lapses in her diary:

May 4 - Ms. Khalifa arrived at her office at 9:30 a.m.

May 6 - Ms. Khalifa arrived at her office at 9:00 a.m. but left at 2:15 p.m. Ms. Murphy does not recall if an explanation was given or if Ms. Khalifa ever made up those hours. In the timesheet, Ms. Khalifa had recorded a departure time of 4:55 p.m.

May 12 - Ms. Khalifa arrived at 10:45 a.m., after having first called Ms. Murphy to advise her that she would be coming in late. Ms. Khalifa recorded in her timesheet that she arrived at 9:00 a.m. that day.

May 16 - Ms. Khalifa arrived at 10:00 a.m., after having first called Ms. Murphy to advise her that she would be coming in late. Ms. Khalifa recorded in her timesheet that she arrived at 9:00 a.m. that day.

May 24 - Ms. Khalifa arrived at 9:20 a.m. and left at 2:45 p.m. Ms. Murphy does not recall if she was notified or was given an explanation. She does not recall if Ms. Khalifa made up those hours. Ms. Khalifa recorded in her timesheet that she left at 5:00 p.m. that day.

May 31 - Ms. Khalifa arrived at 1:40 p.m. Ms. Murphy recorded in her diary that Ms. Khalifa had an emergency dental appointment.

June 7 - Ms. Khalifa arrived at 9:15 a.m. and left at 3:30 p.m. Ms. Murphy does not recall any explanation being given or if Ms. Khalifa ever made up those hours.

June 16 - Ms. Khalifa took a lunch break of two hours. Ms. Murphy does not recall being given any advance notice for this. Ms. Khalifa recorded a 30 minute lunch in her timesheet.

June 21 - Ms. Khalifa arrived at 9:10 a.m. and left at 3:00 p.m. Ms. Murphy does not recall any notice being given for the early departure.

June 28 - Ms. Khalifa did not arrive until 1:30 p.m. Ms. Murphy did not receive any call advising or explaining why her arrival would be late. Ms. Murphy noted in her diary that she checked with the reception desk to verify whether Ms. Khalifa had called in, and was told she had not. From this date forward, Ms. Murphy changed cubicles so that she was no longer located next to Ms. Khalifa's office. However, Ms. Murphy testified that in order to verify Ms. Khalifa's arrival and departure times, she was getting up and walking to Ms. Khalifa's office every 10 minutes to check. Thus, the times recorded in her diary are never more than 10-15 minutes after Ms. Khalifa's actual time of arrival.

June 29 - Ms. Khalifa arrived at 10:00 a.m. She did not call in to explain that she would be late. Ms. Khalifa recorded that she arrived at 9:30 that day.

June 30 - Ms. Khalifa arrived at 9:30 a.m.

July 4 - Ms. Khalifa arrived at 9:30 a.m.

July 7 - Ms. Khalifa called Ms. Murphy at 8:55 a.m. to advise that she would be late as she had a doctor's appointment. She indicated that she would be coming in at 10:30 a.m. As of 12:20, when Ms. Murphy was stepping out of the office, she noted in her diary that Ms. Khalifa had yet to arrive and had not called in an explanation. Ms. Khalifa recorded in her timesheet that she arrived at 12:30 p.m., but stayed that evening until 7:30 p.m.

July 8 - Ms. Khalifa arrived at 10:00 a.m. She recorded in her timesheet that she arrived at 9:00 a.m.

July 15 - Ms. Khalifa arrived at 10:15 a.m.

July 27 - Ms. Khalifa was away at lunch between 11:45 and 2:00 p.m. She recorded in her timesheet that she only took a 30 minute lunch.

July 29 - Ms. Khalifa was away at lunch between 11:45 and 1:15 p.m. She recorded in her timesheet that she only took a 30 minute lunch.

[55] Ms. Murphy testified that she raised with Ms. Khalifa the discrepancies between the observed times and those that Ms. Khalifa was entering on the timesheets. For instance, as I already mentioned, on April 25th, the differences were pointed out and Ms. Khalifa modified her timesheet accordingly. On June 6th, Ms. Murphy noticed Ms. Khalifa had entered 35 hours worked in her timesheet for the previous week, when Ms. Murphy had observed only 28 hours worked. Ms. Murphy discussed this matter with Ms. Khalifa, who explained that she was having some financial problems at the time and asked Ms. Murphy to sign off on the exaggerated timesheet as an advance payment for work to be performed later. Ms. Murphy testified that she accepted her request and signed in "good faith", in order to afford Ms. Khalifa the flexibility to perform the work when she could. Ms. Murphy does not recall being given any indication that Ms. Khalifa ever actually made up those hours owing.

[56] On July 4, Ms. Khalifa submitted a timesheet for signature showing that she had worked 27.5 hours, but Ms. Murphy's records showed that she had in fact worked 25 hours that week. Ms. Murphy testified that Ms. Khalifa was often claiming that she was doing some of her work at home. Given the relatively small discrepancy of 2.5 hours, and

her inability to verify Ms. Khalifa's claim, Ms. Murphy accepted her claim in good faith and did not bother raising this discrepancy with her.

[57] On July 20, while reviewing Ms. Khalifa's performance, Ms. Murphy noticed that a timesheet submitted by Ms. Khalifa relating to a previous week showed 37.5 hours worked. Ms. Murphy's records, however, indicated that she had worked only 30.5 hours that week. Since Ms. Murphy was away from the office when Ms. Khalifa prepared the timesheet for approval, another supervisor, who was presumably unaware of the actual hours worked as recorded in Ms. Murphy's records, signed it in her absence.

[58] On July 25, Ms. Murphy's review of Ms. Khalifa's timesheet for the preceding week indicated that she had worked 37.5 hours, but Ms. Murphy's records showed a total of 27.5 hours worked. Ms. Murphy testified that she did not bother talking to Ms. Khalifa about the discrepancy as she was still unable to verify Ms. Khalifa's claims that she was also working from home. Moreover, Ms. Murphy felt that with all the conflicts that had developed between her and Ms. Khalifa by this point, it was "no longer worth it" to raise the issue.

[59] On August 2, which ended up being the last day that Ms. Khalifa worked at IOGC, she submitted a timesheet for the prior week to Ms. Murphy, who noted in her diary that the claimed hours of work (25) exceeded the number recorded by Ms. Murphy (21). Given Ms. Khalifa's departure, this discrepancy was never raised with her.

[60] On many of the timesheets, the arrival time entered by Ms. Khalifa for numerous workdays is 10 to 30 minutes earlier than what Ms. Murphy had noted in her diary. Ms. Murphy testified that she only raised the larger discrepancies with Ms. Khalifa, particularly during the first couple of months of the latter's employment at the Production Division. In almost all instances, Ms. Murphy signed off on the timesheets nonetheless, without any adjustments being made, having opted not to "split hairs" but rather, to give Ms. Khalifa "the benefit of the doubt" with respect to the smaller differences.

**(ii) What were the indicators of Ms. Khalifa's declining work performance?**

[61] Ms. Khalifa's duties during April to August 2005 were divided into two general categories (project coordination/reporting duties and administrative duties), which were reflected in a document entitled "contract" that she and Ms. Murphy had developed together by April 12, 2005. The project coordination and reporting duties were to be assigned to her by the Production Division as well as other divisions. These tasks were to include the production of IOGC reports, communication initiatives involving the IOGC website, the preparation of statistical summaries, as well as working on a document known as "Royalty Simplification and Guidelines" (the Guidelines). Ms. Khalifa's administrative duties included making travel arrangements for other staff, booking meetings, distributing mail, providing administrative support to Ms. Murphy, and replacing the receptionist during breaks on Tuesdays and Thursdays.

[62] Ms. Murphy testified that on a couple of occasions, Ms. Khalifa did not perform this last task, as was expected of her. On June 9th, as noted in Ms. Murphy's diary, Ms. Khalifa did not relieve the receptionist as scheduled, and no one could locate her. Ms. Murphy testified that she therefore had to fill in for the receptionist herself. Ms. Khalifa

appeared to suggest, during her cross-examination of Ms. Murphy, that she had swapped her shift that day with another employee, but Ms. Murphy testified having had no knowledge of any such arrangement and Ms. Khalifa did not lead any evidence to support this assertion. Ms. Murphy also testified that on July 26, Ms. Khalifa called in at 9:00 a.m. to say that she would not be coming in to the office because a relative of hers from overseas had suddenly showed up for a visit. Ms. Murphy, therefore, had to fill in for Ms. Khalifa's shift at reception that morning.

[63] One of the tasks assigned by Mr. Currie to Ms. Khalifa during her contract consisted of the preparation of the Production Division's work plans, i.e. a document setting out the division's activities. Ms. Murphy testified that this project was "time sensitive", meaning that certain deadlines had to be met. Pursuant to Mr. Currie's instructions that she monitor Ms. Khalifa's progress in the performance of her work tasks, Ms. Murphy met with Ms. Khalifa on May 26 to discuss the status of this project. At that time, Ms. Murphy had no concerns about the project's progress, and Ms. Khalifa did not indicate that she was having any difficulty meeting her target times or requiring any additional time to complete the project. On June 9, however, Mr. Currie convened a meeting with Ms. Khalifa and Ms. Murphy regarding the matter. Mr. Currie was worried that the work plans project had fallen behind schedule. Ms. Murphy testified that Ms. Khalifa got "quite defensive" after hearing his comments but assured him that the work plans would be completed on time. I do not have any evidence before me regarding whether Ms. Khalifa ultimately produced the work plans on time.

[64] Another of the jobs that Mr. Currie asked Ms. Khalifa to execute during her contract was to coordinate the preparation of the Production Division's portion of IOGC's quarterly review. The quarterly review is a key document within IOGC, which is provided to the CEO, and is the basis upon which each division's progress in meeting its goals and objectives is assessed. The document also enables divisions to inform other divisions of the status of their respective activities. In this particular instance, it was very important to Mr. Currie that this review be well executed because it was his division's first major exchange with the new CEO. Mr. Currie and Ms. Murphy met with Ms. Khalifa on June 22 to set out the process for the report's preparation and her role as a coordinator of the materials to be gathered. She was to work with individuals within IOGC to acquire the needed materials. Mr. Currie sent out emails to all staff within the division who were required to provide materials for the quarterly review and identified the times by which they were to provide them to Ms. Khalifa. Mr. Currie testified that Ms. Khalifa did not complete the project by the deadlines he had set down for her.

[65] Ms. Murphy confirmed in her evidence that at the June 22 meeting, Ms. Khalifa was instructed to compile and complete a draft of the full review report by the set deadline. Mr. Currie pointed out that he wanted his division's review in the CEO's hands by July 23. It was explained that this was a "time sensitive" document, a point about which Ms. Khalifa should have been aware, having prepared such documents before. On July 5, Ms. Murphy noted in her diary that she spoke to Ms. Khalifa about the progress of the report. Ms. Murphy reminded her that the report was coming due shortly and asked her what was the status of its preparation. According to Ms. Murphy, Ms. Khalifa was unable to

provide any "specifics". As a result, Ms. Murphy became concerned about whether the report would be completed in time.

[66] On July 12, Ms. Murphy met with Ms. Khalifa to review the report's formatting. On July 18, Ms. Khalifa called in to say that she would be taking the day off as one of her "flex" days because her car again had a flat tire. Nonetheless, she undertook to send in a draft of the document by email later that day. It did not arrive. The following day, July 19, Ms. Murphy spoke to Ms. Khalifa again, reminding her that she was still waiting for the draft of the report. Ms. Khalifa provided it later that day. In a subsequent meeting that day with Mr. Currie, Ms. Murphy briefed him, at his request, on Ms. Khalifa's difficulty meeting her production deadlines as well as her punctuality and attendance.

[67] Ms. Murphy testified that over time, Ms. Khalifa had become increasingly hostile towards her in their exchanges regarding the production of the review report, to the point that Ms. Khalifa would either refuse to answer Ms. Murphy's questions or would do so in an abrupt manner. Ms. Murphy noted this hostility in her diary entry of July 19.

[68] On the following morning (July 20), Ms. Murphy spoke to Mr. Currie again about Ms. Khalifa's lack of commitment in meeting her obligations and supplying the report, as well as her increasing hostility towards her. Ms. Murphy told him that she had become extremely uncomfortable with the situation. He stated that he would review Ms. Khalifa's report but that, in any event, given her difficulty meeting deadlines, he felt it necessary to reorganize tasks within the division. He therefore instructed Ms. Murphy to take over Ms. Khalifa's responsibilities for the production of the quarterly review report. Mr. Currie said he would explain these changes to Ms. Khalifa himself. Ms. Murphy had to rush to make a number of necessary corrections to the report, but managed to provide a draft to Mr. Currie for his review, by the end of the day.

[69] On July 21, Mr. Currie met with Ms. Khalifa to inform her of the changes in responsibilities at the division. Ms. Murphy was also present during the latter part of this meeting. Both she and Mr. Currie testified that Ms. Khalifa was not happy with the proposed changes and with the level of Ms. Murphy's supervision of her. She insisted that Mr. Currie "choose" between her and Ms. Murphy as to who would work for him in the Production Division, because she was unable to work with Ms. Murphy. Mr. Currie responded that there was no question of removing Ms. Murphy from her position. She was a permanent full-time employee of IOGC while Ms. Khalifa was temporary staff under contract.

[70] Ms. Khalifa indicated that she was "unhappy" with the situation, so Mr. Currie asked her what she needed in order to be "happy". More specifically, he asked her if she had any suggestion to make for resolving her issues with Ms. Murphy. Mr. Currie claims that she was unresponsive to his question, and did not ask for or propose any solution that would better enable her to complete her work satisfactorily and on time.

[71] Mr. Currie suggested that the two individuals find some way to work the matter out. Ms. Murphy recalls saying during the meeting that she was willing to work through whatever issues were ongoing, but that she nevertheless remained committed to fulfilling

Mr. Currie's expectations of her, which included providing work for Ms. Khalifa to perform.

[72] Ms. Khalifa was visibly upset with the situation. Mr. Currie remembers suggesting to her that given her unhappiness, perhaps working elsewhere would make her happier.

[73] According to Mr. Currie, he informed Ms. Khalifa during the meeting that while away on his vacation, he would think about developing some method for resolving the problem. He also asked her to honour her work commitments and to meet her deadlines during his absence.

[74] Ms. Murphy testified that until this July 21 meeting, her work relationship with Ms. Khalifa was "up and down". At times, she felt that Ms. Khalifa seemed committed to doing her job and providing the services required of her, but on other occasions, she found that Ms. Khalifa displayed a disregard for her obligations as a contractor to IOGC. Ms. Murphy described her difficulties in supervising Ms. Khalifa's hours and her inability at finding some means to resolve the problem, as "extremely uncomfortable", a sentiment that she communicated to Mr. Currie. Ms. Murphy also testified that at no time during any of the discussions with Mr. Currie to this point was any mention made of cancelling Ms. Khalifa's contract.

[75] At some point in July, prior to his July 22 departure on vacation, Mr. Currie assigned another task to Ms. Khalifa, the preparation of the Guidelines (referred to earlier in this decision), which contain information regarding the calculation of royalties that are due from the oil and gas industry. It is important to the industry that the Guidelines be released in a timely fashion. Mr. Currie provided Ms. Khalifa with a draft copy of the 80-page document, which he had marked up with a number of changes. He instructed her to prepare the Guidelines, which included having them translated into French, by his return from vacation on August 2. He expected that it would not take Ms. Khalifa more than a week to complete the job. Ms. Murphy noted in her testimony, however, that by July 25, Ms. Khalifa had not provided any progress update regarding this task. As of August 2, when Mr. Currie returned from his vacation, Ms. Khalifa had not as yet arranged to have the document sent out for translation and the final product was still not ready.

**(iii) How did Ms. Khalifa develop a tense relationship with, and show disrespect towards, Ms. Murphy?**

[76] IOGC contends that the relationship between Ms. Khalifa and Ms. Murphy unquestionably became increasingly tense with the passage of time. For instance, as I already mentioned, Ms. Murphy testified that on April 29, Ms. Khalifa returned to her desk after her meeting with Mr. Currie, and angrily tossed things around her desk, all the while complaining loudly that Ms. Murphy should have raised the timeliness question with her directly, rather than speaking to Mr. Currie about it.

[77] According to Ms. Murphy, things did not improve over the ensuing weeks. As I already indicated, Ms. Murphy spoke to Mr. Currie a number of times about the difficulty she was having supervising Ms. Khalifa's attendance and work performance. This tension culminated in a complete breakdown in communication on July 20, when Ms. Murphy asked Ms. Khalifa how the quarterly report was progressing. Ms. Khalifa became



"hostile" and "non-conversant". She refused to answer Ms. Murphy's questions, who reminded Ms. Khalifa that the document was due immediately. Mr. Currie wanted to review it prior to his departure for vacation two days later. Ms. Murphy testified that Ms. Khalifa's behaviour was "abrupt" in her refusal to answer any of her questions.

[78] Two days later, on July 22, Ms. Murphy wrote in her diary that Ms. Khalifa displayed "extremely rude behaviour" towards her. When she said "Good Morning" to Ms. Khalifa, the latter did not respond at all. Ms. Murphy noted that over the course of most of the day, she could hear Ms. Khalifa speaking to others on the telephone, complaining that Ms. Murphy had taken over all of her responsibilities at work. Ms. Murphy also recalls seeing Ms. Khalifa speaking to two other IOGC employees elsewhere in the office space that day. She overheard about 30 seconds of the conversation, during which Ms. Khalifa blamed Ms. Murphy for all of these changes in her responsibilities. Later that day, one of those two other employees came up to Ms. Murphy and pointedly asked her what "her hand was" in the changes to Ms. Khalifa's work duties. From that day onwards, both of these other employees were "very cold" towards Ms. Murphy.

[79] The following business day, Monday, July 25, Ms. Murphy noted in her diary that Ms. Khalifa was in a better mood. She brought her children with her to work that day and introduced them to Ms. Murphy. Around 11:30 a.m., she and her family left the office for the rest of the day because they had an appointment with one of the children's physician. The next day (July 26) was when Ms. Khalifa's relative suddenly showed up for a visit from overseas. She visited the office for about 20 minutes with him and then they both left for the rest of the day.

[80] During the remaining three business days (July 27 to 29) leading up to Ms. Khalifa's final meeting with Mr. Currie on August 2, Ms. Murphy did not make any entry in her diary regarding Ms. Khalifa's behaviour towards her nor did Ms. Murphy make any remarks in this regard during her testimony at the hearing.

**(iv) What is IOGC's explanation regarding the termination of Ms. Khalifa's contract?**

[81] Upon his return from vacation, on August 2, Mr. Currie asked Ms. Murphy if there had been any change regarding Ms. Khalifa's performance-related issues. Ms. Murphy informed him that Ms. Khalifa's commitments to the Production Division were still not being honoured (the translated Guidelines had yet to be produced), that she was still not showing up during the expected hours of work, and that her behaviour towards Ms. Murphy had worsened after Ms. Khalifa's July 21 meeting with Mr. Currie.

[82] Mr. Currie concluded that Ms. Khalifa's issues regarding the timeliness of her work, her attendance and her relationship with Ms. Murphy could not be resolved over the two weeks that remained in her contract, which was ending on August 19. He testified that he decided to no longer participate in any extension of her call-up. He knew that the Production Division had the resources to have her tasks reassigned to other employees immediately, so he also decided not to provide her with any further work assignments until the end of her call-up.

[83] Before proceeding on this action, Mr. Currie met with the IOGC manager of contracts and administration, Mr. Potter, along with Ms. Murphy. Mr. Potter explained that IOGC could terminate the contract of a temporary contract employee like Ms. Khalifa at any time prior to the end of the contract's term, if so required. Mr. Potter testified that he understood Mr. Currie's intention to be that Ms. Khalifa's call-up be terminated that day. Mr. Potter therefore offered to tell Ms. Khalifa of the termination, or to join Mr. Currie if he wanted to tell her himself. Mr. Currie declined both offers.

[84] After the meeting with Mr. Potter, Mr. Currie found Ms. Khalifa and invited her into a small boardroom with him. He explained that since her timeliness, attendance, performance and behaviour issues could not be resolved, he had concluded that there was little likelihood that her services would be needed by the Production Division after the end of her call-up. He also told her that he would no longer be assigning any work to her during the remainder of her contract and that during that period, he wanted to work with her in developing a "transition strategy" to transfer her existing work to other employees and to have her return any IOGC materials in her possession. As part of that strategy, he also intended to help her explore the possibility of another division calling her up on a new contract. To that end, he testified that later that day, after the meeting, he spoke to several IOGC managers for whom Ms. Khalifa had worked to tell them that he would not be renewing her call-up but that they could initiate their own call-up for her services from their budgets.

[85] As the meeting was progressing, Mr. Currie perceived that Ms. Khalifa seemed "overwhelmed" and was no longer "able to process" any of the information he was providing. She was seemingly "having discussions" with herself. At this point, Mr. Currie testified that he suggested she could, at her option, continue to work through the day or go home immediately, and that she would be paid her salary for the day just the same. He claims that he fully expected Ms. Khalifa to return to work the following day and develop the "transition strategy" over the final days of the contract. He testified that, in fact, when he observed the following day that Ms. Khalifa had not returned to the office, he called her at home and left a message. Ms. Khalifa never replied.

[86] The evidence of Mr. Potter and Ms. Murphy appears to differ somewhat from Mr. Currie's with respect to the date of termination. According to Mr. Potter, during his meeting with Mr. Currie in the morning of August 2, he understood that the latter intended to "discontinue" Ms. Khalifa's call-up that day. For her part, Ms. Murphy recalled that Mr. Currie came to her desk after the meeting to tell her that he had been unable to resolve the issues with Ms. Khalifa and that although his intention was to terminate her contract that day, he gave her the option to work the remainder of the day. As Ms. Murphy noted in her diary, Ms. Khalifa opted not to stay but rather left for home at 11:30 a.m.

[87] Mr. Currie denies standing outside her cubicle, waiting for Ms. Khalifa to leave, as she had claimed in her evidence. He agrees that he passed by her cubicle a number of times but it was in order to have the above mentioned conversations with the other managers in their respective offices regarding Ms. Khalifa's availability for call-up.

**(v) Did Mr. Currie and Ms. Murphy discuss Ms. Khalifa's family status with her and was it a factor in their conduct and decisions regarding her?**

[88] Ms. Murphy maintains that Ms. Khalifa's family status was not in any way a factor in her dealings with Ms. Khalifa's employment at IOGC. Ms. Murphy does acknowledge that she and Ms. Khalifa spoke to each other in general terms about their respective personal lives from time to time, as co-workers often do. They would ask each other how their weekend was and how their children are doing. Ms. Murphy claims that Ms. Khalifa never told her that she did not want to talk about her family life or that she was uncomfortable about any discussions regarding her personal life.

[89] Ms. Murphy categorically denies having told Ms. Khalifa that single parents like her should seek employment elsewhere, in the manner presented by Ms. Khalifa in her testimony. As mentioned earlier in this decision, Ms. Murphy does recall Ms. Khalifa stating that she was considering taking a full-time job at another government agency where a former IOGC employee was now employed. Ms. Murphy claims that she remarked to Ms. Khalifa that if that job was an opportunity that she wished to pursue, she should look into it. Her personal life and circumstances were not discussed during this conversation.

[90] Mr. Currie testified that when he met with Ms. Khalifa on April 29, she complained that Ms. Murphy had made comments suggesting that she should look for work somewhere else, where the hours of work would be more flexible and would enable her to satisfy her family commitments. Mr. Currie raised this matter with Ms. Murphy afterwards by asking her if she had said anything to Ms. Khalifa suggesting (or which could be interpreted to suggest) that she work elsewhere. Ms. Murphy replied that she could not recall having made any such comment, a position she still maintains today. With regard to Mr. Currie's questions, Ms. Murphy only recalls having been told by him that Ms. Khalifa resented the tight supervision that Ms. Murphy had been applying, and that Ms. Khalifa had indicated that her performance issues were related to her difficulties in managing her time. According to Ms. Murphy, it was in response to this concern that she proposed to Mr. Currie that Ms. Khalifa be offered a flex time contract.

[91] For his part, Mr. Currie insists that Ms. Khalifa's family status was not a factor in his dealings with her and in his ultimate decision to end her employment at the Production Division. He denies ever telling Ms. Khalifa, as she alleges, that she should look for a job elsewhere that is more suitable to her "family situation". He admits that one morning he saw Ms. Khalifa arrive at work late looking stressed and flustered. He invited her into his office for a discussion in private. He asked her if she and her family were alright, and whether she required any support. She replied that everything was fine but also told him that she felt uncomfortable being asked these questions. Mr. Currie testified that he immediately apologized and explained that he posed them only out of his concern for her. He also told her that he had some empathy for her situation because his daughter was also a single mother.

**(vi) Is IOGC's explanation reasonable or just a pretext for otherwise discriminatory practices?**

[92] I find that IOGC has provided a reasonable explanation in response to Ms. Khalifa's *prima facie* case.

[93] I am persuaded by the evidence that Ms. Khalifa had difficulty being punctual in her work attendance. Ms. Murphy's diary was particularly convincing in this regard. The document was very detailed and Ms. Murphy was very credible in her evidence regarding how meticulous she was in entering all of her daily activities therein. I am satisfied that each of the entries reflected circumstances as she observed them at the time. She impressed me as a conscientious employee who took her job tasks seriously, and her assertion that she regularly records her daily activities is entirely consistent with this impression.

[94] An additional factor I considered in assessing Ms. Murphy's evidence is the fact that she ceased working for IOGC in 2005, only a few months after Ms. Khalifa's employment ended. Ms. Murphy had moved to Calgary from New Brunswick in 2004, to accompany her husband on a job transfer. The couple moved back to New Brunswick in October 2005. Thus, at the time Ms. Murphy testified, she had not had any ties with IOGC for almost four years and there is no evidence to suggest that she had any interest in the outcome of the present case. This, in my view, renders her evidence all the more credible.

[95] Ms. Khalifa highlighted the arrival and departure times indicated on her timesheets, all of which were signed off by either Ms. Murphy or other IOGC managers. Many of these times differ from those recorded by Ms. Murphy in her diary. It must be noted, however, that it was always Ms. Khalifa who prepared her timesheets, not the managers. Furthermore, Ms. Murphy did not sign off in several instances where discrepancies were significant. On those occasions Ms. Khalifa acknowledged the errors and either modified the timesheets, or requested that Ms. Murphy ignore the mistake while promising to make up the shortfall. I accept Ms. Murphy's explanation that with respect to the smaller variations, she decided to give Ms. Khalifa "the benefit of the doubt" or, as their relationship became tense, to simply avoid engaging in any conflict over the issue. In her cross examination of Ms. Murphy, Ms. Khalifa seemed to suggest that on some occasions during her absences from her desk during the lunch hour, she was meeting managers from other divisions regarding the work she was performing for them. Ms. Khalifa did not lead any evidence herself to support this claim, and this still would not explain her other punctuality and absenteeism issues. Overall, aside from pointing to the timesheets themselves, Ms. Khalifa did not affirm in her evidence that she was in fact at work during the hours indicated therein.

[96] IOGC has also established that there were significant problems with her work performance, having demonstrated that she failed to meet numerous deadlines for completing her projects, including the production of the quarterly review report and the Guidelines. IOGC has also demonstrated that Mr. Currie had come to realize that a tense relationship had developed between a member of his full-time staff (Ms. Murphy) and Ms. Khalifa.

[97] Ms. Khalifa suggested in her cross-examination of Mr. Currie that the quarterly report was ultimately completed and provided to the CEO, and that IOGC had granted a general extension for the filing of reports to all departments, implying that there was no genuine performance issue with regard to the report. The fact is, however, that Mr. Currie had explicitly stated that he, as the General Manager of Production and the person who

assigned this work task to her, expected and wanted the report to be ready by July 23. He had made a commitment to the CEO to file by that date (i.e., before he left on vacation the following day). Her tardiness in performing this task (she only sent the draft report to Ms. Murphy just days before the deadline), had put this commitment in jeopardy. I do not consider these circumstances to constitute evidence of pretext in IOGC's explanation.

[98] Ms. Khalifa pointed to the evidence of other IOGC employees and Ms. Larocque to the effect that they were not aware of any problems with her work performance. This evidence does not, in my view, call into question the reasonableness of IOGC's explanation regarding this issue. Mr. Jaques had managed Ms. Khalifa on a limited basis and had difficulty recalling his supervision of her other than to say that she was "helpful" to people. An IOGC employee, Alexandra Steinke, with whom Ms. Khalifa used to work in the Executive division, testified that she observed Ms. Khalifa doing a "really good job" and that she could perform any task given to her. However, she admitted that she never oversaw Ms. Khalifa's work in the production division nor monitored or approved any of her IOGC timesheets. She worked at the other end of the workplace and could not see when Ms. Khalifa would come in to work on a daily basis.

[99] Mr. Potter used to supervise Ms. Khalifa when she worked at reception early in her career at IOGC. He testified that she provided excellent service in that capacity, but he did not supervise her work thereafter. Similarly, Ms. McCurdie testified that her division would have been responsible for the operations at the reception desk. She testified that there were no concerns with performance, attendance or punctuality while she worked at reception. Ms. Larocque testified that Ms. Khalifa is currently one of Sprit Staffing's best and most dedicated employees. She has no concerns about Ms. Khalifa's attendance or punctuality. Ms. Larocque also pointed out that the fact that IOGC had renewed Ms. Khalifa's call-ups numerous times was indicative of their having been satisfied with her work.

[100] Nevertheless, this evidence does not cast doubt upon the reasonableness of IOGC's explanation regarding the issue of her work performance. Some of the evidence relates to an earlier period when Ms. Khalifa first joined IOGC or, on the other hand, to a far more recent period and in a different workplace. None of it relates to the period during which she was employed at the production division. Most importantly, the evidence regarding Ms. Khalifa's performance issues at the production division was not contradicted, and was consistent with the timesheets (which Ms. Khalifa agreed to correct a number of times, once Ms. Murphy brought the discrepancies to her attention). Rather than denying that she was late in completing the tasks assigned to her, Ms. Khalifa asserted at the hearing that it did not matter if her reports were tardy since IOGC ultimately granted extensions to all departments for the filing of quarterly reports.

[101] Ms. Khalifa also suggested that there is a contradiction between Mr. Currie's and Ms. Murphy's recollections regarding what he had asked her, during their April 28<sup>th</sup> conversation, regarding her capacity as a single mother who was working at the same time. He testified that he had asked Ms. Murphy whether she had said anything that could be interpreted as a comment that Ms. Khalifa should work somewhere else where the schedule would better accommodate her family-related needs. Ms. Murphy said that they had not discussed Ms. Khalifa's "family status" as a single parent. Mr. Currie testified

that he did not consider his question to Ms. Murphy to have constituted a discussion about Ms. Khalifa's "family status" and IOGC similarly argued that there is no real contradiction in the recollections of Ms. Murphy and Mr. Currie. Whatever the case, even if there is a difference in the two witnesses' evidence, I am not persuaded that it is significant enough to cast doubt on the overall credibility of their evidence or call into question the reasonableness of IOGC's explanation.

[102] Ms. Khalifa contends that if indeed there were performance and timeliness issues regarding her work, she should have received notice to that effect. However, I accept the IOGC's response that given the numerous discussions that Ms. Murphy had with Ms. Khalifa regarding the discrepancies in the timesheets as well as the tardiness of the report, a matter that Mr. Currie had also brought up with her, Ms. Khalifa was indeed put on notice, and both supervisors' conduct in this respect is entirely consistent with Mr. Currie's ultimate decision not to renew Ms. Khalifa's call-up.

[103] Ms. Khalifa also highlighted the supposed distinction between Mr. Currie's testimony that he did not intend to renew her call-up at its expiry, and Mr. Potter's and Ms. Murphy's understanding of his intent to terminate the contract immediately. As with the "family status" discussion dealt with above, I fail to see any significance in this discrepancy, if any exists at all. The fact is that Mr. Currie no longer wished to continue employing Ms. Khalifa. On this point, all the witnesses concur. Any confusion as to whether he intended to release her immediately or help with her transition into another call-up during the remainder of her contract is irrelevant. It does not cast doubt on his evidence overall.

[104] There is some divergence between Ms. Khalifa's and Mr. Currie's versions of what he mentioned at their last meeting. According to her, he said that her being a single parent interfered too much with her ability to do work, and was therefore dismissing her. He denies making such a statement. I accept his account because it is consistent with the preponderance of the evidence. His reasons for dismissing her are clear and well documented, as appears particularly in Ms. Murphy's diary. They do not just relate to her tardiness or absences from work, but her failure to execute tasks and her relationship with her direct supervisor as well. Ms. Khalifa may understandably have associated his concerns about her absenteeism and tardiness to constraints at home of which she may have been personally aware, arising from the care of her family. This may explain her understanding of what was said during their discussion.

[105] However, I find, on a balance of probabilities, that the only factors guiding Mr. Currie's decision to terminate her call-up related to her work performance, including her attendance issues and deteriorating relationship with her manager, Ms. Murphy. Her family status was not a factor. Ms. Khalifa herself testified that she resisted and was uncomfortable with disclosing to Mr. Currie information regarding her family life. Moreover, Ms. Khalifa did not claim or lead any evidence alleging that her timeliness or performance issues were related to her family status. For instance, the evidence shows that most of her late arrivals at work were unexplained or due to non-family related causes, such as car trouble. Ms. Khalifa never alleged that she was unable to perform to the levels expected of her due to difficulties or obstacles related to her family status, nor requested any accommodation in order to meet her commitments.

[106] Instead, her allegations were essentially that Ms. Murphy had a personal animosity towards Ms. Khalifa relating to the latter's being a single mother, and that Ms. Murphy had somehow convinced Mr. Currie to share the same opinion. Ms. Khalifa contends that Mr. Currie changed his attitude towards her after Ms. Murphy's arrival, a change that she claims was linked to their commonly held belief that given Ms. Khalifa's status as a single parent, she should not be working. The evidence does not support this allegation and it ultimately shows that Ms. Khalifa's perception is mistaken. Mr. Currie did indeed adopt a tougher tone with her, but it was related entirely to her job performance and behaviour towards her direct supervisor, Ms. Murphy. Ms. Khalifa's family status was not a factor either in her treatment as an employee or, ultimately, in the decision to terminate her call-up.

[107] For all these reasons, I find that Ms. Khalifa's complaint of discrimination under s. 7 (a) of the *CHRA* has not been substantiated.

### **III. WHAT IS THE LAW REGARDING MS. KHALIFA'S CLAIM OF HARASSMENT?**

[108] It is a discriminatory practice, under s. 14(1)(c) of the *CHRA*, to harass an individual on a prohibited ground of discrimination in matters related to employment.

[109] Harassment, within the meaning of the *CHRA*, consists of unwelcome conduct related to one of the prohibited grounds of discrimination that detrimentally affects the work environment or leads to adverse job-related consequences for the victims (*Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252 at 1284; *Rampersadsingh v. Wignall (No. 2)* (2002), 45 C.H.R.R. D/237 at para. 40 (C.H.R.T.)). In *Canada (HRC) v. Canada (Armed Forces) and Franke*, [1999] 3 F.C. 653 at paras. 29-50 (F.C.T.D.) ("*Franke*"), Madame Justice Tremblay-Lamer set out the test for harassment under the *CHRA*. In order for a complaint to be substantiated, it must be demonstrated:

- (i) That the respondent's alleged conduct is related to the prohibited ground of discrimination alleged in the complaint;
- (ii) That the acts that are the subject of the complaint were unwelcome;
- (iii) That there was an element of persistence or repetition in the impugned conduct. In certain circumstances, however, even a single incident may be severe enough to create a hostile environment. An objective, reasonable person standard is used to assess this factor; and
- (iv) That where a complaint has been filed against the employer regarding the conduct of its employees, the victim of the harassment has, whenever possible, notified the employer of the alleged offensive conduct.

#### **A. Has Ms. Khalifa established all of the conditions needed to make out a case of harassment?**

[110] The complainant claims that Ms. Murphy and Mr. Currie harassed her on the basis of her family status. The alleged incidents are comprised of the following:

- In April 2005, when Ms. Khalifa was called away from work, Ms. Murphy stated that as a single parent, she should consider looking for work elsewhere, in a place that is "better suited for a single parent".
- When Ms. Khalifa would mention some activity involving her children, Ms. Murphy would breathe a heavy sigh or roll her eyes. After one of those incidents, Ms. Murphy said that in her own case, it was acceptable to work because she had a husband's support, whereas Ms. Khalifa did not.
- Mr. Currie met with Ms. Khalifa in his office and asked her personal questions about where she was living and how hard it was to be a single parent. He also told her to look for another job that is more suitable to her "family situation".

[111] I am not persuaded that the evidence bears out that these incidents occurred exactly as Ms. Khalifa alleges. With respect to the April 2005 statement, for instance, Mr. Jaques did not recall Ms. Khalifa being upset about remarks relating to her single parent status, but rather the "hard times" she was experiencing dealing with Ms. Murphy as her supervisor. This is consistent with Mr. Currie's and Ms. Murphy's evidence regarding the "tight supervision" they had implemented, to which Ms. Khalifa had objected.

[112] As I indicated earlier, I found Ms. Murphy to be a very credible witness. She denies having said that Ms. Khalifa should work elsewhere because she is a single parent. Ms. Murphy does recall, however, Ms. Khalifa mentioning that she was considering taking a job at another agency in this period, in response to which Ms. Murphy encouraged her to look into the opportunity. Ms. Murphy maintains that she did not roll her eyes and sigh when family matters were discussed, as alleged by Ms. Khalifa. She also denies having said that in her case, as opposed to Ms. Khalifa's, it was acceptable to work because she was married and had a husband's support.

[113] As for Mr. Currie, he denies having told Ms. Khalifa to "look for another job", but acknowledges having said that given her unhappiness at work, she might want to consider working somewhere that would make her "happier". He also admitted that he asked her how her family was doing when he noticed that she was flustered one day. When she expressed her discomfort with the questions, he apologized and did not discuss the topic any further. It is interesting that Mr. Currie forthrightly conceded having made these remarks, a candour that I find lends credibility to his evidence overall. Furthermore, his testimony that she asked him to stop discussing the matter is consistent with her own evidence that she had been advised by Ms. McCurdie to do precisely that, if Mr. Currie ever raised something to which she objected.

[114] Given the differences between Ms. Khalifa and the other witnesses' testimony, and having due regard to my earlier finding that Ms. Murphy's evidence is particularly credible, I am not persuaded that the incidents of alleged harassment unfolded exactly as Ms. Khalifa contends.

[115] However, even if the alleged harassment occurred as Ms. Khalifa claims, I find that the incidents alleged do not establish the required element of persistence or repetition to make out a case of harassment. On a reasonable and objective basis, Ms. Murphy's rolling



of her eyes and sighing, even when coupled with Mr. Currie's questions about her family, made on one or two occasions, and Ms. Murphy's alleged remark that Ms. Khalifa should consider working elsewhere, do not satisfy the third step of the *Franke* test. While Ms. Khalifa may have perceived the situation as disquieting, a reasonable person would not have considered such conduct as having detrimentally affected the workplace and created a hostile environment. In particular, I find that a reasonable person would not consider Mr. Currie's comments regarding her family in the context in which they were made, to have been anything more than effort on his part to show some empathy for what may have been troubling her. Nevertheless, he curtailed his questioning when so asked by Ms. Khalifa.

[116] In sum, I find that the evidence does not bear out that the alleged incidents of harassment occurred in the manner claimed by Ms. Khalifa. Moreover, the incidents, even if they occurred as alleged, were not repetitious, persistent or serious enough to constitute harassment within the meaning of the *CHRA*.

[117] For these reasons, I find that Ms. Khalifa's allegation of harassment under s. 14 of the *CHRA* has also not been substantiated. Her complaint is therefore dismissed.

"Signed by"

Athanasios Hadjis

OTTAWA, Ontario  
August 24, 2010

#### PARTIES OF RECORD

TRIBUNAL FILE:	T1334/6408
STYLE OF CAUSE:	Melissa Khalifa v. Indian Oil and Gas Canada
DATE AND PLACE OF HEARING:	August 17, 18, 19, 20, 21, 2010 Caglary, AB  August 26, 2010 Via videoconference between Ottawa and Calgary
DECISION OF THE TRIBUNAL DATED:	August 24, 2010

APPEARANCES:	
Melissa Khalifa	For herself
(No one appearing)	For the Canadian Human Rights Commission
Raymond Lee / Frank Durnford	For the Respondent