

**Canadian Human Rights Tribunal**

**Tribunal canadien des droits de la  
personne**

**BETWEEN:**

**KINDRA WOIDEN, LISA FALK,  
JOAN YEARY AND  
SHARLA CURLE (FORMERLY SPEIGHT)**

**Complainants**

**- and -**

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

**- and -**

**DAN LYNN**

**Respondent**

## **REASONS FOR DECISION**

**T.D. 09/02**

**2002/06/17**

**MEMBER: Athanasios D. Hadjis**

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I. Retention of Jurisdiction

[1] This case stems from four complaints originally filed in December of 1998. The complaints were subsequently amended pursuant to a ruling of this Tribunal.<sup>(1)</sup> The four female complainants allege in each of their complaints that the Respondent, who was the senior manager at their former place of employment in Brandon, Manitoba:

1) discriminated against them by harassing them on the ground of sex, contrary to Section 14 of the *Canadian Human Rights Act* ("Act"); and

2) discriminated against them on the basis of sex, contrary to Section 7 of the *Act*.

One of the Complainants, Ms. Joan Yeary, also alleges that the Respondent harassed her on the basis of her family status, and that he discriminated against her on the same ground, contrary to Sections 14 and 7 of the *Act*, respectively.

[2] The Complainants had apparently also filed complaints against their employer, SkyCable Inc. ("SkyCable"), but a settlement was reached regarding those complaints before the matter was referred to this Tribunal. Although the complaint forms refer to the Respondent as "Dan Lynn", it is clear from the exhibits entered into evidence that he is also known by what is likely his full name "Daniel Lynn".

## **I. ABSENCE OF THE RESPONDENT**

[3] At the opening of the hearing, the Tribunal called for appearances. The Canadian Human Rights Commission ("Commission") was represented by counsel and all four unrepresented Complainants were present in the hearing room as well. The Tribunal asked whether the Respondent or anyone appointed to represent him was in attendance. There was no response to this question. The Tribunal adjourned for fifteen minutes and resumed thereafter. The Tribunal again requested whether the Respondent or his representative was in attendance, and there was still no response.

[4] The Tribunal Registry's record of activity in this case demonstrates that the Respondent was made fully aware of these proceedings and that he nonetheless decided to not participate. On July 26, 2001, the Tribunal Registry sent its first letter to the Respondent by courier, advising him that the complaints had been referred by the Commission to the Tribunal. Enclosed with the letter was a standard-form pre-hearing questionnaire to be completed by the Respondent and sent back to the Tribunal. The questionnaire was never returned.

[5] In the following months, the Tribunal Registry sent additional documents to the Respondent, by way of both ordinary as well as registered mail. The registered letters were returned by the post office, marked "unclaimed". The Tribunal Registrar and his staff managed to speak to the Respondent by telephone on several occasions. They suggested to him that he accept the documentation being sent to him, examine it, and, if possible, seek the advice of counsel. On December 13, 2001, the Respondent was served personally in Brandon, Manitoba, by process server, with copies of all the correspondence that had been previously addressed to him from the

Tribunal Registry, including notices of the date of the hearing and its venue. On January 25, 2002, the Respondent was also personally served, by process server, with the Tribunal's preliminary ruling regarding the amendments to the complaints. The Tribunal Registry did not receive any request from the Respondent seeking a postponement of the hearing or indicating that he would be unable to attend for some unforeseen reason.

[6] In light of this evidence and the failure by the Respondent to appear at the opening of the case, I decided to proceed with the hearing in his absence. It is worth noting that the hearing extended over four days in the city of Brandon, Manitoba, and that the proceedings received extensive coverage in the local daily newspaper. Nonetheless, the Respondent did not appear throughout the duration of the hearing. He did not provide the Tribunal with any submissions or other documents either before or after the hearing. The recitation of the facts in this decision is therefore based solely on the evidence adduced by the Commission and the Complainants.

## **II. DISCLOSURE**

[7] The Respondent's absence from the hearing and his non-participation in the entire process resulted in certain difficulties regarding the Tribunal's rules concerning the disclosure of documents. The most obvious problem was that the Respondent failed to comply with any of his disclosure obligations vis-à-vis the Commission and the Complainants. However, an additional issue arose as a result of the Commission's failure to comply with some of its own disclosure obligations.

[8] In particular, many of the exhibits that the Commission sought to introduce were not disclosed to the Respondent as part of a package that was delivered to him on November 21, 2001. Counsel for the Commission explained that he first learned of the existence of most of the undisclosed documents in question when he met with the Complainants in preparation for the hearing, several days prior to its commencement. Still other documents were obtained or prepared during the course of the hearing.

[9] As a result of the Respondent's decision to not participate in the hearing, there was no one present to raise any possible objection to the introduction of documents that had not been previously disclosed. Under the circumstances, I decided to allow those documents to be filed. The Respondent must bear the consequences and risks involved in failing to show any apparent interest in the case being led against him and in disregarding the entire process.

## **III. THE FACTS**

[10] The four Complainants allege that they were discriminated against while they were employed at the Brandon office of SkyCable, a division of Craig Broadcasting Systems Inc. ("Craig Broadcasting"). Craig Broadcasting is a major electronic media enterprise, with extensive operations in Western Manitoba. During the Complainants' period of employment,

Craig Broadcasting owned television and radio stations in the city of Brandon. Additional stations were owned in other cities in Western Canada.

[11] The principal activity of Craig Broadcasting's SkyCable division was the marketing of a wireless digital television system in Manitoba. This technology provided customers with a wide choice of digital quality television programming, which they would receive through special antennas mounted outside their homes. The digital signal received was decoded by way of set-top decoders attached to the customers' televisions. SkyCable transmitted the signal to its customers from large transmission towers situated regionally throughout the province. The company was in operation from as early as mid-1996.

[12] SkyCable's original office was located within Craig Broadcasting's main building in Brandon, which also housed the local television and radio stations. In April, 1997, the SkyCable operation moved to a new location in a separate building situated adjacent to the Craig Broadcasting building. The majority of the employees working at SkyCable's office were employed as customer service representatives, who, as their title implies, dealt with SkyCable's customers, mostly by telephone. Other individuals performed administrative duties such as accounting and the management of the supply of set-top decoders to customers. SkyCable also employed several technicians and installers (all of whom were apparently male), but with the exception of a handful, they typically worked outside the office, on the road, and would only occasionally pass by the office to pick up equipment. The majority of the employees working exclusively at the SkyCable office were women. Some witnesses testified that 70% of the staff was female, while others estimated the proportion to be as high as 90%.

[13] Three of the Complainants (Ms. Woiden, Ms. Falk and Ms. Yeary) were primarily employed as customer service representatives, or as commercial accounts representatives dealing with larger commercial clients. Ms. Yeary, however, was eventually moved to the accounting department. The remaining complainant, Mrs. Curle, worked as the office's receptionist for most of the period of her employment at SkyCable.

[14] The most senior manager at the SkyCable office was the Respondent, Daniel (Dan) Lynn, who held the position of operations manager. The office manager, who reported directly to the Respondent, was Jennifer Houlihan. The office staff, including the four Complainants, usually answered to Ms. Houlihan, but the Respondent was constantly present amongst the employees in the office and he often directly supervised their activities as well. Thus, the staff was effectively overseen by both Ms. Houlihan and the Respondent. However, the Respondent retained the exclusive authority to hire and dismiss any of the office employees.

#### **A. Work Environment**

[15] All of the witnesses heard in this case were employed at some time at the SkyCable office in Brandon. They all agreed that the morale at the office was very poor and that the Respondent's attitude was the principal cause for this situation. Every witness confirmed that the Respondent was a foul-mouthed individual with an extremely volatile temper, who did not treat his employees with any dignity or respect.

[16] The office space, particularly at the second location adjacent to the Craig Broadcasting building, was designed according to an open concept whereby the employees' desks were only separated by shoulder height partitions. As such, comments made in the central portions of the office space could easily be heard by most of the employees. Each of the former workers who testified recalled the Respondent's regularly addressing the staff as "fucking bitches", "fucking idiots", "sluts", "cunts", "fags" and other similarly offensive epithets.

[17] One male employee, Darrell Grant, testified that the atmosphere was always tense, recalling that at one time, he was yelled at for the manner in which he had inscribed the letter "F" on a document. All of the witnesses confirmed that Ms. Houlihan was also tough on the employees in her supervision of their work. She did not, however, engage in any of the name-calling and obscene language ascribed to the Respondent nor did she ever get as angry as he. Many of the witnesses attributed the high employee turnover rate at SkyCable (by some accounts, as high as 150% per year) directly to the attitudes of the Respondent and Ms. Houlihan.

## **B. Joan Yeary**

[18] Of the four complainants, Ms. Yeary was the first to begin working at SkyCable. She was hired as a customer service representative on September 9, 1996, just as the company was setting up operations. Her primary duties consisted of contacting people throughout rural Manitoba and marketing the SkyCable product to them. Once a customer would agree to accept the service, she would conduct follow up calls advising customers of when the service would be activated and arranging for the installation of the set-top decoders. Before long, she was performing other functions as well, including the training of other staff members and the setting up of a system for tracking the various set-top decoders.

[19] From her first days on the job at SkyCable, Ms. Yeary was a witness to the obscenities regularly uttered by the Respondent. For instance, he referred to the female office manager who occupied that post prior to Ms. Houlihan, as "that fucking cow" who did not know "what the fuck she was doing". According to Ms. Yeary, this woman was often in tears as a result. A similar situation arose with respect to another female employee, ("Ms. T."), whom the Respondent apparently disliked. He therefore told the office staff to call her by the same term that he used, "that fucking bitch".

[20] The Respondent often referred to most of the women as "baby" and he usually called Ms. Yeary by the nickname "Joanie Baby". On one occasion, Ms. Yeary was in the coffee room at the same time as the Respondent, who was apparently upset with some breakdowns in the company's operations. He turned to her and declared, "Joanie Baby, the whole fucking staff is stupid and they're all a bunch of fucking cunts."

[21] At another time, the Respondent remarked to Ms. Yeary "how tight" the "wonderful little body" of her female assistant, Bobbi Gerrard, was. The Respondent regularly commented to Ms. Yeary on "how cute" the body of another female employee was.

[22] Ms. Yeary was not immune from comments about her physical appearance either. One day, while working in the office copy room, the Respondent walked in and told her, "Oh, Joanie

Baby, looks like your breasts are growing." According to Ms. Yeary, he often would approach her and other female staff members from behind and put his arms around their waists or shoulders and say that they "looked good" or that they "smelled good".

[23] Ms. Yeary recalls that the Respondent frequently commented that the co-Complainant, Kindra Woiden, had a nice body and at one time, when she came to work wearing a pair of jeans, he said, in a voice loud enough for Ms. Yeary to overhear, "nice ass". The Respondent also mentioned to Ms. Yeary that he liked the "big breasts" of another employee, stating on one occasion that her husband "must have fun with those". The Respondent was staring at that employee's breasts when making the statement. Similar comments were made about another woman who worked at the office for a short time. One day when she arrived at work wearing a shorter skirt, he assigned her to do some filing at the filing cabinets situated in a fairly central area of the office. While she was bent over placing the files, the Respondent stood behind her and said, "Oh, doesn't that look good", apparently unconcerned that virtually everyone in the office could hear him. He laughed and walked away.

[24] According to Ms. Yeary, these comments about women were rarely if ever instigated or prompted by any particular event. He would simply blurt out the remarks for no particular reason.

[25] Aside from utterances about women's physical appearances, the Respondent often spoke to Ms. Yeary regarding her personal life. She is a single mother of three children and the Respondent frequently suggested to her that she begin going out with a member of the Craig family, which owned Craig Broadcasting. The Respondent advised her many times to "get into bed with one of [the Craigs] and you'll be set for life, they've got lots of money".

[26] The Respondent's statements about Ms. Yeary's personal life even extended to the business activities of SkyCable. Ms. Yeary was planning to visit some family members in Winnipeg at a time when the company was in need of additional installers. The Respondent suggested that while there, she "make sure to hit the bars and pick up enough guys that you can bring back because we need some new installers around here".

[27] In her testimony, Ms. Yeary confirmed the declarations of the other witnesses to the effect that the Respondent constantly swore at the staff in general and had an extremely hot temper. However, until early 1998, this anger was not usually directed specifically at her. In December of 1997, the Respondent met Ms. Yeary's brother and learned that he worked for a competitor of SkyCable. Some time thereafter, two male staff members informed Ms. Yeary that the Respondent was "out to get" her because he suspected she was spying on behalf of her brother's employer. Ms. Yeary recalls that from that time onwards, the Respondent began treating her particularly badly. Her work began being double-checked by the Respondent and Ms. Houlihan for no reason.

[28] As a specific example of the worsening situation, she referred to an episode that arose when the Respondent instructed her to prepare several reports within what she considers an impossibly short delay. When indeed the reports were not completed on time, the Respondent became extremely angry, screamed at her that "if you can't get the fucking job done, then maybe you



shouldn't be here", and swiped his arm across her desk, tossing all her papers on to the floor. Similarly, in early May 1998, the Respondent told another employee who had executed some work in accordance with Ms. Yeary's instructions, that "Joan [Yeary] doesn't know fuck all, you don't have to fucking listen to her." He made this remark while standing only two feet away from Ms. Yeary.

[29] Her relationship with the Respondent became even worse after Ms. Yeary witnessed a violent altercation between the Respondent and his spouse, at a local restaurant-bar. The next business day, the Respondent angrily summoned all the staff into the office boardroom and said, while furiously pacing back and forth, that his personal life "is my fucking business and none of you have any fucking business spreading rumours about me". He was addressing most of his comments directly at Ms. Yeary. Yet she affirms that she never told anyone about the incident but that the matter had likely become widely known due to the presence of other Craig Broadcasting and SkyCable employees at the bar.

[30] These incidents of anger, vulgarities and name-calling had already made Ms. Yeary's life very difficult when a new conflict emerged between her and the Respondent, regarding her work hours. When she was hired in 1996, she was informed that the hours of work were Monday to Friday, 8:00 am to 5:00 pm, and that any possible future change in the hours would only apply to customer service representatives. By May 1998, Ms. Yeary had been transferred to the accounting department, which had little, if any, contact with the general public. On May 12, 1998, the Respondent distributed a letter to the office employees informing them that a greater focus on customer service demanded that the experienced, full-time staff be made available over extended hours, to deal with SkyCable's clients. Ms. Yeary testified that she never received a copy of this letter.

[31] About one week later, the Respondent met with Ms. Yeary and informed her that she would have to work extended hours as well. In a memo dated May 22, 1998, Ms. Yeary replied to the Respondent that she was unable to work extended hours due to her family status. She is a single mother of three children who were then aged 15, 12 and 8. Their father was living in the United States and Ms. Yeary's mother, who was working full-time herself, could not care for the children more than one Saturday per month. The eldest child was already working in a part-time job in the evenings and could not watch over the other children either. Ms. Yeary's annual salary had remained unchanged since the date she was hired, at \$22,000, and she could not afford to pay for daycare outside the normal school hours. Ms. Yeary declared in her memo that she would not tender her resignation as had been apparently requested by Ms. Houlihan.

[32] Nonetheless, on May 26, 1998, Ms. Yeary was handed a letter signed by the Respondent, instructing her that effective June 8, 1998, her normal hours of work would include rotating shifts of evenings and weekends. She was being given two more weeks than the other employees "for you to do whatever you have to do personally in order for you to attend work as scheduled". During a conversation that occurred some time after this letter, Ms. Houlihan advised Ms. Yeary to seek outside counsel. Consequently, Ms. Yeary contacted the Commission, which advised her in turn to seek some accommodation from her employer. Accordingly, on June 3, 1998, Ms. Yeary wrote a letter to the Respondent setting out her particular family situation and requesting

that these needs be accommodated by limiting her extended hours to one Saturday per month and possibly one evening per week.

[33] Throughout the course of these events, Ms. Yeary was puzzled as to why her hours were being changed. Not being a customer service representative, she had little or no contact with the public. Moreover, the employer had the option of calling upon the other employee in that department, Bobbi Gerrard, to work the extended hours. Ms. Gerrard was single with no children and, according to Ms. Yeary, had no objection to working evenings and weekends.

[34] At one point, the Respondent called Ms. Yeary and Ms. Gerrard into his office, ostensibly to discuss the matter. Instead, for the duration of the meeting, which Ms. Yeary estimates at one hour and a half, the Respondent shouted continuously, or in her words, "ranted and raved and swore". Any time either of the employees attempted to interject, he would cut them off. The meeting ended without the issue being resolved and according to Ms. Yeary, the Respondent refused to discuss the matter again thereafter. Although Ms. Yeary's schedule was not substantially changed for the month of June 1998, Ms. Houlihan maintained that the modifications would be implemented effective the month of July 1998, requiring her to work four evenings per week, until 8:00 pm, as well as every second Saturday.

[35] Ms. Yeary claims that by the time this meeting occurred, she had already become "a mess". She had been crying frequently for some time as well as suffering from intense headaches, insomnia and shaking, as a result of her prior encounters with the Respondent's anger, vulgarities and name calling. It was at this point, some time in June 1998, that a final incident occurred that ultimately compelled her to cease working at SkyCable. It was, as she describes it, the "final straw". Her computer had ceased functioning while she was working on it. The following day, while it was being repaired, the Respondent approached her and yelled that she had caused the malfunction by entering personal information on the computer. She denied his allegation and asked for an apology. Once the computer was repaired, the technician informed her that the breakdown was an ordinary occurrence with such equipment and was not related to any personal information having been entered. The Respondent nonetheless never apologized.

[36] On June 26, 1998, Ms. Yeary visited her family physician who, upon viewing the state she was in, particularly her crying and insomnia, instructed her to not return to work and accordingly issued a sickness certificate. Ms. Yeary complied with her physician's instructions. On July 2, 1998, after examining her, a psychologist, R.A. Richert, Ph.D., wrote to Craig Broadcasting, which was responsible for the administration of SkyCable's payroll, and advised them that Ms. Yeary required sick leave for an extended period because she was suffering from "work related stress" that demanded she take time off work in order to make a recovery.

[37] Ms. Yeary was entitled to short term disability coverage equivalent to two thirds of her normal salary, but she testified that it was insufficient to meet the needs of her family and she could therefore not afford to remain off work for an extended period. In addition, a dispute had arisen between Craig Broadcasting and the disability insurance carrier as to whether her compensation was work-related and therefore more appropriately covered by the provincial worker's compensation scheme. The dispute risked affecting or delaying her compensation.

[38] In light of all these circumstances, Ms. Yearly decided that it would be best for her and her family that she seek new full-time employment elsewhere. She attended several job interviews and by August 10, 1998, she was hired by another employer, at an annual salary that exceeded what she was earning at SkyCable by "a couple of thousand dollars". Therefore, on about that same date, August 10, 1998, Ms. Yearly submitted her letter of resignation to SkyCable. She has continued to work for that same new employer to this day.

### **C. Sharla Curle (formerly Speight)**

[39] This Complainant filed her complaint on December 1, 1998, under her name at the time, Sharla Speight. At the hearing, she requested that she be referred to in these proceedings by her current married name, Mrs. Sharla Curle.

[40] Mrs. Curle was unemployed when she was hired by SkyCable, on September 8, 1997. The co-Complainant, Joan Yearly, is a friend of Mrs. Curle and knew that she was seeking work at the time. SkyCable had been looking to fill the position of office receptionist and Ms. Yearly therefore recommended Mrs. Curle to the Respondent, assuring him that she was well qualified for that position. The Respondent agreed to interview Mrs. Curle, but Ms. Yearly recalled in her testimony how curious she found it that in advance of the interview, the Respondent seemed very interested in learning if Mrs. Curle's hair colour was blonde, if she had a "good body" and whether she was married. The interview was conducted by the Respondent alone and Mrs. Curle was hired immediately after the meeting. Mrs. Curle remembers that throughout her interview, he was continuously looking at her clothing and her overall appearance.

[41] As was the case with Ms. Yearly, it was not long after being hired that Mrs. Curle witnessed the Respondent make crude remarks about other employees. Only one week into her new job, Mrs. Curle learned that the female employee referred to earlier in this decision as Ms. T., was being dismissed by the Respondent. As Ms. T. left the office, the Respondent came to the counter next to where Mrs. Curle was working and told her that he was "glad to see that fucking bitch go". Some months later, the Respondent told Mrs. Curle that he would have liked to see "those fucking bitches go", referring to three other female employees, including Ms. Yearly. On other occasions, she heard the Respondent comment that the co-Complainant, Ms. Woiden, had a "nice ass" and that she "looked good". Once, when the Respondent noticed that a female employee was wearing a dress made of a thin material, he remarked in a voice loud enough for Mrs. Curle to hear, that he was able to see what the woman was wearing underneath.

[42] The Respondent made similar remarks about Mrs. Curle as well. One or two months after being hired, she began filing some documents into the lower shelf of the filing cabinet situated in the open area of the office. As she was bent over, the Respondent came up behind her at a distance of about six feet, leaned over sideways while trying to look up her skirt and said "nice ass, good view from here". Disgusted by the comment, Mrs. Curle slammed the cabinet shut and returned to her desk.

[43] Mrs. Curle was also the recipient of certain comments from the Respondent relating to a counter space situated in the wall separating the reception area where she worked and the general office area behind. As part of her job, she often would look through the opening in order to speak

to the other employees. The height of the counter came to about the level of her chest. On one occasion when she was at the wall opening, the Respondent told her to not lean on the counter, as it might get dented, presumably by her breasts. On another occasion, while she was standing at this window, the Respondent remarked that the cutout area was at the "perfect level".

[44] The Respondent also made comments regarding Mrs. Curle's personal life. Shortly after she began working for SkyCable, the Respondent apparently learned that she had a boyfriend. Other female employees had introduced their boyfriends to the Respondent, but Mrs. Curle had not done so. One day, in Mrs. Curle's presence, the Respondent commented to one of the male technicians that he thought her boyfriend was just an "imaginary blow-up doll", since he had never met the person.

[45] Mrs. Curle worked as a receptionist until the second week of August 1998, when she accepted a position as the Respondent's assistant. She testified that she did not want the job, having refused it on other occasions in the past. However, she was enticed to accept by being offered the opportunity to acquire certain supervisory duties.

[46] By this time, many of the employees were upset with Ms. Houlihan's administration of the office. Now that Mrs. Curle had assumed some management responsibilities, many of those disgruntled employees asked her to intervene. She agreed and accordingly prepared a letter addressed to the Respondent, dated August 18, 1998, that was signed by eleven office staff members (one man, ten women), including Mrs. Curle and the co-Complainants, Ms. Woiden and Ms. Falk.

[47] The letter detailed eleven problems that the staff had been having with Ms. Houlihan and concluded with the following statement:

Please note that we all want to work as a team, but feel that this is not going to happen if this atmosphere is to continue. We feel that our jobs are demanding enough without the added pressures from Jennifer [Houlihan]. We feel that we have brought these problems to your attention prior to this letter, but nothing has been done. We hope that we will notice a change in attitude and treatment from Jennifer towards her fellow co-workers.

We only wrote this letter out of desperation. There is nothing that we have not tried to [sic] make things work between Jennifer and the rest of the staff. We are not prepared to quit, as we believe this office can be a very exciting place to work if this matter can be addressed and solved. Everyone would like to enjoy coming to work, but that does not happen at this time. You will find productivity will increase if staff moral [sic] is boosted. We ask you for your assistance with this matter and hope it will be addressed.

The Respondent's initial reaction to the letter was to call Mrs. Curle to a meeting in his office to discuss the issue. He referred to the letter as "union shit". He told her he would look into the matter but nothing much happened in the ensuing days. Mrs. Curle later mentioned to another

management employee that if the issues were not addressed, they would be taken up with the owners of SkyCable, the Craig family.

[48] The Respondent must have learned of Mrs. Curle's comments because on August 24, 1998, he called a special staff meeting in the boardroom. He convoked the employees in his usual manner: by walking within the central office area, pointing to people and yelling, "To the boardroom, now!" All of the persons called in were women, except for the one man who had also signed the letter. Mrs. Curle, Ms. Woiden and Ms. Falk were all in attendance.

[49] The Respondent slammed the door behind him as he entered the boardroom. He yelled throughout the course of the meeting, which lasted about half an hour. He had the letter in his hands and shouted, "What the fuck is this?" He threw documents all over the table in a dramatic fashion and paced back and forth. He referred to the people in attendance as "fucking idiots" and at one point told the employees, "If any of you want to leave, you know where the door is, I'll give you your two weeks' pay." He stated that he was the "fucking boss" around here, not the Craig family. He accused Mrs. Curle of having organized the protest and of having failed to inform the other workers of his intention to deal with the matter. She tried to reply that he had asked her to keep his undertaking confidential. However, it was difficult for anyone to get any word in edgewise. Before long, Mrs. Curle, Ms. Woiden and some of the other staff members were crying as a result of this confrontation. According to Ms. Falk, everyone in the room was made "to feel like garbage" by the Respondent. When the Respondent finally finished talking, he opened the door and stormed out. The employees sat silently in shock for a few moments before returning to their work stations.

[50] Some time later in the day, Mrs. Curle sent an office staff member up to the reception area to assist the new receptionist. The Respondent objected to this and reacted angrily by again screaming that he was the "fucking boss here". Mrs. Curle testified that she had by then realized that she had to stop working at SkyCable. Her first reaction was to call a friend who worked at a law firm in Brandon, and make an appointment with a lawyer for the following day. According to Mrs. Curle, she did not know for what exact reason she felt the need to meet with a lawyer aside from just obtaining some "help".

[51] She finished her shift, packed her personal effects into a box and left the office. She had kept all of these conflicts at work "bottled up" inside her, not having even confided in her boyfriend. She felt emotionally as if she was having a breakdown, so on her way home, she stopped off at a local medical clinic. After examining her, the attending physician issued a sickness certificate declaring that she was required to not work until September 8, 1998. Additional certificates were subsequently issued by her physician and a psychiatrist who also treated her. As a result, she received short-term disability coverage until November 1998 but was denied any additional long-term disability coverage thereafter.

[52] When she returned to her home, Mrs. Curle called Ms. Woiden and Ms. Falk, as well as her friend and former co-worker, Ms. Yeary. She learned for the first time that the first two women had also decided that they could no longer return to the workplace and that they had also visited their physicians who had instructed them to go on sick leave. As a result of their discussions, all four women agreed to visit the lawyer together the following day. This meeting did not prove

very helpful. They later sought advice from another lawyer. Ultimately, these meetings led the women to conclude that their human rights had been violated. They therefore contacted the Commission and filed their complaints.

[53] Mrs. Curle never formally resigned from SkyCable. She had continued to hope to return to the workplace if ever the Respondent was dismissed by the company. However, since SkyCable had not fired or transferred him by the fall of 1998, she began seeking new employment from October 22, 1998 onwards. On January 4, 1999, she was hired at a new job where she earned a higher salary than that which she was receiving at SkyCable.

#### **D. Kindra Woiden**

[54] Ms. Woiden began working at SkyCable on February 16, 1998. She was initially employed as a customer service representative. Several months later, she was assigned to the position of commercial accounts representative, dealing with larger corporate clients.

[55] As in the case of the other witnesses heard by the Tribunal, Ms. Woiden recalls the constant usage by the Respondent of vulgarities and the insults that he directed towards the employees in the office. She also attests to the Respondent's volatile temper, affirming that at times she feared he would express his anger physically by hitting someone or something. She testified that he would get very upset whenever he determined that the rate of clients signed up by a representative in a given period was too low. In her case, she recalls that on numerous such occasions, he expressed his disapproval by yelling to her comments such as, "Fucking bitch, you don't know what you're doing."

[56] Overall, his attitude was rude and demeaning, particularly with respect to the female employees. Ms. Woiden affirms that she enjoyed her job, mainly because she became very good at it. However, she found herself merely putting in her hours and going home thereafter, in order to minimize her contact with the Respondent. Every week, she would hope that the Respondent would be working outside of the office for fear of his reaction if he was at the office and noticed that something was not functioning properly.

[57] Ms. Woiden witnessed the Respondent make comments of a sexual nature regarding her female co-workers. For instance, in the summer of 1998, after the co-Complainant, Ms. Falk, had become pregnant, she and Ms. Woiden were talking about the pregnancy in the lunch room in the presence of the Respondent. He intervened in their conversation by telling Ms. Falk, "Well, at least now you'll have boobs."

[58] Ms. Woiden also recalls having seen the Respondent looking at Mrs. Curle from behind while she was working at the filing cabinets and saying in a voice loud enough for Ms. Woiden and others to hear, "Oh, look at the legs on that one." In addition, Ms. Woiden was one of the persons who heard the Respondent make the comments recounted earlier in this decision, regarding his advice to Mrs. Curle to not lean on the reception counter for fear of damaging it.

[59] The Respondent made utterances about Ms. Woiden's appearance. For instance, several weeks after being hired, she wore a sweater to work and he asked her if it was not "a little tight".

She remembers that on another occasion, the Respondent looked up and down her body while telling her, "Oh, don't you look good today." He also commented to her on how nice her legs looked. As I have indicated earlier in this decision, Ms. Yeary and Mrs. Curle also testified to having heard the Respondent make similar comments about Ms. Woiden's appearance.

[60] The Respondent would also discuss personal matters with Ms. Woiden. A couple of weeks after she had begun working at SkyCable, the Respondent made a comment about her boyfriend. He asked her what she was doing with a "fucking loser" like him. One or two months later, the Respondent approached Ms. Woiden in the lunch room while she was on a break and told her that he was earning a lot of money, which allowed him to pay an allowance to his wife. He then asked Ms. Woiden how much she "would cost". He spoke this comment in a quiet tone. She interprets his question to mean how much would it cost to "keep" her. She considers both remarks as a suggestion that she become sexually involved with him. She testified that on both occasions she did not reply to his comments and just walked away.

[61] The Respondent's actions regarding Ms. Woiden were not just limited to verbal statements but also included incidents of physical contact with her. She recalls that on two or three occasions, he came up behind her while she was seated at her work desk cubicle and he rubbed her shoulders for about ten to fifteen seconds. Similarly, she remembers that once when she was standing at her desk, the Respondent came up and put his arm around her waist while asking ordinary business related questions. These occurrences of physical contact took place in her first few months of employment at SkyCable when she held the position of customer service representative.

[62] Aside from these events, Ms. Woiden testified extensively with regard to two significant incidents regarding the Respondent.

#### **(i) The Cabin Incident**

[63] Ms. Woiden had been working at SkyCable for less than two months when the Respondent passed by her desk, on April 2, 1998, and left her a document. He told her to "take care of it" and walked away. It consisted of a letter from a Winnipeg law firm representing the owners of a lot situated near a transmission tower being constructed by SkyCable. The lot owners were demanding that all construction cease. This would have had a major impact on SkyCable as it had already signed up over 300 new customers who were to receive their service from this antenna.

[64] Ms. Woiden could not understand why this matter had been assigned to her. It involved important legal issues and she was merely a customer service representative at the time. Ordinarily, she would have expected Ms. Houlihan to deal with such questions. Ms. Woiden could only conclude that by giving her this file, the Respondent was demonstrating his confidence in her abilities.

[65] She researched into the facts alleged in the letter and soon found evidence to indicate that some of the assertions were unfounded. She brought this evidence to the Respondent on April 7, 1998. He told Ms. Woiden that in order to verify some of the information that she had

collected, a visit to the tower site was necessary. The antenna was being built on Riding Mountain in the Rural Municipality of Rosedale, approximately an hour's drive north of Brandon. Access to the construction site was through dirt roads and the location of the tower itself was remote. In fact, one of the arguments developed by Ms. Woiden in response to the allegations of the lot owners was that there were no dwelling units on their property.

[66] The Respondent asked that Ms. Woiden accompany him on the site visit, which he scheduled for the following day, after work. They departed at about 6:30 pm, in the Respondent's sport utility vehicle. He was at the wheel. It was dusk by the time they arrived at the site. They examined the area and took notes and photographs to assist them in preparing SkyCable's response to the neighbours' allegations. After completing their visit at the site, the Respondent began driving the vehicle back along the same road they had initially taken. After a short distance, the Respondent told her that he would turn off to take another dirt road in order to determine if there existed a secondary access to the tower. Ms. Woiden had no objection since one of the issues raised by the other lot owners was that the principal access road passed too close to their property. If another road existed, this source of the dispute with the neighbours could be eliminated.

[67] The Respondent drove around for about forty-five minutes, turning from one dirt road to another. Ms. Woiden assumed that he was trying to figure out a way to the tower site. Suddenly, they came upon a sign indicating the direction to Otter Lake, and the Respondent turned down that road. At this point, the Respondent informed Ms. Woiden that he owned a cabin on Otter Lake. He said he had recently installed a new water pump and wanted to check its condition.

[68] They soon arrived at the cabin and although Ms. Woiden initially remained inside the vehicle, he invited her in to see how well SkyCable's signal could be received there. She therefore exited the vehicle and followed him into the house. He led her to the living room and turned on the television. He suggested she take off her winter jacket while they waited for the TV set to warm up. She did so. He then showed her around the various rooms in the house, eventually pointing out to her the new water pump that he had mentioned earlier.

[69] They returned to the living room and the Respondent sat down at one end of the couch, and began changing the channels with the TV's remote control. She remained standing in the middle of the room. She testified that by this time she had begun to feel very uncomfortable. The stay at the cabin was longer than she had anticipated and it had now occurred to her that if she wanted to leave, she had nowhere to go: the Respondent had locked the vehicle and she did not know if there were any other houses nearby.

[70] The Respondent urged her to sit down and watch the television programming. She went to the extreme opposite end of the couch and sat down. Some seconds later he moved from his seat and sat down right next to Ms. Woiden. His leg was up against hers. She testified that at this point, she wanted to move away but she felt frozen, unable to move. She recalls trying to convince herself that "this isn't happening to me, this doesn't happen to me". The Respondent put his arm around her shoulders while rubbing her leg with the other arm. She began to cry and remembers feeling "so stupid and so naive".



[71] The Respondent then leaned over and put his face very close to hers but she kept on looking straight ahead and away from him. Ms. Woiden declared at this point, "Dan, I think it's time we leave." He replied that he wanted to stay. She repeated that she wanted to go. He said, "I thought this is what you wanted." She responded by repeating over and over, while crying, that she wanted to go now. He finally backed off and stood up. He said, "Fine," in an angry tone. They put on their jackets, he shut down the TV and the lights, and they left the cabin.

[72] They entered the vehicle and he drove back to Brandon. The Respondent made no mention of anything related to the incident in the cabin. Out of fear that he might attempt to enter her house when he dropped her off, Ms. Woiden did not direct the Respondent to her address but rather to that of her boyfriend. She was driven to that location, opened the door of the vehicle and walked directly into her boyfriend's home. She did not tell her boyfriend about the incident in the cabin.

[73] Ms. Woiden testified that the following morning, she did not feel like returning to work, but she had no choice. If she quit and lost her income, she would be unable to pay her rent and other expenses. So she decided to go to work, hoping at the same time that the Respondent perhaps would not be in the office that day. However, he did turn up at work but throughout the entire day, he and she had no interaction. He never demonstrated any acknowledgement of the incident. He never discussed the Riding Mountain transmission tower issue again with her. He apparently resolved the conflict with the neighbouring property owners himself.

## **(ii) The Winnipeg Incident**

[74] In late May or early June, 1998, the Respondent informed Ms. Woiden that a two-day meeting had been scheduled with several consultants from Toronto, to take place in Winnipeg. They were to advise the Respondent and her about marketing the SkyCable product to commercial customers, such as those for which she was responsible. She was reluctant to go to the meeting with the Respondent, recalling the prior incident at the cabin, but she felt she had to attend so as not to jeopardize her job. To further compound her fears, the Respondent asked her whether he should reserve one room or two at the hotel where they would be staying. She did not answer him. Instead, she "kind of laughed it off", shrugged her shoulders and walked out of his office. She testified that she was so worried about how the Respondent would act that she finally told her sister about the cabin incident. Until this point, Ms. Woiden had not discussed those events with anyone. Her sister became so concerned for Ms. Woiden's well-being that she decided to leave Brandon and stay at their grandmother's house in Winnipeg on the same night that Ms. Woiden would be there. Her sister was ready to rush over and assist Ms. Woiden if something untoward was to occur.

[75] The day of the meeting, the Respondent and Ms. Woiden headed off for Winnipeg in a company-owned automobile. The meeting was held at the offices of Craig Broadcasting and ended at about 5:30. They then went to dinner in a restaurant with a member of the Craig family who had organized the meeting. After leaving the restaurant, they got back into the company car, Ms. Woiden at the wheel. The Respondent started asking Ms. Woiden whether she thought they should stay until the following day or not. She found this question curious since he had told her that the meeting was scheduled for two days. Her only response was to tell him that it was his

decision. As she was driving down the boulevard that leads out of town, he finally said that they would stay and directed her to enter the parking lot of a hotel they were passing at that moment.

[76] She waited in the car while he went to the reception desk. He returned and told her to find a parking spot. In their ride up the hotel elevator, the Respondent stated that he wanted to discuss some of the matters dealt with during the meeting with the consultants. She therefore followed him as he went to his room. It was in the form of a suite: a kitchen, a living room and a closed bedroom to the side. She immediately took out her notes from the meeting and began setting them up on the kitchen table. She testified that she began talking about that day's business but the Respondent, who had removed his jacket and was seated in the living room, seemed disinterested. At one point, he remarked that the hotel room was nice. He then said to her, "You can sleep on the bed and I'll just sleep on the couch." She claims that she then knew that if she did not leave the room, she would find herself in the same situation as at the cabin. She did not respond to his comment but at the same moment the telephone rang and he answered. From what Ms. Woiden overheard, she understood that it was the Respondent's wife at the other end. At one point his tone got a little angry. After he hung up the phone, he stood up and told Ms. Woiden, "No, I don't think we'll stay tonight." She did not inquire into his motives as she was pleased to be leaving the hotel room.

[77] They went downstairs and he proceeded to the front desk. They got back into the car and drove directly home to Brandon. Ms. Woiden drove the Respondent to his house. She returned safely to her home and called her sister who was still back in Winnipeg, to inform her that she had arrived.

[78] Ms. Woiden returned to the office the following morning. Although the Respondent was there, he did not talk to her about the meeting with the consultants nor about the incident at the hotel.

### **(iii) Ms. Woiden's Departure from SkyCable**

[79] As in the case of the other co-Complainants, Ms. Woiden's departure from SkyCable was ultimately provoked by the Respondent's reaction, on August 24, 1998, to the letter from the staff regarding Ms. Houlihan. Ms. Woiden had signed the letter and she was amongst those summoned into the boardroom by the Respondent. She testified that after hearing him call her and the other employees "fucking idiots" repeatedly, she just had had enough and began crying. After he left the room, she sat there for some minutes because she was upset, trying to calm herself down. She then returned to her desk. She completed her work and left at the end of her shift. She never returned to work at SkyCable.

[80] On her way home, Ms. Woiden stopped off at a local walk-in clinic to be examined by a physician. She testified that in the preceding months, and particularly after the cabin incident, she was often crying, shaking and nervous. She would frequently get up in the morning not wanting to go to work for fear of having to deal with the Respondent. She therefore decided to visit the doctor thinking that he could possibly give her some advice or some medication to calm her down. After her examination, the physician issued her a sickness certificate instructing her to be off work until September 8, 1998. Her family doctor later extended the period to September

30, 1998. Ms. Woiden acknowledges that she was only unable to work at SkyCable, due to the continued presence of the Respondent. She would have been able to work during this period if he was not there.

[81] Ms. Woiden claims that she had hoped the doctor's advice or some other factor would have permitted her to return to her employment at SkyCable. But by September 25, 1998, she concluded that she could not go back and she therefore submitted her resignation to Craig Broadcasting, effective September 30, 1998, the same day that her disability benefits were to end. She applied for employment insurance benefits thereafter but they did not begin until early in November 1998. They continued until April 24, 1999, at which time Ms. Woiden obtained new employment.

[82] On February 2, 2001, she resigned from this new job in order to join her husband where he works in a town in rural Manitoba, many hours from Brandon. She was receiving maternity benefits at the time of the hearing (February 11-14, 2002).

### **E. Lisa Falk**

[83] Ms. Falk worked for SkyCable from March 27, 1998 until August 24, 1998. She applied for the job on the suggestion of her friend, Kindra Woiden, who arranged for an interview with the Respondent. He was alone with Ms. Falk during the interview. He did not ask her any questions regarding her qualifications or her résumé. He spent the time telling her about the company and its potential. She testified that she felt as if she had the customer service representative job instantly. The Respondent informed her that the annual salary would begin at \$17,900 but would soon thereafter increase to \$22,000. She began working the following day.

[84] In her first week at work, she witnessed the Respondent's anger and use of vulgar language. During a staff meeting, he waved a pile of documents in front of everyone and shouted, "These are the fucking disconnects, you guys don't know what the fuck you're doing." He was referring to the number of customers who had recently disconnected from the SkyCable service. After this meeting, two customer service representatives were so upset, they quit their jobs.

[85] Ms. Falk heard the Respondent regularly refer to staff members as "idiots", "sluts" and "bitches". On a couple of occasions, he specifically called her a "bitch" and an "idiot". She also heard him make remarks about her and the other women when they walked by, such as "Oooh!" and "Mmm!" She recalls that one day, while she was bending over at the filing cabinet, the Respondent said "Oh, that skirt looks good." When it became known at the office that she was pregnant, he said to her that at least now she would have "boobs", that her shirt looked good and that she had a "nice rack".

[86] The Respondent made a more direct sexual comment to Ms. Falk at a corporate rodeo that was held in June 1998. At one point during the event, the Respondent leaned over close to Ms. Falk's ear and asked her, "Lisa, will you sleep with me?" She replied no and pointed out to him that his wife was standing nearby. For as long as Ms. Falk was there, he repeatedly leaned over to her and made the same request. She continued to turn him down. However, at one point he asked again but added that Ms. Falk should come see him in his office the next day and he would

give her a raise. After this comment, Ms. Falk just wanted to get away so she left the rodeo five minutes later, well before the event had ended.

[87] The following day she went to work as normal. Based on the promise made to her during her initial job interview, she felt that she had already been entitled to an increase in salary since at least several months prior. However, she decided to not bring up this matter now with the Respondent for fear that he would interpret it as an acceptance of his request that she sleep with him. She testified that for this reason, she held off demanding a pay raise until August 1998.

[88] Ms. Falk also stated that the Respondent occasionally engaged in unwanted physical contact with her. One day, two installers from Winnipeg came to Brandon to visit the office staff. Ms. Falk joined them and the Respondent for lunch. When he introduced the installers to Ms. Falk, he put his arm around her. He later gave her a hug and put his face up against hers. In addition, during the early months of her pregnancy, and well before it was physically apparent that she was carrying a child, the Respondent frequently came up to her, rubbed her abdomen and asked how she was doing.

[89] The Respondent did not refrain from making comments about Ms. Falk's personal matters. In May, after the Respondent had met her boyfriend and learned that he was a body-builder, the Respondent constantly referred to him as her "stripper boyfriend". He once told her while they were both just standing at the doorway smoking, "I think you need a rich man to look after you." This comment was unexpected and completely unrelated to anything they were talking about at the time. Some time later, when it became known within the office that Ms. Falk's relationship with her boyfriend had ended, he told her, "You would have no problems getting laid."

[90] Ms. Falk decided, as did two of her co-Complainants, to leave after the boardroom meeting called by the Respondent on August 24, 1998. She felt that the Respondent's treatment of the staff was humiliating. Following the meeting, she returned to her desk. Throughout the day, she sensed the Respondent glaring at her with a look of disgust. She went to the bathroom and cried. She testified that she felt "sick of being treated like garbage" and embarrassed that she had allowed herself to be treated that way. She therefore decided to go home at the end of her shift and not come back.

[91] The following day she went to a medical clinic complaining of stress and anxiety. The physician issued a note declaring her unfit for work until September 5, 1998. Her family doctor later extended the period to October 13, 1998. She was hoping that the Respondent would be dismissed or removed from the SkyCable office by Craig Broadcasting. However, within several weeks she realized that the Respondent was going to remain there indefinitely. She therefore submitted her resignation on September 25, 1998, to take effect on September 30, even though she would have been entitled to disability benefits until October 13.

[92] Her employment insurance benefits commenced on October 15, 1998 and ceased at the end of December, to be replaced by maternity benefits. At the end of her maternity coverage, she sought but was unable to find employment in Brandon. She therefore moved to Vancouver in June 1999. She found a job there but the cost of living was high. Consequently, four or five months later she moved to Edmonton where she continues to reside. She now works in a

restaurant. Her income since leaving Brandon has never matched the salary that she was earning at SkyCable.

## **F. Other SkyCable Employees**

[93] Aside from the four Complainants, several other former SkyCable employees testified at the hearing. Mr. Darrell Grant reiterated the others' evidence to the effect that the Respondent regularly used foul language against the staff. He also witnessed some of the sexual remarks that were specifically used with respect to the female employees. For instance, just after one woman had been hired at the office, the Respondent remarked to Mr. Grant, "I bet she fucks like a mink."

[94] Mr. Grant recalled some of the physical gestures that the Respondent would make. He walked behind women with his arms out and motioned with his hands, as if he was squeezing their buttocks. At other times, he pretended to grab his genitals. Mr. Grant remembers at least one occasion when the Respondent walked behind one female office worker and actually partially unzipped his pants, as if he was going to take them off.

[95] Mr. Grant was hired by SkyCable in January 1997 and was laid off by the company in October 1999. He was working at the company's warehouse by that time. He pointed out however that the SkyCable office where the Complainants had worked was shut down in August 1999, and all of the operations that were performed there were transferred to an office in Winnipeg. Mr. Grant also confirmed that the Respondent was fired by SkyCable in the month of April 1999.

[96] Barbara Wilson worked for SkyCable from August 1996 until January 1997, as a customer service representative. She recalls the constant use of obscenities by the Respondent and describes his attitude as demeaning. He referred to the staff as a "bunch of fucking cunts" or "fucking bitches". One incident that stands out in her memory is when the Respondent commented to her that Ms. Yeary had large breasts and that he assumed they had grown. Ms. Wilson considers herself fortunate to have been dismissed from SkyCable so soon after being hired.

[97] Timothy Melnyck worked in the SkyCable office from November 1996 until April 1998. He testified that he used to hear the Respondent make sexual comments about the female employees. Once, the Respondent pointed to one woman employee and said to Mr. Melnyck, "I'll bet you she's sucked a mean dick in her lifetime." Mr. Melnyck was surprised at how loud he made the statement. With respect to Ms. Woiden, the Respondent once told Mr. Melnyck, "I'd screw that in a minute if my old ticker could stand it." Mr. Melnyck also recalls the Respondent often intentionally knocking papers off Mrs. Curle's reception desk. When she would bend down to pick the papers up, the Respondent would try to look up her skirt.

[98] Bobbi Gerrard worked in the accounting department from January to June 1998. She testified as to the extensive use of vulgar language by the Respondent and recalled how one time, when another female employee had bent down, the Respondent came up behind her and put his

hands around her waist. He often mentioned to others how beautiful and sexy he considered that employee to be.

### **G. Credibility of the Evidence**

[99] All four Complainants remained in the hearing room throughout the course of the hearing. However, even discounting for this fact, I still find the evidence of the Complainants and of the other witnesses credible. It should be noted that none of the non-Complainant witnesses sat in on the hearing prior to being called to testify. The testimonies of the Complainants and the other witnesses were delivered in a manner that was forthright and consistent. Each witness' evidence was often corroborated by the evidence of other witnesses.

## **IV. THE LAW**

[100] Section 7 of the *Act* makes it a discriminatory practice to directly or indirectly differentiate adversely in relation to an employee in the course of employment on a prohibited ground of discrimination. Subsection 14(1) provides that it is a discriminatory practice to harass an individual on a prohibited ground of discrimination. The prohibited grounds of discrimination include sex and family status (Subsection 3(1)). Moreover, Subsection 14(2) specifies that sexual harassment shall, for the purposes of Subsection 14(1), be deemed to be harassment on a prohibited ground.

### **A. Analysis of the Allegation of Discrimination on the Ground of Sex**

[101] Sexual harassment can take many forms. It does not merely take in situations where someone demands a sexual favour of an employee in exchange for some benefit or, inversely, under the threat of adverse job consequences if the request is refused (the so-called *quid pro quo* form of harassment). As the Supreme Court of Canada pointed out in *Janzen v. Platy Enterprises Inc.*,<sup>(2)</sup> this form is simply one manifestation of sexual harassment.

[102] Sexual harassment also encompasses situations in which employees are forced to endure sexual groping, propositions and inappropriate comments, even where there are no tangible economic rewards attached to involvement in such behaviour. Thus, according to the Court, sexual harassment is 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. The Court added that sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.<sup>(3)</sup> It is not necessary for harassment to be the sole reason for the actions complained of for a complainant to succeed and the harassment need not even be intentional on the part of the perpetrator of the harassment.<sup>(4)</sup>

[103] In the case of *Canada (HRC) v. Canada (Armed Forces) and Franke*,<sup>(5)</sup> Madame Justice Tremblay-Lamer elaborated on the test to be applied in assessing sexual harassment:

(i) The acts that are the subject of the complaint must have been unwelcome. The Tribunal must therefore look at a complainant's reaction at the time of the incident and assess whether she expressly, or by her behaviour, demonstrated that the conduct was unwelcome. The Court recognized that a verbal "no" is not required in all cases and that a repetitive failure to respond to suggestive comments constitutes a signal to a harasser that his conduct was unwelcome. Fear of losing her job, for instance, may force an employee to endure objectionable conduct. The appropriate standard against which to assess a complainant's conduct will be that of a reasonable person.

(ii) The conduct must be sexual in nature. This encompasses a broad range of conduct. Requests for sexual favours and propositioning fall within the ambit of acts that are sexual in nature and that constitute a psychological form of sexual harassment. Verbal sexual harassment includes gender-based insults, sexist remarks, comments about a person's looks, dress, appearance or sexual habits. Physical forms of sexual harassment include pinching, grabbing, hugging, kissing and leering. Persistent questioning about an employee's personal sex life has been held to constitute sexual harassment.<sup>(6)</sup> The Tribunal's determination of what is "sexual in nature" should again be assessed to the standard of a reasonable person in the circumstances of the case, keeping in mind the prevailing social norms.

(iii) Ordinarily, harassment requires an element of persistence or repetition, but in certain circumstances even a single incident may be severe enough to create a hostile environment. The objective reasonable person standard is used to assess this factor as well.

(iv) The final factor arises where a complaint is filed against an employer regarding the conduct of one of its employees. Fairness requires that in such cases, the victim of the harassment, whenever possible, *notify the employer* of the alleged offensive conduct. This factor is no longer relevant to the present case, in light of the settlement that the Complainants reached with the employer before the matter was referred to the Tribunal.

[104] In *Stadnyk v. Canada (Employment and Immigration Comm.)*,<sup>(7)</sup> the Federal Court of Appeal stated that in cases of sexual harassment where the alleged victim is a woman, the reasonable person standard should be adapted to that of a reasonable woman. This adjustment serves to recognize that male-female interaction may be perceived differently by men than by women. However, even when I apply the standard of a reasonable person, without any adjustment for the Complainants' gender, I still find that the Respondent discriminated against the Complainants by harassing them on the basis of their sex. His conduct was sexual in nature, was unwelcome by the Complainants and was not only persistent and repetitive but, on occasion, severe. The events giving rise to this finding include the following:

a) His suggestion to Ms. Falk that she speak to him about an increase in her salary, coming on the heels of his persistent requests that she sleep with him, is a typical case of the *quid pro quo* form of sexual harassment. In fact, Ms. Falk may

have suffered a real economic loss as a result of his proposition. She decided to refrain from requesting the salary raise she otherwise deserved, for fear of its being considered by the Respondent as an implicit acceptance of his sexual propositions.

b) The Respondent's conduct regarding Ms. Woiden during the cabin and Winnipeg incidents also contributes to the finding of sexual harassment. His actions at the cabin were undoubtedly sexual in nature. With respect to their visit to Winnipeg, although the Respondent did not physically touch Ms. Woiden nor explicitly suggest that she engage in sexual activity, I find that his behaviour, particularly in the context of the previous incident at the cabin, was certainly sexual in nature and inappropriate. I have no doubt that the Respondent's actions in both cases were not welcome by Ms. Woiden. She effectively had no choice but to go along with the Respondent's decision to drive to his cabin while they were on what was supposed to be a business-related activity. She had no reason to suspect the Respondent's conduct when he invited her into the cabin while he checked out the building. Her acceptance of his invitation to enter the cabin cannot reasonably be interpreted as an indication to him that his subsequent sexual propositions would be welcome. Similarly, I do not consider her feigned laughter and shrugging off of his question, in advance of the Winnipeg trip, regarding whether he should only reserve one hotel room, as in any way indicative of an acceptance by her that they sleep in the same room. Rather, her reaction was a reasonable response to yet another of the Respondent's countless offensive remarks. To respond to her boss in a more assertive manner risked putting her job in jeopardy.

c) Ms. Woiden and the other Complainants referred to other incidents of physical contact by him, such as hugging and the rubbing of shoulders. Numerous incidents of leering were reported by the Complainants, both in regard to themselves and to other female employees. It could be argued that the occasional touching of an employee's shoulders is not sexual in nature. However, in the context of the clear and credible evidence from the Complainants and other witnesses (male and female) of the Respondent's frequent and deliberate attempts to look up women's clothing, to make offensive gestures and to commit other similar acts, I find that any reasonable person would conclude that even casual touching by him of women was sexual in nature. The Complainants testified that when he would engage in this conduct, their reaction was either to walk away or to endure it until he would stop. There is no evidence that any of these women ever demonstrated that they welcomed his actions. Any reasonable person would have responded in the same manner, keeping in mind that the conduct was being perpetrated by the senior manager who had the authority to dismiss them from their jobs.

d) The most common and repetitive form of sexual harassment practised by the Respondent was verbal in nature. He questioned and commented about the personal lives of all the Complainants. He also made comments of a sexual nature



about all of these women's appearances. The Complainants were both the objects as well as the observers of innumerable vulgar statements by the Respondent, most of which were sexual in nature. While it has been recognized that the usage of terms such as "fucking" does not always carry a sexual connotation<sup>(8)</sup>, the Respondent's vocabulary went much further. One cannot dissociate the sexual nature of words such as "slut", "bitch" and "cunt" when they are used by the male senior manager in an office composed almost entirely of women. The Complainants reacted to his remarks in a number of ways. Sometimes they just ignored them and, when possible, walked away. At other times, the Complainants raised their shoulders and tried to laugh or shrug off his comments. In some cases, the reactions were more expressive, such as when Mrs. Curle shut the filing cabinet with some force after the Respondent's attempt to look up her skirt. I find that their reaction did not constitute a sign that his conduct was welcome. The Complainants' reactions were entirely reasonable in the circumstances. These sorts of responses are to be expected in an environment where the remarks are made by the workplace's most senior manager. It is worth noting that most of the women who worked at the SkyCable office were young (three of the Complainants were in their 20's at the time). The Respondent was well into his 40's, if not older. It is reasonable for a young woman, in these circumstances, to not energetically protest against the actions of her much older male supervisor. To do so would put her job at risk, thereby denying her the work experience that she needs at this early stage of her working career.<sup>(9)</sup> I find that in the present case, the Complainants' reactions were not inappropriate and did not signal an acceptance of the Respondent's comments.

The Respondent's actions were clearly persistent, repetitious and serious enough so as to create a hostile work environment for all of the Complainants. For all the above reasons, I conclude that the Respondent sexually harassed the Complainants.

[105] The Respondent's harassment of the Complainants on a prohibited ground of discrimination constitutes a breach of Section 14 of the *Act*. The Complainants had alleged in their amended complaints that he had violated Section 7 as well. In light of my finding on their claims of sexual harassment, I see no need to examine this secondary allegation.

## **B. Analysis of Ms. Yeary's Allegation of Discrimination on the Ground of Family Status**

[106] Ms. Yeary alleges that the Respondent discriminated against her on the ground of family status by requiring that she change her work hours in a manner that was incompatible with her obligations as a single mother of three children.

[107] The definition of discrimination based on a person's family status was discussed by the Ontario Court of Appeal in the case of *Ontario (Human Rights Commission) v. Mr. A.*<sup>(10)</sup> The Court, relying largely on the definition of harassment set out in *Janzen*, stated that discrimination on the basis of family status may be defined as practices or attitudes that have the effect of limiting the conditions of employment of, or the employment opportunities available to, employees on the basis of a characteristic relating to their family.

[108] I find that on the evidence led by Ms. Yeary and the Commission, it is clear that the practice established by the Respondent of requiring that Ms. Yeary work the extended hours limited her ability to work because of the basic needs related to her particular family situation. It was made clear to her that if she did not work the new hours, she would be dismissed. Ordinarily, following such a finding, an analysis is conducted of the respondent's explanation for the imposition of the rule. This explanation may rely on the exception set out in Section 15 of the *Act* to the effect that the allegedly offensive rule is based on a *bona fide* occupational requirement and that any accommodation of the needs of the complainant would impose undue hardship on the respondent.

[109] The Respondent's decision in this case to ignore the process before this Tribunal and his failure to present any defence, prevents me from proceeding through this phase of the analysis. There is some indication in several letters signed by the Respondent that the decision to impose the new hours on Ms. Yeary was necessary in order to satisfy SkyCable's "legitimate business requirements". However, in the absence of any elaboration as to these supposed requirements, I must reject this possible explanation.

[110] The Respondent's deliberate absence from this case poses an additional problem for him. It is probable that had he participated, he would have argued that his actions regarding the establishment of this rule and its imposition on Ms. Yeary, were made entirely in his capacity as an employee, manager or agent of SkyCable, and that any liability arising therefrom should only attach to SkyCable and not to him personally. Since this argument was never led before me, I will not address it other than to note advisedly that this issue has not been canvassed in any way, in the present case.

[111] Although I have decided that Ms. Yeary's Section 7 based claim of discrimination on the ground of family status has been substantiated, I have not reached the same conclusion regarding her allegation of harassment on the same ground. The principles that underlie the definition of sexual harassment as set out in *Janzen*, can also be applied to other cases of harassment, including those based on race and national or ethnic origin.<sup>(11)</sup>

[112] Applying these principles, I find that a reasonable person would not consider the Respondent's conduct vis-à-vis Ms. Yeary regarding her working hours (consisting principally of several letters and at least one meeting) to have been persistent or repetitive enough to justify a claim of harassment. Nor do I find those incidents giving rise to her claim to have been serious enough to constitute harassment. Simply put, the hostile and offensive work environment created by the sexual harassment practised by the Respondent, cannot also be attributed, even in part, to his conduct regarding Ms. Yeary's work hours. I therefore dismiss her allegation, pursuant to Section 14 of the *Act*, of harassment on the ground of family status.

## **V. REMEDY**

[113] Having concluded that the Respondent is liable to the Complainants, it remains to be determined which remedy, if any, is appropriate. The Tribunal's remedial jurisdiction is governed by Section 53 of the *Act*, which contemplates the imposition of remedies designed to prevent future discrimination as well as compensate individual complainants. The goal of compensation is to make whole the victim of the discriminatory practice, taking into account principles of mitigation, reasonable foreseeability and remoteness.<sup>-(12)</sup>

#### **A. Lost Wages**

[114] All four Complainants allege that the Respondent's discriminatory conduct left them with no alternative but to abandon their jobs at SkyCable. When complainants choose to leave their employment rather than endure sexual harassment, they may be deemed to have been dismissed on grounds of prohibited discrimination, a form of constructive dismissal.<sup>-(13)</sup> However, damages for wage loss in such cases can only be awarded where a real and causal connection has been established between the sexual harassment and the loss of their employment.<sup>-(14)</sup>

[115] None of the Complainants left on the occasion of the more severe incidents of sexual harassment, such as Ms. Falk's conversation with the Respondent at the corporate rodeo or the cabin incident with Ms. Woiden. Both women continued working thereafter. However, the acts of sexual harassment that created a hostile work environment were intertwined with the Respondent's overall aggressive and anger-ridden management style. Although the outbursts of August 24, 1998, (in the cases of Ms. Woiden, Mrs. Curle and Ms. Falk) and June, 1998, (in the case of Ms. Yeary) were not overtly

[116] sexual in nature (aside from his usual use of vulgarities), these events were nonetheless the culmination of a whole series of discriminatory acts. These women could no longer continue working with the Respondent without putting their psychological and even their physical states at risk. I am satisfied that their resignations or departures from SkyCable constitute constructive dismissals caused by the Respondent's sexual harassment. In Ms. Yeary's case, this situation was compounded by the discrimination practised against her on the basis of her family status.

[117] I therefore find that the Complainants are entitled to compensation for their lost wages. However, in calculating their losses, I have taken into consideration the fact that SkyCable closed its office in Brandon in August, 1999. The Complainants are accordingly not entitled to any lost wages beyond this point as it is certain that their employment would have ceased at this time, in any event. The Respondent is ordered to pay to the Complainants the following sums regarding their lost wages:

- Ms. Yeary received a portion of her salary after her departure, in the form of a disability allowance. The remaining portion, until the date of her resignation on August 10, 1998, would have totalled \$698.08. She was hired at a higher paying job immediately thereafter. Her wage loss is limited therefore to the sum of **\$698.08**.
- Mrs. Curle received her disability allowance until November 23, 1998. The difference between that allowance and her ordinary salary at SkyCable was

\$1,591.59. She did not receive any income until January 4, 1999, when she was hired at her new higher paying job. The salary she would have earned over this period would have been \$2,140.60. I am satisfied from Mrs. Curle's evidence that she made reasonable efforts to obtain other suitable employment and thereby mitigate her loss. Her wage loss for this period is therefore calculated to be  $\$1,591.59 + \$2,140.60 = \mathbf{\$3,732.19}$ .

- Ms. Woiden's evidence, as led by the Commission, was not clear with respect to the calculation of her wage loss. I have attempted to calculate the loss from what details are available. The difference between the disability benefits that she received until September 30, 1998, and her normal salary was \$504.68. From October 1, 1998, until April 24, 1999, when she was hired at her new job, her income at SkyCable would have been \$13,475.05. However, during this period, Ms. Woiden apparently received \$7,691 in employment insurance benefits. Section 45 of the *Employment Insurance Act*, <sup>(15)</sup> requires an employee to repay the Receiver General any employment insurance benefits upon receipt of a damage award referable to the same period of time as benefits have been received. <sup>(16)</sup> I have decided to make an award to Ms. Woiden for the entire amount of her lost wages and leave it to her to reimburse the Receiver General after the successful execution of this decision. I am satisfied that Ms. Woiden made reasonable efforts to obtain other suitable employment and thereby mitigate her wage loss. According to the limited information presented to me, it appears that Ms. Woiden's income at her new job exceeded her SkyCable salary. She left that new job in February, 2001, but in any event, since SkyCable's office operations in Brandon had by then been closed, she is not entitled to any further compensation for wage loss. To summarize, Ms. Woiden is entitled to the following sum regarding her wage loss:  $\$504.68 + \$13,475.05 = \mathbf{\$13,979.73}$ .

- Ms. Falk received disability benefits until September 30, 1998. The difference between those benefits and her regular salary at SkyCable was \$499.68. During the thirteen week period from October 1, 1998 until December 28, 1998, when she began receiving maternity benefits, Ms. Falk would have earned \$5,958.36. She received employment insurance benefits of \$2,050.00 during this period. Ms. Falk will have to reimburse this amount to the Receiver General if she in fact collects on her compensation for wage loss, in the same manner as discussed earlier regarding Ms. Woiden. Ms. Falk ceased receiving maternity benefits at some time in May, 1999, and from then until June, 1999, she was unemployed. I was not provided with exact dates so I will assume the period of unemployment extended for four weeks, a span during which she would have earned \$916.67 if she were still employed at SkyCable. From June 1999 onwards, her salary at her new job in Vancouver was lower than that earned at SkyCable, but I do not have any direct evidence of what the difference was. Assuming that all of her employment income, as it appears on her 1999 income tax return, was earned at the Vancouver job, from June through December 1999, her bi-weekly income appears to have been about \$360. The difference between this amount and what she would have earned at SkyCable is \$556.67 per two week period. From June to

the end of August, 1999, when SkyCable's Brandon office closed, there are 6 ½ two-week periods. The difference in salary over this period is therefore \$3618.36. To summarize, the total loss in wages is \$499.68 + \$5,958.36 + \$3618.36 = **\$10,076.40.**

[117] The Respondent must therefore pay to each of the Complainants the above mentioned sums in compensation for their respective wage losses. I have no difficulty in ordering him to pay these sums even though SkyCable was legally their employer and not he. Co-workers of complainants in sexual harassment cases have often been ordered to pay for the ensuing wage loss, although usually it has been in the context of a joint and several order issued against the co-worker and the employer.

[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.

## **B. Gross-up**

[119] The Complainants may incur an increased income tax liability as a result of the lump sum awards regarding their lost wages. This would unfairly penalize them. Accordingly, the Respondent is ordered to pay to each of the Complainants an additional sum that is sufficient to cover any additional tax liability they may incur as a result of receiving payment in this fashion.

## **C. Expenses**

[120] The Complainants incurred the following expenses as a result of the Respondent's discriminatory practice against them. These costs consist of either the fees charged for their medical certificates or for the legal advice that they sought after their departure from SkyCable. The Respondent is ordered to pay these costs to the Complainants:

- Ms. Woiden: Medical certificate \$ 15.00

Lawyers' fees \$344.66

Total **\$359.66**

- Mrs. Curle: Medical certificates \$ 30.00

Lawyers' fees \$416.86

Total **\$446.86**

- Ms. Yeary: Lawyers' fees **\$342.75**
- Ms. Falk: Medical certificates \$ 35.00

Lawyers' fees \$281.51

Total **\$316.51**

## **D. Non-Pecuniary Damages**

### **(i) Pain and Suffering**

[121] Paragraph 53(2)(e) of the *Act* provides that the Tribunal may order a respondent to compensate a victim for any pain and suffering the victim experienced as a result of the discriminatory practice, to a maximum of \$20,000.

[122] The assessment of damages for pain and suffering must take into account a particular factor in this case. The Complainants had also filed complaints against SkyCable, presumably invoking the liability of the employer for the acts of its employee, the Respondent, under Section 65 of the *Act*. These complaints were settled some time ago. SkyCable agreed to pay a specified amount to each of the Complainants but also stipulated that the settlements were entered into without prejudice and without any admission of liability on its part.

[123] The sums paid to the Complainants by SkyCable were apparently designated as compensation for pain and suffering. As such, Counsel for the Commission, with the consent of the Complainants, submitted to the Tribunal that these sums should be deducted from any awards for pain and suffering issued by me in the present case. In order to ensure that the settlement amounts remain confidential, the Complainants wrote down the amounts that they each received from SkyCable and passed up these notes to the Tribunal, in separate sealed envelopes.

[124] Turning to the Complainants' present complaints against the Respondent, I am convinced that the poisoned work environment generated by his conduct was exacting on their psychological and physical healths and caused them significant pain and suffering. The Complainants' physicians were so concerned about their patients' states that they ordered them to stop working. This fact is indicative of the extent to which their lives had been adversely affected by the Respondent's conduct. The Complainants testified that the symptoms of their suffering, such as the headaches, insomnia and anxiety, built up over time and worsened just before their departures. It was this worsening of their conditions that provoked their decisions to leave.

[125] Their suffering has continued after their departures. Ms. Yeary and Mrs. Curle, who still live in Brandon, spoke of their constant fear of running into the Respondent. They both recounted incidents where they saw him while shopping or eating in local restaurants, and felt so uneasy that they had to turn around and leave. Ms. Woiden recalls that on one occasion, she had to refuse a task assigned to her by her subsequent employer because it involved dealing with a

business being operated by the Respondent. Ms. Falk's inability to find a job in Brandon after her constructive dismissal from SkyCable led, at least in part, to her decision to move to another city in search of employment.

[126] Taking into consideration all of these factors, including the level of compensation already received by the Complainants from SkyCable, I order the Respondent to pay to the Complainants the following amounts for their pain and suffering:

- Ms. Woiden \$8,000
- Mrs. Curle \$8,000
- Ms. Falk \$8,000
- Ms. Yeary \$6,000

### **(ii) Special Compensation for Reckless or Wilful Conduct**

[127] Subsection 53(3) of the *Act* declares that a Tribunal may order a respondent to pay to the victim a sum no greater than \$20,000, if the Tribunal finds that the respondent engaged in the discriminatory practice wilfully or recklessly.

[128] The Respondent's course of conduct can certainly be characterized as being reckless with regard to the rights of other persons. His vulgar and offensive remarks and gestures were thrown around the SkyCable office without any apparent concern on his part. Many of the witnesses recalled how surprising it was to see how openly the Respondent would engage in these acts. Moreover, his propositions to Ms. Falk and Ms. Woiden were undoubtedly wilful on his part. When it came to Ms. Yeary's appeals to the Respondent that he accommodate her particular needs with respect to her family, he responded without any regard to her rights. He instructed her to "do whatever you have to do personally in order for you to attend work as scheduled" or else she would be dismissed.

[129] Taking all of the circumstances into account, I order the Respondent to pay to each of the Complainants the sum of \$10,000.00, as special compensation for his wilful and reckless practice of discrimination, in accordance with Subsection 53(3) of the *Act*.

### **(iii) Whether the Older Version of the Act's Remedial Provisions Applies to this Case**

[130] Prior to the amendments to the *Act* that took effect on June 30, 1998,<sup>(17)</sup> awards to victims for non-pecuniary damages were limited to only \$5,000 (Subsection 53(3)). In *Nkwazi v. Canada (Correctional Service) (No. 3)*,<sup>(18)</sup> the Canadian Human Rights Tribunal held that where the discriminatory conduct occurs prior to June 30, 1998, the older limits continue to apply. In the present case, although the Respondent's discriminatory conduct commenced prior to this date, it continued beyond it.

[131] With regard to Ms. Yeary, even though she did not perform any work at SkyCable after June 26, 1998, she did not resign until August 10, 1998. She could have returned to her job were it not for the ongoing presence of the Respondent in the workplace. As such, she continued to be directly affected by the Respondent's discriminatory conduct, even while she was away from the office, on sick leave that itself had come about as a result of the Respondent's conduct.

[132] I therefore find that the discriminatory conduct practised by the Respondent against Ms. Yeary and the other Complainants extended beyond June 30, 1998, and that consequently, the amendments to the *Act* regarding non-pecuniary damages apply to their cases.

### **E. Interest**

[133] I order the Respondent to pay to the Complainants simple interest on all of the above-mentioned awards (lost wages, expenses, pain and suffering, special compensation). The interest will be calculated at the rate of five per cent (5%) per annum to accrue from the original date of filing of each complaint until the final payment of these awards.

### **F. Training and Counselling**

[134] I accept the submission of the Commission and some of the Complainants that the Respondent could benefit from certain training and counselling. I therefore order the Respondent to attend one or more programs designed or directed to providing an understanding of sensitivity to harassment issues in the workplace as well as learning how to manage one's anger. The program(s) are not to exceed a total of three days and must take place in Brandon or any other place in Canada where the Respondent may be residing. The program(s) shall be chosen in consultation with the Commission. The Respondent shall attend the program(s) at his own expense, within six months from the date of this decision. If a program is not available within this period, he shall attend one within such time as determined in consultation with the Commission.

### **G. Letter of Apology**

[135] Ms. Woiden, Ms. Yeary and Mrs. Curle have asked that the Respondent be ordered to provide each of them with a signed letter of apology. Ms. Falk declared that she had no interest in receiving such a document from him. I find the request for such a letter appropriate and I therefore order the Respondent to prepare and sign a separate letter of apology for each of the Complainants, other than Ms. Falk. The Respondent is ordered to provide the letters to the Commission, which in turn is expected to forward the letters to the Complainants. The Respondent must comply with this order within a period of forty-five (45) days from the date of this decision.

### **H. Lost Income for Attendance at Hearing**

[136] Ms. Yeary requested that she be reimbursed for the wages that she lost while she was in attendance at the hearing of her complaint. Compensation for income lost by a complainant



while in attendance at their hearing may be awarded in exceptional circumstances. <sup>(19)</sup> There is no evidence of such exceptional circumstances in Ms. Yeary's case.

## **I. Retention of Jurisdiction**

[137] I retain jurisdiction in the event that any dispute arises regarding the quantification or implementation of any of the remedies awarded in this decision.

(Original signed by)

Athanasios D. Hadjis

OTTAWA, Ontario

June 17, 2002

## **CANADIAN HUMAN RIGHTS TRIBUNAL**

### **COUNSEL OF RECORD**

TRIBUNAL FILE NO.: T657/4501

STYLE OF CAUSE: Kindra Woiden, Lisa Falk, Joan Yeary and Sharla Curle (formerly Speight)  
v. Dan Lynn

PLACE OF HEARING: Brandon, Manitoba

February 11-14, 2002

DECISION OF THE TRIBUNAL DATED: June 17, 2002

APPEARANCES:

Kindra Woiden, Lisa Falk, Joan Yeary and Sharla Curle On their own behalf

Giacomo Vigna For the Canadian Human Rights Commission

1. <sup>1</sup> *Woiden et al. v. Lynn* (Ruling No. 1) (January 23, 2002), T657/4501, (C.H.R.T.).
2. <sup>2</sup> [1989] 1 S.C.R. 1252 at page 1282.
3. <sup>3</sup> *Ibid* at page 1284.
4. <sup>4</sup> *Swan v. Canada (Armed Forces)* (1994), 25 C.H.R.R. D/312 at para. 73 (C.H.R.T.).
5. <sup>5</sup> (1999), 34 C.H.R.R. D/140 at paras. 29-50 (F.C.T.D.).
6. <sup>6</sup> *Noffke v. McClaskin Hot House* (1989), 11 C.H.R.R. D/407 (Ont. Bd. of Inq.).
7. <sup>7</sup> (2000), 38 C.H.R.R. D/290 at para. 25 (F.C.A.)
8. <sup>8</sup> *Marinaki v. Canada (Human Resources Development)*, [2000] C.H.R.D. No. 2 at para. 200 (C.H.R.T.) (Q.L.).
9. <sup>9</sup> *Bouvier v. Metro Express* (1992), 17 C.H.R.R., D/313 at para. 65 (C.H.R.T.), aff'd [1993] F.C.J. No. 218 (F.C.T.D.).
10. <sup>10</sup> [2000] O.J. No. 4275 at para. 54 (Ont. C.A.) (Q.L.), leave to appeal to S.C.C. granted.
11. <sup>11</sup> *Marinaki, supra*, note 7, at paras. 187 and 188.
12. <sup>12</sup> *Canada (Attorney General) v. Morgan* (1991), 21 C.H.R.R. D/87 at paras. 9-12 (F.C.A.).
13. <sup>13</sup> *Miller v. Sam's Pizza House* (1992), 23 C.H.R.R. D/433 at para. 158 (N.S. Bd. of Inq.).
14. <sup>14</sup> *Ibid* at para. 224.
15. <sup>15</sup> S.C. 1996, c. 23.
16. <sup>16</sup> This issue was dealt with in some detail in *Bernard v. Waycobah Board of Education* (1999), 36 C.H.R.R. D/51 (C.H.R.T.).

17. <sup>17</sup> *An Act to amend the Canada Evidence Act and the Criminal Code in respect of persons with disabilities, to amend the Canadian Human Rights Act in respect of persons with disabilities and other matters and to make consequential amendments to other Acts*, S.C. 1998, c.9, s. 29.

18. <sup>18</sup> (2001), 39 C.H.R.R. D/237 at paras. 257-270 (C.H.R.T.).

19. <sup>19</sup> *Goyette v. Syndicat des employé(es) de terminus de Voyageur Colonial*, [2000] C.H.R.D. No. 37 at paras. 75-77 (C.H.R.T); *Canada (Attorney General) v. Lambie* [1996] F.C.J. No. 1695 at paras. 40-42 (F.C.T.D).