

Canadian Human
Rights Tribunal



Tribunal canadien
des droits de la personne

Between:

Connie Bushey

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Arvind Sharma

Respondent

Decision

Member: Athanasios D. Hadjis

Date: June 5, 2003

Citation: 2003 CHRT 21

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[1] The Complainant and the Respondent are employees of Canada Post Corporation (“**Canada Post**”). The Complainant alleges that the Respondent sexually harassed her during the period when they were both members of their union’s local executive, from February to August 1998.

[2] The Canadian Human Rights Commission (“**Commission**”) was the only party represented by legal counsel at the hearing before the Tribunal. The Complainant’s case was essentially introduced through the evidence led by the Commission. The Respondent presented his case on his own.

I. Facts

A. The Complainant’s Perspective

(i) Employment and Union Membership

[3] The Complainant has worked at Canada Post since 1982. Her position in 1998 was that of Officer of Testing and Design, within the Service Performance Evaluation section. The section measures the delivery performance of Canada Post’s products. She worked in an office situated in one of several large buildings that are occupied by Canada Post, near the intersection of Riverside Drive and Heron Road, in Ottawa. Her office was on the 3rd floor of the 10-storey structure known as the East Tower.

[4] The Respondent was first hired by Canada Post in 1991. His regular position in 1998 was that of Supervisor in Transactional Control Accounting, in what is essentially the billing and accounting department of Canada Post. In April and May 1998, he received an acting assignment at the higher level position of Officer. His office was on the 5th floor of the East Tower, two storeys above the Complainant’s office.

[5] Both parties were members of the Union of Postal Communications Employees (“**UPCE**”), the bargaining agent for about 3,000 of Canada Post’s employees. The UPCE is a

component of the Public Service Alliance of Canada (“PSAC”). The Complainant became involved in some of the UPCE’s activities in 1994, and, in 1996, she was elected Vice-President of her local, UPCE 70180 (“Local”). It was the UPCE’s largest local in the country, with about 1,000 members at that time.

[6] Although the Complainant and the Respondent worked in the same building, their occupations were completely unrelated. They met for the first time in September 1997, during a union membership meeting. Several days after the meeting, the Respondent went to the Complainant’s office and inquired about how he could get more involved with the union. She advised him to speak to the then President of the Local, Mr. Jim Fraser, or the Chief Shop Steward, Mr. Ken Zarichansky. She also suggested to the Respondent that he consider taking several courses offered by the PSAC.

[7] The Complainant testified that from October 1997 until February 1998, the Respondent showed up at her Canada Post office about once every month. She was leery of his visits although there was nothing in his conduct that gave her specific cause for concern. She found it odd that he would keep coming back even though she had advised him to speak to the other members of the Local Executive about getting more involved.

[8] On February 19, 1998, a general membership meeting was held to elect the Local’s Executive. Mr. Fraser did not want to run for President again, preferring instead to devote himself entirely to his other duties as Full-time Officer of the Local (a full-time paid position). The members elected the Complainant to replace him as President. The position of Treasurer had also been vacated. By then, Mr. Fraser and other members of the previous Executive had already met the Respondent. They considered him to be a good candidate for Treasurer since he possessed accounting skills, worked in an accounting-related position at Canada Post and had taken college level courses in the Certified General Accounting program.

[9] These Executive members recommended the Respondent’s candidacy to the Complainant and they proposed that she, as the newly elected President, nominate him to improve his

prospects for election. She testified that she initially objected to their proposal, in light of her general concerns about his visits to her office. She eventually went along with the others' suggestion and nominated the Respondent for Treasurer. He won the election for the position.

[10] The Treasurer's duties consisted essentially of receiving and depositing the Local's monies and issuing cheques for disbursements, including those related to the Full-time Officer's salary. In addition, the Treasurer was involved in the preparation of the annual financial statements and budget. For the issuance of cheques, two signatures were required from either the Treasurer, President, Vice-President or Full-time Officer, although the latter was not permitted to sign his own pay cheque. No more than ten to twenty cheques were issued in a given month. Much of the Executive's activities related to grievances and disciplinary actions involving the Local's membership. These matters were dealt with mostly by the Full-time Officer in consultation with the President and the Chief Shop Steward. These tasks did not form part of the Treasurer's range of duties. The Treasurer was expected to attend executive meetings, which were held about once a month, in the evenings.

[11] The Local had leased office space at a nearby building that was owned by the Canadian Labour Congress ("CLC"). The CLC building was within walking distance from the Canada Post complex where the Complainant and the Respondent worked. All of the Local's documents, including its financial records, were kept at the office. Access to the office was restricted, but all the Executive members, including the Respondent, were provided with keys and access cards that enabled them to enter at any time, on any day of the week. The Complainant testified that she kept no financial records or other union documents at her Canada Post office. She was not directly involved in the making of payments by the Local, aside from the requirement that she approve mileage claims and other extraordinary expenses. The Complainant claims that the Respondent was instructed, when he took on his duties, to leave these expense-related documents and any cheques that required her signature, in her mail slot at the Local office. After being signed, the cheques were to be mailed by the Full-time Officer who worked there each day. She herself ordinarily went to the Local office daily, mainly to verify if

the employer had sent any “twenty-four notices” requesting a meeting, pursuant to the collective agreement.

(ii) Visits and Calls by the Respondent to the Complainant’s Office

[12] The Complainant alleges that very soon after the Respondent was elected Treasurer, he began to contact her at work repeatedly, by telephone and in person. She recalls that he was calling her about four to five times per day and that he was coming down to her office just as often. Considering the limited scope of the Treasurer’s duties and the minimal degree of interaction with other Executive members that was required, there was almost no reason at all for him to be in touch with her at work.

[13] She states that the subject matter of these calls and visits initially concerned ways to improve the union’s operations. However, the conversations soon began to drift towards personal matters. He began to tell the Complainant details about his family life. He is of East Indian origin and he explained how he had an arranged marriage in accordance with the customs of his culture. She claims that these conversations were distracting her from her work and became very annoying. She occasionally asked him to leave but he often just remained at her doorway and stared at her.

[14] Another topic raised by the Respondent with the Complainant was his résumé. According to the Complainant, within five days after the Local’s election, he began asking to sit down and review this document with her. She consented and they met for this purpose at the Local office one afternoon after work. The Complainant claims that she ended up being in the office with the Respondent for two hours. It became evident to her that he was unwilling to accept some of her recommendations just so the meeting could be prolonged and he could spend more time with her. He repeatedly requested additional help with his résumé over the following weeks even though she told him she was too busy to help.

(iii) Incident Outside of the Complainant's Apartment Building

[15] On March 10, 1998, the Complainant alleges that an incident took place that changed the nature of the Respondent's conduct towards her from merely annoying to overtly sexual. Freezing rain was coming down that day and the roads were icy. She had walked over to the Local office on her way home from work, in order to check for any correspondence. The Respondent called the office and she answered. He told her he was going to come in to do some accounting work. He insisted that she not attempt to walk to her nearby apartment but that she wait for him to come by and drive her home. The Complainant initially refused but the Respondent was so insistent, that she finally accepted.

[16] As they pulled up to the driveway of her apartment building, the Respondent asked her which of the units was hers and she pointed it out. He then turned to her and asked if he could come into her apartment. She said no, but he replied that it would be alright since he could easily call his wife and tell her he was working late. He suggested that the Complainant could give him a drink. She testified that she again told him no, that he was not coming into her apartment and that he should behave himself. She claims that he told her they could get intimate together. He went on to say, "It's okay if we have sex" and "Won't you even give me a kiss?" She again told him no, to which he responded that she would have no choice but to kiss him. If she refused to do so in private, he would force a situation upon her where she would have to kiss him in public. She stepped out of the car and slammed the door shut behind her.

[17] She was angry and upset, but her greatest concern lay in the fact that she had indicated to him where her ground floor unit was located. In her testimony, the Complainant stated that although she had received lifts home from other Executive members and work colleagues in the past, people with whom she was acquainted for years, no one had ever entered or even requested to come into her apartment.

(iv) The Subject Matter of the Respondent's Visits and Calls Becomes Sexual in Nature

[18] According to the Complainant, the Respondent's uninvited calls and visits continued unabated over the following weeks. His first daily visit typically occurred at 7:30 a.m., as he was coming in to work, followed by another visit between 9:30 and 10:00 a.m., a third one at noon and a final visit in the late afternoon. He became more forward in his comments, telling the Complainant that it was important for him to see her each day. He would say that he liked a particular dress that she was wearing and ask that she wear it again so that his "fantasies would come true". He said that he would continue to pursue her until those fantasies came true. He also told her that he would be jealous if she had a relationship with another man. He advised her to not tell anyone about their "relationship" and that if she did do so, he would deny it. He told her that "it is a man's world", she had no proof and her word would never be believed. She repeatedly told him that they did not have a "relationship" and that his behaviour was unacceptable. Yet, he continued calling and visiting her.

[19] The Complainant testified that the Respondent always made sure that his statements would not be overheard. During his early morning visits, there usually were no other people working nearby. The Complainant's section was divided up into several offices by partial-height partitions. The evidence is that the co-worker whose office was on one side of hers was legally deaf. In addition, Richard Hudon, whose office was on the other side, testified that he had several illnesses that caused him significant pain, during this period. In order to alleviate the pain, Mr. Hudon tried to focus his complete attention on one thing at a time, typically his work. He was, therefore, often able to block out any other activities going on around him.

[20] Even so, Mr. Hudon testified that he witnessed the Respondent's frequent visits to the Complainant's office. To his recollection, there were usually three to four visits a day, each about seven minutes long. Mr. Hudon assumed initially that the parties' conversations were union-related, but after a while, he sensed that the subject-matter was more personal in nature, and he deliberately tried not to overhear.

(v) **The Response from Other Union Executives**

[21] The Complainant testified that the day after the March 10, 1998 incident in the Respondent's car, she called or spoke in person with the following union executives to complain about the Respondent's conduct:

- X Jim Fraser – Full-time Officer and former President of Local;
- X Dave Vaughan – Vice-President of Local;
- X Tom Matchett – Ontario Regional Director of the UPCE;
- X Jim Murray – National President of the UPCE.

They all told the Respondent that she was overreacting. According to the Complainant, they did not believe that a “quiet, nice, little guy” like the Respondent could have done what she alleged. She claims that Mr. Murray even told her, “Isn't it funny that you've got a boyfriend”. He went on to tell her that it was a personal matter that she should resolve for herself, without involving the union.

[22] As a result, she realized that she would get little support from these men and that she would have to deal with the Respondent on her own. In spite of that, she soon got into the habit of calling Mr. Fraser or Mr. Vaughan after the Respondent's uninvited visits. She concluded that if her union colleagues were not going to help her deal with the Respondent's harassment, she would make an effort to deflect some of the harassment on to them.

[23] All four of these men testified in the present case. They confirm having been notified by the Complainant of her allegations and they all, to greater or lesser extents, acknowledge that they had not fully understood or grasped the issues being raised by the Complainant. Messrs. Vaughan and Fraser were particularly apologetic regarding their reactions to her complaints. They also both confirmed that over a period of time the Complainant called them several times a day to complain about the day's most recent unwanted visits by the Respondent.

(vi) National UPCE Conference in London, Ontario

[24] In March 1998, the UPCE held its national conference in London, Ontario. The delegates attending from the Local were the Complainant, Mr. Fraser, Mr. Vaughan and Ken Zarichansky, the Chief Shop Steward. The day before departing from Ottawa to go to the conference, the Complainant went to the Local office after work to check for any correspondence. The Respondent showed up at the office while she was there. According to the Complainant, he asked her if she would take him along to the conference, adding that they could stay in the hotel room and have sex. If he did not go with her, he said that he was going to call her at the hotel when she got there to make sure she was alright. She replied that he could not come along and that he was not to call her, at home or at the hotel. She then left.

[25] When she got home, she received a call from the Respondent telling her that Mr. Zarichansky was at the Local office and wanted to speak to her about a grievance. She retorted that the Respondent had been specifically instructed to not call her at home, and that if Mr. Zarichansky wanted to speak to her, he could place the call himself.

[26] In the Complainant's opinion, the Respondent had by this time become obsessed with seeing her. For instance, she believes that he was making very frequent visits to the Local office in the hope of running into the Complainant. If the Local received several invoices that required payment, the Respondent had the habit of going to the office repeatedly, over a series of days, and making out one cheque per visit, instead of doing them all at once. He thus created for himself ostensible cause for showing up at the office over several evenings.

(vii) Purchase of New Couch for Office and Gifts for the Complainant

[27] The Complainant alleges that, on numerous occasions, the Respondent proposed several questionable purchases by the Local, including that of a new couch for the office. The office already had a two seat couch that was in good condition and did not require replacement. According to the

Complainant, the Respondent told her that he wanted a new and presumably larger couch to be bought, on which he could have sex with her and other women.

[28] Mr. Fraser testified that the Respondent spoke to him about buying a new couch as well. The reason given by the Respondent was so that he could “lay down”. Mr. Fraser informed the Respondent that spending union funds on a new couch when there was one there already would be unacceptable to the membership. Mr. Fraser and other witnesses noted in their testimonies that both the CLC’s Building and the Canada Post buildings had nursing stations with cots where employees could go if they felt the need to lie down.

[29] The Complainant testified that beginning in the month of April 1998, the Respondent began suggesting that the Local should buy a dress and flowers for her on the occasion of her birthday, which was coming up in May. He also proposed that the union organize a birthday party for her. She told him many times that his suggestions were inappropriate.

[30] Messrs. Hudon, Vaughan and Fraser recall having gone to lunch at a restaurant one day, with other members of the Local, including the Respondent and the Complainant. While they were all at the table, the Respondent mentioned that the Local should buy a dress and hold a party for the Complainant. According to Mr. Hudon, the comment was made in a serious tone and not in a joking fashion. He describes the comment as having been a “conversation stopper”. Mr. Fraser and the Complainant told the Respondent that his suggestion was inappropriate.

[31] Mr. Fraser also testified that on several occasions, the Respondent had raised with him the idea of purchasing flowers and a dress for the Complainant. Mr. Fraser remembers wondering how the Respondent, who was married with a family, could suggest buying a gift as personal as flowers or a dress.

[32] According to the Complainant, the Local did not ultimately ever throw a party nor purchase any gifts of this nature for her.

(viii) Incident at Office of the Local - April 18, 1998

[33] In order to update its bookkeeping practices, the Local had purchased the computerized accounting software known as “Quicken”. This program was readily available at retail stores and was designed to be used by ordinary consumers to keep track of their personal banking and other transactions. The program had been installed on the Local’s computer. As Treasurer, the Respondent was expected to use this software.

[34] The evidence suggests that as of 1998, the Respondent was very competent in the use of various computer programs at Canada Post, which were, by all accounts, significantly more complex than Quicken. The Respondent’s supervisor at that time, Franco Chiumera, testified that the Respondent was fairly knowledgeable at learning computer programs and that he demonstrated an ability to pick up programs more quickly than others. The Respondent’s supervisor between 1999 and 2001 was Alex Eloise. He testified that the Respondent’s computer skills were the best in his team and that the Respondent was the driving force behind computer usage in the section. Mr. Eloise also confirmed that the Respondent was a “quick study” in learning new software.

[35] In early April 1998, the Respondent spoke to the Complainant and asked her to train him on Quicken after business hours, at the Local office. She declined, explaining to him that she had not really used the program yet herself. He nonetheless insisted that she train him. According to the Complainant, who has, since that time, had occasion to use Quicken, the software is so simple that she was able to learn how to use it by herself within ten minutes.

[36] The Complainant spoke to a colleague from work, Mary Sue Allen, who was already acquainted with the software since she had been using it at home to manage her family’s finances, and asked Ms. Allen to meet the Respondent and provide him with some training. When Ms. Allen first contacted the Respondent, she suggested that it may be more helpful for him to read the software’s on-line manual or take a professional training course. According to Ms. Allen, he declined her suggestion and insisted on receiving the training from her. A meeting was therefore arranged between her and the Respondent for Saturday, April 18, 1998, at 1:00 p.m., at the Local office.

[37] As the time of the meeting approached, the Complainant contends that she began to worry about Ms. Allen's safety, in light of the Respondent's prior comments about how he wanted to have sex on the couch in the Local office. The Complainant therefore decided to go to the office on that Saturday, to ensure that nothing untoward would happen to Ms. Allen. Unbeknownst to the Complainant, Ms. Allen had developed some concerns of her own. Ms. Allen stated in her testimony that she became uncomfortable with the Respondent's insistence that she train him. So, on the morning of April 18, she called and cancelled the meeting.

[38] The Complainant, being unaware of the cancellation, arrived at the Local office at about 1:00 p.m., when the training was scheduled to begin. She found the Respondent sitting at the desk with an open beer bottle in front of him. Based on his speech, he appeared "tipsy", though not drunk. He informed the Complainant that Ms. Allen had cancelled the training session. As the Complainant turned to leave, the Respondent said that he had uncovered a problem with respect to Mr. Fraser's expense claims. The Complainant, therefore, decided to speak by telephone to Mr. Fraser about this issue. She sat at the desk and the Respondent stood behind her as they spoke through the hands-free speakerphone. Mr. Fraser confirmed in his testimony that this conversation took place and that it lasted about ten to fifteen minutes.

[39] After the call was completed, the Respondent asked the Complainant, who was still seated, to pull her chair in so that he could get to the bulletin board behind her. She gave him some space, but he pushed her chair further in, saying he needed even more room. As a result, she was now stuck against the desk, unable to move or get up. At this point, he grabbed her forearms with his hands and began kissing her hair, head and neck. She told him to "get the fuck off" her but he refused. He said that he was in love with her and she had to agree to have sex with him. She told him to get off her once more, and to get in front of the desk. He again said no, but after she threatened to call the police, he let go and moved to the other side of the desk. The Complainant told him that his behaviour was inappropriate and a violation of the PSAC harassment policy, for which he could be disciplined. He retorted that he was going to force her to kiss him. She replied that she would not kiss him and that she did not want to have sex with him.

[40] At this stage, the Respondent confirmed to the Complainant that he had sought the Treasurer's position just so he could pursue her. He indicated that from where he came, there was no problem with his having a relationship with her. He also reiterated that if she told anyone about his behaviour, she would not be believed, and that it was a man's world where a woman's word made no difference. She repeated to him that he was in breach of the PSAC harassment policy and that his behaviour had to cease immediately. She then left the office. She testified that during this incident, she maintained a calm demeanour. She was upset all the same and when she got home to her apartment, she "curled up in a ball and just cried". She considered calling the police but assumed it would be to no avail as it would just have been her word against his. The Complainant claims that the Respondent had held her arms so tightly that she developed bruises. Indeed, Mr. Hudon recalls having noticed at work that one of the Complainant's forearms was bruised, although he does not remember exactly when he made this observation.

(ix) April 19, 1998 Letter from Complainant to Respondent

[41] The Complainant decided that she had to take some formal action against the Respondent since her verbal warnings about his conduct had not worked. Thus, on Sunday, April 19, 1998, the day after the incident with the Respondent, she drafted a letter addressed to him. It was printed on the Local's stationery and stated the following:

Regarding: Inappropriate Sexual Comments

On March 26, April 18, and several other occasions, you have made inappropriate sexual comments to me. These comments have ranged from telling me how beautiful I am to requesting that I do not date anyone else to asking me to have sex with you.

On at least four occasions, I have told you to refrain from making these comments. On April 18, 1998, I explained to you that this is a violation of the PSAC Constitution and the PSAC Harassment Policy. Enclosed is a copy of the PSAC Harassment Policy and a copy of the PSAC Constitution, Section 25, Discipline which outline the potential steps that could be taken if this behavior is not stopped.

Your sexual comments are unwarranted and unwelcome. Due to the fact that I have on several occasions requested that you refrain from this behavior and you

have not adjusted your behavior accordingly, I feel that you are sexually harassing me.

In the future, I expect that you will deal with me in a professional, business manner as it is inappropriate for you to continue make [sic] these sexual comments to me.

Sincerely

[signed]
Connie Bushey
President, Local 70180

The letter indicates that copies were to be provided to Messrs. Vaughan, Fraser, Murray and Matchett.

[42] The Complainant does not mention the alleged incident of physical contact in the letter. She explained in her testimony that the office of Local President was very public in nature and she wanted to keep her personal problems private. She also feared that an assertion by her that she had been assaulted could have been “used against” her by others, particularly because she felt that without any witnesses, no one would believe her. On Monday, April 20, 1998, the Complainant handed the letter to Messrs. Fraser and Vaughan and asked them to deliver it to the Respondent, who was away from work that day on annual leave.

[43] Early the next morning, Tuesday, April 21, 1998, the Respondent telephoned the Complainant at her office and said that he wanted to talk to her “about what happened Saturday”. She replied that she did not want to talk to him and that he was to leave her alone and not contact her. A short time later, at the indicated time of 9:11 a.m., the Respondent sent her an e-mail message in which he stated:

I am sorry, wouldn't you wish me best of luck for my exam. I still have respect for you.

Arvind.

[44] The Respondent was to write an examination regarding a job competition later that day. The Complainant asserts that up to that date, no problem had arisen with respect to any of the Respondent's acts in his capacity as Treasurer and that the only possible matter for him to have apologized about was the incident of April 18th.

[45] At 11:00 a.m., apparently after Messrs. Fraser and Vaughan had asked to meet with him, the Respondent called the Complainant to tell her that she had no right to tell them what had happened. He asserted that he was the one being harassed and informed the Complainant that she would never be believed. She replied that he had continued his inappropriate behaviour, despite her warnings against it. She had no choice but to bring the matter to a higher level.

[46] Messrs. Fraser and Vaughan met with the Respondent over the lunch hour on April 21. They handed him the letter and told him that the attention that he had been showing to the Complainant was improper. They advised him to cease and desist this conduct and, in particular, to not have any further contact with her other than for union-related business. The Respondent denied having done anything wrong. He offered to resign as Treasurer but Messrs. Fraser and Vaughan replied that he had been doing a good job and his resignation was not necessary. As Mr. Vaughan recalls, the Respondent agreed to not "bother" the Complainant any more. It was suggested to the Respondent that an apology to the Complainant may be appropriate. He was specifically instructed to not telephone her that day.

[47] A shop stewards' meeting was taking place at the Local office that evening, which the Complainant decided not to attend. Amongst the people present was the Respondent. At about 5:30 p.m., the Complainant received a call at her home from him. He told her that he was at the meeting, that extra pizza had been ordered and that she should come over to have some. She replied that he had been specifically instructed to not call her. He said that he wanted to apologize for his behaviour and that he had to hear her voice. She told him not to call her again and slammed down the phone.

[48] On April 22, 1998, the Complainant received a letter from the Respondent that states the following (the text has not been altered or corrected):

To: Connie Bushey

From: Arvind Sharma

Subject: Inappropriate Behaviour

Connie, I am deeply sorry and I am apologising for all conflict it may have cause you. I will endeavour to earn your respect again. I am and will be professional and be respectful. I trust that you will forgive me. I do not know what else I should say. Also I want to ask your opinion time to time; therefore, please guide me.

Regards,

[signed]
Arvind

At about 7:30 a.m., on the following day, April 23rd, the Respondent walked into the Complainant's office. She was busy talking on the phone so he left her a message on a small *Post-It* self-adhesive sheet of paper that he placed on her desk. The note stated (the text is again unaltered):

Plse Phone me & say you have forgotten. Connie, I'll never hurt you.

Thx Arvind.

The Complainant threw the note in the garbage can and the Respondent left her office. She later retrieved the note and it was entered into evidence at the hearing.

[49] Later that day, at about 3:00 p.m., the Complainant met with Messrs. Fraser and Vaughan at the Local office. They called and spoke to the Respondent over the hands-free speakerphone. Mr. Fraser and Mr. Vaughan chastised him for having phoned the Complainant and they reiterated that he was to stop contacting her for anything besides union business. He was also to return the Complainant's business card that contained her unlisted home telephone number, which he had been

given when he became Treasurer. The Respondent agreed to bring the impugned behaviour to an end and to return the business card.

[50] The next day, April 24, 1998, the Respondent wrote the following letter to Messrs. Fraser and Vaughan (the text is unaltered):

To: Brother Jim/Dave

Jim I wanted to talk to you, sorry I was with my Boss. Jim/Dave, I don't want to hurt anybody. Plse-Plse don't take me wrong way. I have excellent reputation at work I respect other people. I have Connie's card which I'll give you tomorrow and I'll earn the card back with respect. I did nothing wrong. I'll not call Connie if I'm at work with an appointment & respectfully. I hope that you will understand me. If you want I'm willing to give you the office key/pass.

This is just the note, don't take wrong way. I talk to respect plse. I'm not bad.

Thx Arvind.

The Complainant's business card was indeed returned by the Respondent to Mr. Fraser the following day. Messrs. Vaughan and Fraser did not ask the Respondent to hand in his office key and pass.

(x) Changes in the Complainant's Behaviour

[51] The Complainant claims that as a consequence of the Respondent's actions, she was forced to make numerous changes in her life. She did not live far from her office and was in the habit of walking to and from work. After the April 18th incident, she started driving to her job out of fear that the Respondent would confront her while walking and assault her.

[52] She resolved to never allow herself to be alone with the Respondent again. To this end, she informed her manager, Gilles Séguin, about her problems with the Respondent. Mr. Séguin advised her that if the Respondent showed up, she could leave her cubicle and come to his office or go to the

section's common area. As is further discussed below, the Complainant alleges that by May 1998, the Respondent had resumed his daily visits to her office. She therefore began to leave her office whenever he was likely to come by, and go elsewhere, such as the cafeteria. She ended up having to work later hours in order to make up for the time she lost earlier in the day, while away from her desk.

[53] The Complainant claims that she also stopped going to the Local office alone. Ordinarily, Mr. Fraser left for home at about 4:00 p.m. The Complainant now had to make sure to take care of any union business at the Local office prior to Mr. Fraser's departure. This often meant that she had to leave earlier from her job at Canada Post.

[54] She contends that all of these changes had a negative impact on her performance at work as well as on her ability to function as President.

(xi) Renewed Contact by the Respondent after the April 18, 1998 Incident

[55] The Complainant alleges that within a few days after her letter to the Respondent and his conversations with Messrs. Fraser and Vaughan, during which he agreed to not contact her except for union-related business, he resumed his uninvited visits, calls and other communications regarding matters that had nothing to do with the Local's activities.

[56] On April 28, 1998, the Respondent sent the Complainant an e-mail message containing a summary of a management course for women that was being offered at Carleton University. The Respondent stated at the top of the message, "Connie, you should attend this program." At about the same time, he spoke to her by telephone about their going together to purchase two new filing cabinets for the Local office. She told him that new cabinets were not needed but that if he insisted on making the acquisition, he was to discuss the matter with Mr. Fraser and make the purchase with him. She considers this request to be another attempt by him to be alone with her.

[57] In May 1998, the Complainant began visiting her office again. She claims that his comments during these visits were usually sexual in nature. He related his sexual fantasies about her, described his preferred sexual positions, and repeatedly asked to have sex with her. She always told him that she would not have any sexual relations with him and reminded him that he had been warned to stop this behaviour.

[58] The Complainant testified that on one occasion, the Respondent had shown up at her office and began saying that he wanted to have sex with her and that he would not leave her alone unless she did. She shouted back to him to “get the fuck out” of her office and cease this form of conduct. Her objections were so loud that Mr. Hudon’s attention was drawn away from his work and he rose to see what was going on in the neighbouring cubicle. In his testimony, Mr. Hudon recalled seeing the Respondent rush past him heading out of the Complainant’s office. She, on the other hand, remembers that the Respondent was still in her office when Mr. Hudon walked in. She turned to the Respondent and said, “Go ahead, Arvind, tell him, tell him you were demanding sex from me.” The Respondent denied her charge and then ran out of the office.

[59] She was so upset, Mr. Hudon had to sit with her for a while to calm her down. He recalls that she was “crying in great sobs” and was somewhat incoherent. He tried to comfort her but, although he is a fairly close friend of hers, he did not think it appropriate at that time to ask about what happened.

[60] Mr. Hudon testified that the Respondent would ask him where the Complainant was, whenever he passed by and did not find her. Mr. Hudon refused to answer, since the Complainant had specifically asked him to not divulge her whereabouts. As a result, the Respondent used to leave numerous messages in the Complainant’s voice mail box, often saying that he needed to talk to her and hear her voice.

[61] During a weekend in the month of May 1998, the PSAC held a meeting in Hull. Four members of the Local Executive attended, including the Complainant and the Respondent. The Complainant drove everyone to the meeting in her car. On the way back, the Respondent made

several comments regarding an upcoming series of “labour college” courses that the Complainant was to take at the University of Ottawa. The program required that she reside on the university campus for the duration of the training session, which was to last for one month, beginning May 25th. Mr. Vaughan, the Vice President, had been assigned all of her union functions and responsibilities in her absence. The Respondent stated that he wanted her phone number and address at the university campus so that he could call her during the day and come by and visit her, together with his wife, at night. The Complainant told him that she would not give him this information. He was insistent on obtaining it, claiming that she was being rude and insensitive in not providing it. Eventually, one of the other Executive members, Mr. Zarichansky, intervened and stated, in a fairly assertive manner, that the Complainant had clearly said no to the Respondent’s request and that he should leave her alone.

[62] When the “labour college” session ended, a graduation ceremony was held at the university. Several members of the Local Executive attended the event including Mr. Fraser, Mr. Zarichansky and the Respondent. As the Complainant looked out into the audience that day, she saw the Respondent standing with a large bouquet of roses in his arms. She feared that the Respondent was planning on giving her the flowers that he had been talking about for months and that, at the same time, he would finally manage to kiss her in public, as he had first announced to her when he drove her home in March. She was afraid that she would be unable to avoid his embrace. As luck would have it, the ceremony ran long and the Respondent had to leave to attend his child’s birthday party. He handed off the bouquet to Mr. Fraser. According to Mr. Fraser’s testimony, the Respondent had brought the flowers to the event and they were not paid for from the Local’s funds.

[63] Since the Respondent never learned how to reach the Complainant at the university, she did not hear from him at all during the training session. When she returned to her Canada Post office in late June 1998, she found numerous messages in her voice mail box from the Respondent in which he stated that he needed to hear her voice and asked her to call him. She also found an e-mail message sent by the Respondent to her on June 12, 1998. The message was not related in any way to the union’s activities. It consisted of a file attachment containing a skill-testing quiz and a comment from the Respondent that he was certain the Complainant would score 98% on the quiz.

(xii) Events after the Complainant's Return from "Labour College"

[64] The Respondent began calling the Complainant again as soon as she returned to work. She reminded him each time that she did not want him to phone her. On occasions when she was away from her office, the Respondent left messages in her voice mail box, asking that she call him. The Complainant describes the tone of his voice on these messages as "anxious". Whenever he managed to speak to her, he often explained that all he wanted to do was hear her voice. The Complainant continued her practice of calling Mr. Fraser and Mr. Vaughan after receiving the Respondent's calls. She testified that by this time, she had begun to feel more worried about and afraid of the Respondent's conduct, having reached the conclusion that he was obsessed with her. She therefore discussed with Mr. Fraser and Mr. Vaughan the possibility of restricting the Respondent's access to the Local office by taking away his pass and keys, but they felt that this would be an overreaction and a possible violation of his rights.

[65] The Local had acquired a new computer in July 1998, and a software package that was in widespread use at Canada Post was installed on it. The package included the Lotus spreadsheet program. The Respondent called the Complainant and requested that she train him on the program. She flatly refused, especially since the program formed part of the package that he was already presumably using at his Canada Post job. She perceived his request as yet another excuse to get her in a room alone with him.

[66] The Respondent served as a union representative on the Joint Health and Safety Committee. The committee's functions included the conduct of annual workplace inspections regarding the health and safety of Canada Post employees. On July 16, 1998, the Respondent and a management representative carried out the annual inspection on the Complainant's floor in the East Tower. The Complainant alleges that at one point during the day, while she was on the telephone, she looked up and saw the Respondent standing at her cubicle's entrance, staring at her and listening to her conversation. He told her she looked unhappy and suggested that the union should buy her flowers to make her feel better. She again reminded him that such a purchase would be inappropriate and that he had already been advised in her letter to cease making these comments.

[67] As a result of what she came to regard as the Respondent's obsession with her, she developed a fear for her safety. This led her to make additional changes to her lifestyle. For instance, she ceased her lunch hour walking and running exercises for fear of crossing paths with the Respondent. She also stopped going to the park at Mooney's Bay, near her apartment, because she knew that he used to go there often with his family. She even contemplated resigning from the Local Executive, having been frustrated by her fellow union representatives' unwillingness to intervene.

[68] Her fear was compounded by certain statements that the Respondent made to her in late June or early July 1998, about his impending change of residence. The Respondent informed the Complainant that he was planning to move to a location that was only ten minutes away from her home. She alleges that he said he would be living so close to her that he intended to come by and visit her during weekends and evenings. The evidence is that by August 1998, the Respondent and his family did indeed move into a house owned by his father, which is located a short distance away from the Complainant's apartment.

[69] On Friday, July 17, 1998, the Respondent called the Complainant and told her that he would be seeing her the next day. She pointed out to him that the next day was a Saturday and she had no intention of seeing him. He replied that he intended to drop by and visit her at what she assumed was her apartment. She advised him to stay away. Over the course of the weekend, she made sure not to be at home, in case he attempted to visit her. The following Monday, July 20, the Respondent called her early in the morning and asked her how her weekend was.

[70] She was now very concerned, sensing that the Respondent had moved beyond the workplace and was "invading" her "home territory". She therefore wrote a second letter to the Respondent, dated July 20, 1998, on the Local's stationery, in which she stated the following (the text has not been altered from the original):

July 20, 1998

Arvind Sharma
Regarding: Continuation of Inappropriate Behavior

In April 1998, you received a warning letter regarding inappropriate comments and behavior that you had directed towards me. Over the past three months, I do not feel that you have improved on you comments or behavior towards me.

It has been noted that you are at the Local several times a week. I personally have noted that you go in to sign a cheque and the next day you are into do one other small task. It appears that you are in the office so many times because you are seeking an opportunity to be with me alone. Due to the initial inappropriate behavior, I no longer feel safe and comfortable to go into the Local during the evening or on the weekend. This is mainly due to the fact that I do not know when you will be there and if you are there what types of comments or behavior that will be exhibited towards me. This is affecting my efficiency as the President of the Local and the efficiency of the Local in the service we provide to the membership.

Although, there has been several comments, the most inappropriate and worrisome comments came over the past week. When you indicated I was required to provide you with training on the computer, I firmly and repeatedly told you that I would not provide the training. You responded that I had to provide you training and the trainer had to be me. Even though I said "NO" several times, you insisted that I train you. Your lack of understanding of the word "NO" is a very simple word. As you are well versed in the use of computers and the operations of the computer, I do not believe that you needed training on the computer. I really question your motives as to why you would insist on being trained by me. In my opinion, this was your latest plan for you to be alone with me. In the future, I do not want you to arrange or plan situations where you are alone with me.

On Thursday, July 16, you stated to me that that Local should buy me flowers to cheer me up. This is similar to the situation when you wanted the Local to buy me flowers and a dress for my birthday. It has been explained to you that the I and the other members of the Local Executive considers this behavior very inappropriate and not acceptable.

On Friday, July 17, you stated that you will be seeing me on the weekend. I am uncertain as to why you seem to think that you would be seeing me. In fact the way you said the comment, I was uncertain if you were planning to see me at the Local or if you were planning to stop by my apartment. As I had never discussed or planned to see you this weekend, I am uncertain how you came about with this idea. This could be considered as a form of stalking. This behavior threatens my safety which has a high emotional impact on the victim (me). This further leads me to believe that you are seeking the opportunity to see me alone.

On Monday, July 20, you phoned me and stated that you were calling to see how my weekend was. It has been noted that you do not call Jim or Dave or Ken. Is this your way of singling me out so that you can talk to me each and every day?

This behavior must stop or further action will be taken. This could lead to formal charges that will be made public through the disciplinary process.

Sincerely

[signed]
Connie Bushey
President, UPCE, Local 70180

The Complainant provided copies of the letter to Messrs. Murray, Matchett, Vaughan and Fraser. At the Complainant's request, Messrs. Vaughan and Fraser met with the Respondent to hand him the letter. Although the Respondent read the letter, he refused to keep it and he handed it back. Messrs. Vaughan and Fraser told him to stop bothering the Complainant, and he apparently consented.

[71] Later that day, the Respondent sent the following hand-written letter to Mr. Murray (the text has not been altered from the original):

Brother Jim Murray,

As our conversation this afternoon, the letter provide to me by Jim Fraser & Dave Vaughan are false and incorrect. I did nothing wrong. I'll not phone Connie at work instead for union business I'll phone at the Local.

I'm hard worker, honest & helping nature individual. I can say so many things about somebody but they don't mean they are correct.

To solve this problem, I want to meet you, Connie, Tom Matchett personally to over with the family domestic misunderstanding problem. I work until 3:30 PM. Plse let me know when we can meet. I will not resign. I want to move forward.

Later that week, the Complainant met with a person responsible for security at Canada Post. This individual advised her that the conduct of the Respondent, as described by her, could

constitute a form of stalking. He also informed her that complaints could be filed with the employer, the union, the police and the Canadian Human Rights Commission. However, having been already notified about the Respondent's request for a meeting, she decided to hold off on the filing of any complaint until after the meeting.

(xiii) July 27, 1998 Meeting

[72] Pursuant to the Respondent's request in his July 20th letter, a meeting was convened at the Local office, on July 27, 1998, attended by Messrs. Murray, Matchett, Vaughan and Fraser, together with the Respondent and the Complainant. Mr. Matchett presided over the meeting. According to the Complainant, it was readily apparent to her that the topic of the meeting for the other union representatives was how to resolve the problem so as to maintain the efficient operation of the Local. There was no interest in actually dealing with the Respondent's behaviour. The Complainant notes that the collective bargaining period was fast approaching and the UPCE could not afford to have outstanding tensions within its largest local.

[73] The Complainant claims that as she recounted the incidents to the others, the Respondent continuously interjected with objections and denials, shouting "that's not true" and "you're lying". When he denied having suggested that the Local buy her flowers and a dress, Mr. Fraser stepped in and told the Respondent, "Yes you did, so stop lying". Although the Respondent initially denied the Complainant's accusations regarding his repeated requests for sex, he eventually conceded "It's not three times I demanded sex from you, it was once, and I was drunk".

[74] Eventually, a proposal was put forth that the Respondent resign from the Health and Safety Committee, that he undertake to visit the Local office on Wednesdays only and that he cease contacting the Complainant. She claims that while the others may have felt that a consensus was reached in the room to accept this proposal as a resolution to the problem, she never expressed any acceptance. She noted that Mr. Matchett closed the meeting by telling the Respondent to "just continue with what you are doing" and instructing her to stop writing letters to the Respondent. She

therefore perceived the proposal as an implicit approval of the Respondent's stalking and demands for sex.

[75] Disappointed with the outcome of this meeting, the Complainant decided to take action against the Respondent. On July 31, 1998, she filed a human rights complaint with the Human Rights section of Canada Post. On August 4, 1998, she laid charges with the PSAC and UPCE, against the Respondent, in accordance with the PSAC's Constitution and the UPCE's By-laws. She alleged that the Respondent had engaged in conduct that was prejudicial to the good order and discipline of the union and that he had sexually or personally harassed her.

[76] On August 10, 1998, the Respondent sent a letter to Mr. Murray informing him that he was resigning as Treasurer of the Local, effective the same day.

[77] On August 31, 1998, Mr. Fraser and the Complainant met with an investigator of the Ottawa-Carleton Regional Police. A file was opened in the Complainant's name regarding the Respondent, so that in the event she ever felt the need to call for assistance, the police would already be aware of the background to the case. For additional security, the Complainant gave the police file number to her manager, Mr. Séguin.

[78] On October 30, 1998, Canada Post communicated the findings from its investigation into the Complainant's internal human rights complaint. The investigation was conducted by Ms. Leslie Hine, Human Rights Co-ordinator at Canada Post, who testified that she gathered information by interviewing numerous witnesses, one on one, including the Complainant and the Respondent. Neither the Respondent nor the Complainant were present during the interviews of the other witnesses. Ms. Hine took notes during the interviews. In most cases, the notes were shown to the witnesses and signed by them. Canada Post concluded that the Respondent's "obsessive behaviour and unwelcome sexual requests [were] unacceptable and cannot be condoned by the corporation". The employer therefore ordered the Respondent to attend a human rights sensitization course, to provide a full and frank apology to the Complainant and to cease having any contact with her. In addition, he was suspended from work without pay for two weeks and a copy of the letter setting out

these conclusions was placed on his personal file. Any violation of these conditions would result in the immediate termination of his employment. The Respondent initially filed a grievance against the employer's decision but the grievance was later abandoned.

[79] Also on October 30, 1998, the National Executive of the UPCE placed the Local under trusteeship due to "serious questions" that were raised about its "ability to function". The Complainant and the other Executive members were advised that they no longer held their offices. When the Local was brought out of trusteeship a year later, the Complainant was re-elected President.

[80] The union investigation committee that enquired into the Complainant's charges against the Respondent concluded that he had sexually or personally harassed her. The UPCE National Executive adopted the committee's report and on June 1, 1999, the National Board of Directors of the PSAC suspended the Respondent's membership in the union for a period of five years.

[81] On December 23, 1998, the Complainant filed with the Commission, the present human rights complaint against the Respondent. Separate human rights complaints were also filed with the Commission against the PSAC and the UPCE, in which the Complainant alleged that these employee organizations had failed to provide her with a workplace free from harassment. These latter complaints were settled several weeks before the start of the hearing into the complaint against the Respondent.

(xiv) Measures Taken by the Complainant to Avoid Contact with the Respondent

[82] The Complainant testified that one of the principal fears that she developed as a result of the Respondent's alleged behaviour was that he would come to her apartment, particularly after he moved his residence to a location nearby. She claims to have notified her building's manager and superintendents about her concerns regarding the Respondent. More importantly, although she enjoyed living in the apartment that she had occupied ever since moving to Ottawa eleven years before, she decided that she had to move as far away as possible from the city, so as to make it

difficult for the Respondent to visit her. She started looking for a new home in December 1998, and by June 1999, she had purchased and moved into a house located well outside the city. She has continued to work at Canada Post and her commute now takes 1½ hours. She must now drive to work whereas she used to be able to conveniently walk there from her apartment. She has deliberately not installed a telephone in her new home but instead uses a cellular phone only, with a number that is not published in any phone book.

[83] Both the Complainant and the Respondent have since changed offices and buildings within the Canada Post complex. Nonetheless, special security measures have been put in place at work by her employer. Her name is not posted anywhere, including her office door and employee lists. Her desk is always placed in a central and public area, away from any corners or stairwells. The Respondent is not allowed access to the building in which the Complainant works.

[84] The Complainant acknowledged in her testimony that the Respondent has not spoken to or contacted her again since 1998. In one chance encounter in a store about one year ago, he turned around and walked away from her. The Complainant contends that the change in his conduct can be attributed to his fear of losing his job if he were to ever violate Canada Post's order that he never come into contact with her.

B. The Respondent's Perspective

[85] The Respondent denies the Complainant's contention that he joined the Local Executive in order to gain an opportunity to keep company with her. The Respondent claims that when he attended the union meeting in September 1997, he noticed that there were no members of visible minority groups on the Local Executive and thought that by getting involved he could become a role model for others. In addition, he saw it as an opportunity to improve his English language skills and to become acquainted with other employees from different departments. He also acknowledges that he was pleasantly surprised to learn that Local Executive Members received a modest fee in return for their participation.

[86] The Respondent agrees that he made telephone calls to the Complainant and visited her occasionally, but contends that their conversations always related to union activities. For instance, he regularly came to her office to get her signature on Mr. Fraser's pay and expense reimbursement cheques. The Respondent then delivered the cheques to Mr. Fraser's spouse, who worked in a neighbouring building. About four or five of the fifteen to twenty cheques issued each month were made payable to Mr. Fraser. The Respondent categorically denies that his calls and visits occurred with the frequency suggested by the Complainant. The visits were no more than three or four per week, he contends, and would only occur at the Complainant's request. In addition, the reason that he often went to the Local office after work was because many of the Local's books and other documents were in disorder and the task of reorganizing them took some time.

[87] The Respondent points out that his job did not allow him to be away from his office as often as implied in the Complainant's testimony. He was supervising two other employees during this period and they relied on him for advice. He had to be available for them at all times. The Respondent's supervisor at the time, Mr. Chiumera, testified that he had not noticed any abnormal absences. Yet, on cross-examination, Mr. Chiumera admitted that he never tracked or monitored the Respondent's ordinary work breaks and he would not have noticed if the Respondent was away from his desk for even as many as ten minutes. Mr. Chiumera agreed that it does not take more than a couple of minutes to go down by elevator to the Complainant's floor. Mr. Chiumera was interviewed by Ms. Hine on August 31, 1998, in the context of the Canada Post human rights investigation. According to her notes, which Mr. Chiumera had read and signed at the end of the interview, he recalled that the Respondent "had been away from his desk or on the phone more often [although] not more often than his usual break time", ever since he joined the union Executive.

[88] The Respondent is also adamant that no discussions of a sexual nature took place between him and the Complainant. They did engage in friendly conversations about some aspects of their personal lives, such as his arranged marriage. She spoke to him about some of her family background too. However, he insists that no conversations ever occurred relating to how beautiful she was, his sexual fantasies, their having sex or anything else of the sort. He describes his relationship with the Complainant as "friendly" and he considered her "as a sister".

[89] The Respondent contends that the only items of furniture that he recommended should be purchased for the Local office were office chairs, filing cabinets and a desk. He also felt that the refrigerator should be replaced. He insists, however, that he never suggested buying a new couch. He submits that the Complainant, Mr. Fraser and Mr. Vaughan are “against him” and were “lying” when they claimed otherwise in their testimonies.

[90] The Respondent denied ever suggesting that the Local hold a party for the Complainant or buy her a dress and flowers. In addition, the Respondent intimated that the atmosphere in the restaurant, in which he allegedly suggested that the Local buy the Complainant a dress and hold her a party, was too loud for Messrs. Hudon, Vaughan and Fraser to have heard his supposed comment. He noted that these witnesses were unable to recall many other details from that outing. As for the flowers that he held at the Complainant’s graduation ceremony, the Respondent claims that they were not purchased by him, but rather by the Local, and that Mr. Fraser had brought them to the ceremony. At a certain point, Mr. Fraser handed them over to Mr. Zarichansky who later passed them over to the Respondent.

[91] In his evidence, the Respondent did not deny or comment in any way about the remarks that he is alleged to have made to the Complainant in his car when he drove her home on March 10, 1998, nor, more importantly, with respect to the incident of physical contact that the Complainant claims took place in the Local office on April 18, 1998.

[92] The Respondent acknowledges that a meeting took place on April 21, 1998 between himself and Messrs. Vaughan and Fraser, during which he was presented with the Complainant’s April 19th letter and told to no longer go to her office. He was angered by their comments and denied the alleged conduct. He was upset that this issue had never been raised with him before. The Respondent claims that Messrs. Vaughan and Fraser told him to drop by the Local office later that afternoon to write up a letter of apology addressed to the Complainant and that the matter would then be “over with”. If he failed to do so, they threatened to make the allegations known publicly. The Respondent showed up at the Local office as he was advised to do, but he insists that he did not draft the letter of apology. He claims that he simply typed the text as it was dictated to him by

Mr. Vaughan. After the Respondent printed and signed the letter, he left it with Mr. Vaughan for delivery to the Complainant. Both Mr. Fraser and Mr. Vaughan, who were called as witnesses by the Commission, testified that they did not participate in the preparation of the Respondent's letter of apology and that they did not assist in the composition of its text.

[93] The Respondent further asserts that he did not call the Complainant at home later that evening (April 21) to invite her to the shop stewards' meeting. However, he admits that he did phone her at work three days later to speak to her about the letter that she had sent him. She invited him down to her office to discuss the matter. When he arrived, he noticed that his letter of apology was on her desk. She told him that he was not being respectful of her and that he should apologize. He replied that he had already provided an apology but he was prepared to go even further. As a demonstration of his "respect" for her, and to show her that he was "not bad" and would not "hurt" her, he wrote out the message on the *Post-It* note paper, referred to earlier in this decision, and placed it on his letter of apology. She threw both documents in her garbage can and told him to go back to work.

[94] In the days and weeks that followed, the Respondent claims that when he and the Complainant ran into each other in the Local office, they exchanged simple pleasantries, asking each other how they and their families were, how their weekend was, and so on. Aside from these conversations, he did not speak to her about anything other than union-related matters, such as her approving his participation at a UPCE conference in Montreal. His relations with her were "professional".

[95] During the course of this conference, which was held in May 1998, the Respondent claims that none of the other union representatives present, including Messrs. Hudon, Matchett and Murray, complained to him about his conduct with respect to the Complainant. He acknowledges, however, that he never asked them their opinion on the matter either.

[96] It is the Respondent's contention that his family's decision to change residence had nothing to do with his attempting to live near the Complainant's home. The Respondent, his wife and his

children had been residing in a flat in central Ottawa. This residence lacked a backyard in which the children could play and the living space was relatively limited. The Respondent's father owns several residential properties within the city, including the one in which they had been living and the one to which they moved. The latter property is a single family dwelling with a large backyard, and is situated only a few minutes' distance from the Respondent's workplace. The property had been purchased by the Respondent's father almost two decades before. Due to some delay related to the departure of the previous tenants of the house, the Respondent was not able to take possession of the house until July 1998.

[97] According to the Respondent, there are several incidents that serve to demonstrate that he was not harassing the Complainant and that she willingly interacted with him. Early in April 1998, he claims that she sought his assistance in using the income tax preparation software known as QuickTax. He and Mr. Hudon had distributed copies of the program to union members to help them prepare their returns. The Respondent also recalls the Complainant asking for his support if she ran for the position of national President of the UPCE and promising to support his candidacy for Local President. He also claims that the Complainant called him and asked to be e-mailed the skill-testing quiz, which he sent her on June 12.

[98] Some time in May or June 1998, the Respondent and his family were caught in an elevator at the CLC building, in which the Local office was located. They only managed to escape with the assistance of the fire department. When the Complainant heard about the incident, she invited the Respondent to her office to discuss it and any measures that needed to be taken. On another occasion, also in May or June 1998, the Executive was having a meal at a restaurant and the Respondent recalls Mr. Fraser commenting how good it was that the Complainant and the Respondent had put their differences behind them and were friendly with each other again. Presumably, the Complainant made no effort to contradict this remark. According to the Respondent, these events, coupled with the fact that the Complainant did not file a complaint with any authority from February to July 1998, demonstrate that their relationship was friendly and that he was not harassing her.

[99] The Respondent was therefore angered when Messrs. Vaughan and Fraser presented him with the Complainant's letter of July 20, 1998. He disagreed with the letter's content, although he read only a portion of it before handing it back in rejection. In his opinion, it was he who was being harassed by the Complainant and he made it clear to the other gentlemen that he would not sign another letter of apology. The Respondent offered to resign his Executive post, but Messrs. Vaughan and Fraser again advised him against it. The Respondent then contacted Messrs. Matchett and Murray and asked them to call a meeting in order to resolve the matter, "once and for all".

[100] That meeting was held on July 27th and, according to the Respondent, an agreement was reached. He points out that although Mr. Fraser's original suggestion was that the Respondent only visit the Local office on Wednesdays, it was the Complainant who intervened and specifically requested that he be required to resign from the Health and Safety Committee as well. The Respondent therefore disagrees with her contention that she did not accept the proposal that was put forth during the meeting. He notes that following the meeting, he acted in compliance with the understanding that was reached, by resigning from the Committee, curtailing his visits to the Local and eliminating all contact with the Complainant.

[101] The Respondent was, as a result, surprised to be informed that the Complainant had filed a human rights complaint against him with Canada Post and with the union. He spoke to his Director and to a human resources officer at Canada Post, about the matter. Upon obtaining further advice from his family, the Respondent decided to resign his position on the Local Executive. The Respondent was later interviewed alone by Ms. Hine over the course of several days. As he answered her questions during the interview, Ms. Hine took notes. On October 20, 1998, Ms. Hine met with the Respondent and handed him her notes for review by him. He refused to read the document nor receive a copy, although he signed and dated the document nonetheless. The Respondent objects to the manner in which Ms. Hine conducted her investigation, citing her failure to interview some of the persons that he identified to her as important witnesses as well as her practice of not allowing him to sit in on the other interviews that she did conduct. The Respondent denies having made many of the statements attributed to him in Ms. Hine's notes from his interview.

[102] In late October 1998, the Respondent was informed of Canada Post's decision regarding the human rights complaint, during a meeting with Ms. Hine, which was also attended by his Director and a UPCE representative. He disagreed with Canada Post's findings and filed a grievance that he later abandoned. He claims that he has complied with all the recommendations set out in the decision. As a result of the stress that the Respondent associates with the filing of the various complaints against him, he claims he has developed several medical problems, although no expert evidence was led in support of his contention.

[103] The Respondent emphasized throughout his evidence that he is a person with a good reputation within Canada Post and the community at large. He is an industrious employee who regularly works extended hours in order to ensure that his job gets done. He has contributed to the union and its membership by, for instance, working within the Health and Safety Committee, setting up and providing software to union members for the preparation of their income tax returns, inquiring into the establishment of an internet website for the Local, and providing for a sound administration of the Local's funds. He has supervised other employees and worked with dozens of co-workers within the same workplace. He has worked in areas where 50% to 80% of the workforce is female. Yet, no one other than the Complainant has ever accused him of sexual harassment or any other wrongdoing. This evidence, he argues, supports his contention that he did not sexually harass the Complainant.

II. Law

[104] According to Section 14(1)(c) of the *Canadian Human Rights Act*¹ ("*Act*"), it is a discriminatory practice to harass an individual on a prohibited ground of discrimination, in matters related to employment. Sexual harassment is deemed to be harassment on a prohibited ground (s. 14(2)).

¹ R.S.C. 1985, c. H-6

[105] As the Supreme Court of Canada stated in *Janzen v. Platy Enterprises Inc.*,² 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 victim of harassment. Sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

[106] The Federal Court of Canada-Trial Division elaborated on this definition in *Canada (HRC) v. Canada (Armed Forces) and Franke*.³ In order for a complaint of harassment to be substantiated, the Court stated that the following must be demonstrated:

- (i) The impugned conduct must be of a sexual nature. Requests for sexual favours and propositioning are sexual in nature and constitute a psychological form of sexual harassment. Acts of harassment may also be physical, such as pinching, grabbing, hugging, kissing and leering. The acts could be verbal in nature, as well, encompassing conduct such as gender-based insults or remarks regarding a person's appearance or sexual habits. The Tribunal's determination of what is "sexual in nature" is carried out in accordance with the standard of the reasonable person in the circumstances of the case, keeping in mind the prevailing social norms.
- (ii) The acts that are the subject of the complaint were unwelcome. In other words, it must be determined whether the alleged harasser's conduct was desired or solicited. This task can be accomplished by assessing the complainant's reaction at the time of the alleged incidents of harassment, and determining whether she expressly, or by her behaviour, demonstrated that the conduct was unwelcome. The Court recognized, however, that a verbal "no" is not required in all cases and that a repetitive failure to respond to a harasser's comments could constitute a signal to him that his conduct is unwelcome. In these cases, the appropriate standard to apply will again be that of a reasonable person in the circumstances.
- (iii) Ordinarily, harassment requires an element of persistence or repetition, but in certain circumstances even a single incident, such as a physical assault, may be severe

² [1989] 1 S.C.R. 1252

³ (1999), 34 C.H.R.R. D/140 at paras. 29-50 (F.C.T.D.)

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 not relevant to the present case, in light of the fact that there is no complaint before the Tribunal regarding the employer's conduct.

[107] In *Stadnyk v. Canada (Employment and Immigration Comm.)*, the Federal Court of Appeal suggested that where proper expert evidence is before the Tribunal confirming that male-female interaction may be perceived differently by men than by women, then the appropriate standard against which to test for sexual harassment should be that of a reasonable *woman*.⁴ In the present case, however, no such expert evidence was led.

III. Analysis

A. Preliminary Issue – Jurisdiction

[108] At the outset of the hearing, there was some discussion about whether the subject matter of the complaint fell within the jurisdiction of the *Act* and by extension, the Tribunal. According to s. 2, the *Act* applies to all matters coming within the legislative authority of Parliament. The making of laws in respect of Canada's postal service constitutes one of the enumerated legislative powers of Parliament pursuant to s. 91(5) of the *Constitution Act, 1867*.⁵ Although the Complainant and the Respondent both work for Canada Post, he only met and dealt with her as a result of their involvement with the union, and not, strictly speaking, in the course of their employment.

⁴ (2000), 38 C.H.R.R. D/290 at para. 25 (F.C.A.)

⁵ (U.K.), 30831 Vict. c. 3, reprinted in R.S.C. 1985, App. II, No. 5

[109] It is clear from the evidence, however, that many or even most of the alleged acts of misconduct occurred at the parties' place of employment, during working hours, notably as regards the Respondent's repeated visits and calls to the Complainant's office. Moreover, even the acts that allegedly occurred outside of Canada Post's premises came about within the context of the parties' work on behalf of their bargaining unit, which is itself inextricably linked to their employment. In other words, the interaction between the Complainant and the Respondent would never have taken place, but for their status as Canada Post employees that led to their union involvement. It seems to me that it is not essential for the facts giving rise to an employment-related harassment complaint to physically take place at the federally-regulated workplace. Any conduct, wherever it may occur, arising somehow in the context of federally-regulated employment is subject to the *Act*.

[110] As the Trial Division of the Federal Court indicated in *Cluff v. Canada (Department of Agriculture)*⁶, the "matters related to employment", referred to in s. 14 of the *Act*, encompass activities that fairly and reasonably may be said to be incidental to the employment or logically and naturally connected with it. I find that the parties' involvement within the Local meets this definition, and that the subject matter of the complaint therefore falls within the purview of s. 14. As a result, the Tribunal possesses the jurisdiction to deal with the issues raised.

B. Credibility of the Evidence

[111] I must state at the outset that I prefer the Complainant's version of the facts over that of the Respondent on practically all counts. The Complainant's testimony was detailed, comprehensive, forthright and believable. To the contrary, the Respondent's general denials and suggestions that the Complainant and all of the other witnesses had fabricated much of their evidence are simply not credible.

⁶ [1994] 2 F.C. 176 (F.C.T.D.)

[112] The Complainant tendered into evidence detailed notes recounting the Respondent's conduct, which she had recorded contemporaneously with the alleged acts. These notes were consistent with her testimony and that of the other witnesses. Indeed, most of the witnesses who know the Complainant attested as to how meticulous and organized she is, both in her work and her union activities. It is entirely consistent with these accounts of her character, to have gathered and maintained this information in the manner presented.

[113] Several of the witnesses at the hearing (Messrs. Vaughan, Hudon, Seguin, Chiumera, Fraser, Murray and Matchett) were interviewed by Ms. Hine. Interestingly, the testimony of these witnesses was in almost all respects consistent with the statements that had been recorded by Ms. Hine during her interviews that took place from August to October 1998, only a short time after the impugned conduct occurred.

[114] Ms. Hine was herself called as a witness by the Respondent. She provided ample opportunity to these individuals to review and amend the notes, and several witnesses at the hearing pointed out sections where they had indeed corrected the text after having read it at the time. Furthermore, I was impressed with Ms. Hine's independent recollection of many of the answers given during these interviews, and the care with which, during her testimony before the Tribunal, she identified those elements of her notes that she did not independently recall. I am therefore satisfied that Ms. Hine's notes accurately reflect the content of her conversations with all of the persons she interviewed.

[115] The Respondent was interviewed by Ms. Hine and her notes suggest that he acknowledged some of the material facts alleged against him. For instance, according to the notes, he concedes that he had "discussed" sex with the Complainant. He also states that one occasion, when he "drank, [he] may have been more forward than usual" with the Complainant. In his testimony, the Respondent denied having made these comments during the interview.

[116] The Respondent, in contrast to the Complainant, was often vague in his evidence and, most remarkably, did not reply at all to some of the more significant allegations made against him. For instance, the Respondent did not comment upon, let alone contradict, the Complainant's allegations

about the March 10th incident in his car and the allegations relating to the April 18th incident at the Local office. The matters that the Respondent chose to refute in his evidence were collateral to the essential aspects of the complaint and his evidence did not serve to undermine the Complainant's case.

[117] An illustration of this is the manner with which the Respondent chose to deal with the question of his April 22nd letter of apology. The Respondent emphasized several times in his testimony that it was Mr. Vaughan who drafted the text of the letter. I do not find the Respondent's contention convincing. Messrs. Vaughan and Fraser, whose testimony I found credible overall, both denied having assisted the Respondent. More significantly, the usage in the letter of the expression "time to time", suggests that the Respondent was the drafter. Commission counsel pointed out how on numerous occasions during the course of the hearing, the Respondent used the same expression in the identical fashion (that is, without being preceded by the preposition "from", as is the usual practice). The Respondent's supervisor, Mr. Eloise, mentioned in his testimony that English is not the Respondent's first language and that some of his linguistic skills need improvement. Indeed, it is for this reason that the Respondent claims he sought assistance in drafting the letter. However, whether or not Mr. Vaughan assisted the Respondent has very little bearing on the question of determining whether he committed the discriminatory practices alleged. The Respondent appeared to suggest that the letter of apology could not be treated as an admission of his guilt if it was not drafted by him. Yet, irrespective of who drafted the letter, the Respondent signed it and he in fact testified that he agreed with its contents.

[118] In any event, the Respondent sent a separate message of apology by e-mail earlier, on the morning of April 21st, which he acknowledges to have drafted himself. The Respondent did not specify in either document what he was "sorry" about and the evidence is that he had been performing his functions as Treasurer well to that point. The Complainant contends that the apology could therefore only be related to his acts of harassment, notably the April 18th incident at the Local office. The Respondent did not provide any alternate explanation in his evidence as to what his possible transgression could have been. As a result, the Complainant's contention was left uncontradicted by the Respondent.

[119] Another collateral matter that preoccupied the Respondent was the fact that on October 23, 1998, the Complainant had circulated a document to other UPCE locals, in which she complained about the UPCE executive's conduct, including its handling of her complaints against the Respondent. At one point in the multi-page document, which included photocopies of the Complainant's prior correspondence with the UPCE executive, the Respondent's first name was mentioned, probably by inadvertence, since all of the other references to him elsewhere in the document had been stricken out. Yet, the Respondent devoted much energy at the hearing expressing his outrage that his identity had been disclosed, even though it was sent well after the alleged incidents of harassment, and was consequently of little or no relevance to the inquiry into the merits of the complaint.

[120] I am mindful of the fact that the Respondent was not represented by legal counsel. While it is important for the Tribunal to afford unrepresented litigants a certain latitude in presenting their cases, particularly where an opposing party has the benefit of legal representation, they are nonetheless obliged to abide by the same evidentiary principles applicable to all human rights cases. All parties, whether represented or not, must suffer the consequences of failing to lead evidence that is essential to making their case or failing to answer the evidence that is led against them.

C. Was the Respondent's Conduct Sexual in Nature?

[121] I find that the Respondent's conduct was sexual in nature. For the reasons that I expressed just above, I accept the Complainant's evidence in its entirety with respect to the March 10th remarks by the Respondent outside her home, as well as the April 18th incident at the Local office. The Respondent's statements during both of these events were clearly sexual, consisting of nothing less than direct requests for sexual relations with the Complainant. Furthermore, the latter event was coupled with physical contact. His additional demands for sex, at the Local office, at her office, and by telephone, are also obviously sexual in nature. His conduct was, however, not limited to these comments. It also encompassed some of the behaviour mentioned in *Franke* as constituting other forms of sexual conduct, including staring or leering at the Complainant and his repeated compliments about her appearance. I find that the inordinate level of attention shown towards the

Complainant by the Respondent, as demonstrated, for instance, by his desire to have the union buy her gifts and his attempts to communicate with her outside of the workplace, can also be reasonably perceived in the circumstances as having a sexual connotation.

[122] I am therefore satisfied that the Respondent's conduct was of a sexual nature.

D. Was the Respondent's Behaviour Unwelcome?

[123] I am equally persuaded that the Complainant demonstrated to the Respondent that she did not welcome his behaviour. Her letters of April 18th and July 20th could not have been any clearer in expressing her rejection of his conduct. The detail with which she informs him of his inappropriate acts is remarkable. No reasonable person could ever perceive her statements as anything less than an outright disapproval of his behaviour. Yet, the Respondent did not alter his conduct, even after receiving the first letter. The Respondent seemed to suggest that his April 22nd letter of apology had mended the misunderstanding, as he perceived it, that had developed between him and the Complainant. He felt that he could maintain the same level of contact with the Complainant, as a result. Assuming there was ever any basis for him to entertain this thought, it should have been dispelled by the telephone call that he received on April 23rd from the Complainant and Messrs. Vaughan and Fraser, instructing him to cease contacting her. Instead of heeding this warning, however, he recommenced his visits and calls within days.

[124] Besides, the Respondent possessed the necessary knowledge to ascertain that his conduct was unwelcome from the time he first joined the Local Executive, in February 1998. The Respondent acknowledged in his evidence that in September 1997, he completed a course offered by the PSAC on sexual harassment. Material regarding sexual harassment was available to all UPCE members, particularly the Local Executive officers. The PSAC Constitution and UPCE by-laws, of which one would expect Local Executive officers to have knowledge, set out these organizations' sexual harassment policies. In addition, in April 1998, the Respondent attended a lecture given at the Local with respect to personal and sexual harassment. At the May 1998 UPCE conference in Montreal, which the Respondent attended, a session on harassment was conducted. In June 1998, the

Respondent attended a course on threats and behavioural awareness. With all this training and information provided or made available to him, the Respondent should reasonably have understood that his conduct was unacceptable. He certainly should have realized, as a result of the Complainant's constant refusals of his advances and her repeated demands that he leave her alone, that she did not welcome his actions.

[125] I am therefore persuaded that the Respondent's behaviour was unwelcome.

E. Was the Respondent's Behaviour Persistent or Severe Enough to Create a Hostile Environment?

[126] I find that the Respondent's conduct was both severe and repetitive enough to poison the Complainant's environment, inside and outside her workplace. I accept her evidence that she felt compelled to leave her office and engage in other evasive tactics in order to minimize contact with the Respondent. His persistent behaviour led to her eventual fear for her physical well-being. Her cause for concern was reinforced by the unwanted physical contact against her that took place at the Local office on April 18th. While it is true that the Respondent eventually lifted his grasp from her arms and complied with her demands that he step away, his actions that day alone were serious enough to create a hostile environment, particularly in light of her prior clear and unequivocal rejections of his sexual advances. There is no room for him to claim any misunderstanding on his part.

[127] I am persuaded that any reasonable person would find that the Respondent's behaviour created a hostile environment for the Complainant.

[128] For all the above reasons, I have concluded that the Respondent sexually harassed the Complainant, contrary to s. 14 of the *Act*.

IV. Remedy

[129] Having concluded that the Respondent sexually harassed the Complainant, I must now determine what remedy, if any, is appropriate. The Tribunal's remedial jurisdiction is set out in s. 53 of the *Act*, which contemplates the imposition of remedies designed to prevent future discrimination as well as to compensate individual victims. The goal of compensation is to make the victim whole for the damage caused by the act that is the source of the liability. Only the part of the loss that is reasonably foreseeable is recoverable.⁷

A. Expenses Related to the Complainant's Change of Residence

[130] The Complainant claims that as a result of the Respondent's conduct, which she feared had now developed into a form of stalking, she was compelled to move to a new residence, well outside Ottawa. She hoped that the move to an undisclosed and distant location would prevent, or at least discourage, the Respondent from contacting her outside the workplace. Her decision was prompted in large part by the Respondent's change of residence to a home near the apartment in which she was living at the time. She is therefore seeking compensation for the expenses arising from the move and the additional disbursements incurred by her, due to the distance of the new location from Ottawa. The Complainant testified that she was happy with her apartment and, in particular, with its central location that allowed her to walk to work. Prior to the incidents of sexual harassment, she had not considered changing her residence.

[131] I am persuaded that the Complainant's fears were genuine and reasonable in light of the Respondent's continued contact with the Complainant, notwithstanding the numerous directions to him that he cease this behaviour immediately. The Complainant testified that a senior security officer with Canada Post, whom she consulted in July 1998 for advice, told her that the Respondent's conduct corresponded with the profile that is often assigned to stalkers. This information served to

⁷ *Canada (Attorney General) v. Green* (2000), 38 C.H.R.R. D/1 at para. 142 (F.C.T.D.)

reinforce her concern that the Respondent posed a real threat to her mental and even her physical well-being, especially when one considers that he had already physically forced himself upon her on at least one occasion.

[132] In this context, I am satisfied that her decision to move away, in reaction to the threat that he posed was reasonably foreseeable and that damages related to this decision are therefore recoverable. There exists, however, a duty on complainants to mitigate their damages.⁸ The Complainant in this case seeks reimbursement of the costs associated with the purchase of the single family house to which she moved after she left her apartment. While I have no reason to doubt the Complainant's sincerity with respect to her affirmation that she had no intention of moving at all, let alone purchasing a house, prior to the harassment that she suffered at the hands of the Respondent, it seems to me that her duty to mitigate her loss calls for her to at least seek out similar accommodations, to the extent possible. She would then, for instance, have been in a position to claim any possible excess rental costs associated with her new dwelling.

[133] No evidence was led to suggest that it was difficult or impossible for the Complainant to find a rental unit that would meet her need to distance herself from the Respondent. I find it inappropriate for the Respondent to be obliged to pay the costs associated with the acquisition by the Complainant of a new asset, one that she may sell some day in the future, possibly at a profit. To put it another way, while the Complainant's move to a location that is distant from the Respondent's home may have been reasonably foreseeable, the decision by her to purchase a house as a result, was not. I therefore find that the Complainant is not entitled to the costs relating to the acquisition of her home in June 1999.

⁸ *Ibid.*

[134] The costs that she is entitled to recover are the following:

• Expenses related to the move of her furniture and other personal effects:	\$817.50
• Parking fees at work (the Complainant no longer lives within walking distance from her workplace):	750.00
• Change of postal address notice:	32.00
• New utility hook-ups:	95.00
• Higher costs associated with cell phone usage instead of land line:	762.00
• Additional automobile-related costs associated with the increased usage arising from the long distance commute to work:	<u>4,200.00</u>
Total:	\$6,656.50

[135] The Respondent is ordered to pay to the Complainant the sum of \$6,656.50, in compensation for the expenses incurred by her as a result of the discriminatory practice (s. 53(2)(c) of the *Act*).

B. Letter of Apology

[136] The Commission and the Complainant request a letter of apology from the Respondent. At the time of the hearing, the judicial review of the Tribunal decision in *Stevenson v. Canadian Security Intelligence Service*⁹ was still pending before the Federal Court-Trial Division. One of the issues before the Court was whether the Canadian Human Rights Tribunal possesses the jurisdiction to order respondents to issue letters of apology. Under these circumstances, the Commission and the Complainant requested that the Tribunal retain jurisdiction on this matter pending the outcome of the Court's judgment.

⁹ (2001), 41 C.H.R.R. D/433 (C.H.R.T.)

[137] The Court's decision was released on March 24, 2003.¹⁰ The Court found that the *Act* cannot be interpreted in such a manner as to empower the Tribunal to make such orders. This decision is binding on this Tribunal and the request for a letter of apology is therefore denied.

C. Pain and Suffering

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

[139] This statutory provision, together with s. 53(3) (which relates to compensation in cases where the discriminatory conduct was wilful or reckless, and which is further discussed later in this decision), took effect on June 30, 1998. Due to the fact that the Respondent's discriminatory conduct continued beyond this date, these provisions are applicable to the present complaint.¹¹

[140] There is no question that the Respondent's harassment of the Complainant caused a major disruption in her life and significantly affected her well-being. She testified as to the effect that his behaviour had on her emotional state, which included bouts of crying, a growing impatience with work colleagues and others, a pronounced fear of coming into contact with the Respondent and a sense of violation and embarrassment. Several of the witnesses were well-acquainted with the Complainant. They testified as to how independent and strong-willed the Complainant was prior to the Respondent's harassment, and how her temperament worsened demonstrably during the course of the period when she was harassed. Her performance at her job also deteriorated as a result of the

¹⁰ *Canada (Attorney General) v. Stevenson*, 2003 FCT 341 (F.C.T.D.)

¹¹ *Nkwazi v. Canada (Correctional Service)*(No. 3) (2001), 39 C.H.R.R. D/237 at paras. 257-270 (C.H.R.T.); *Woiden v. Lynn* (No. 2) (2002), 43 C.H.R.R. D/296 (C.H.R.T.)

stress she was experiencing and the measures that she adopted to avoid coming into contact with the Respondent.

[141] After several months, the Complainant managed to bring her life back to a state of relative normalcy. However, this only came about after she made the decision to move far away from her previous home and after significant security measures were implemented at her workplace that remain in place to this day.

[142] Taking into consideration all of the relevant circumstances, I order the Respondent to pay to the Complainant the sum of \$12,000 in compensation for her pain and suffering.

[143] It appears that as part of the settlement agreement that was reached regarding the complaints that had been filed against the UPCE and the PSAC, the Complainant received some financial compensation for her pain and suffering. My assessment of the damages for her pain and suffering regarding the present complaint, however, takes into account only those factors that relate directly to the discriminatory conduct of the Respondent. These damages are severable from those caused by the conduct of the unions. As such, I am satisfied that no issue of double indemnification arises and that the sums received by the Complainant from the unions need not be deducted from the amounts being awarded in the present decision.

D. Wilful and Reckless Behaviour

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

[145] There is overwhelming evidence of reckless conduct on the part of the Respondent. He had received sexual harassment sensitization training several times and was consequently in a position to fully comprehend that his behaviour was unacceptable, not to mention illegal. Yet, he took the

unreasonable risk of engaging in unwelcome conduct of a sexual nature towards the Complainant. Moreover, the Respondent continued harassing the Complainant in the face of repeated requests and instructions that he stop.

[146] I am satisfied, therefore, that the Respondent's discriminatory practice was not only reckless but wilful as well. In these circumstances, the Respondent is ordered to pay to the Complainant the sum of \$15,000 in damages, pursuant to s. 53(3).

E. Interest

[147] Interest is payable in respect of all of the monetary awards made in this decision (s. 53(4) of the *Act*). The interest shall be simple interest calculated on a yearly basis, at a rate equivalent to the Bank Rate (Monthly series) set by the Bank of Canada. With respect to the compensation for pain and suffering and for wilful and reckless behaviour, the interest shall run from March 10, 1998, the date when the Respondent sexually harassed the Complainant in his automobile, to the date of payment. In no case shall the interest regarding each of these awards be allowed to exceed the maximum allowable sum of \$20,000.¹² Because the expenses related to the Complainant's change of residence have been incurred at various times, right up to the hearing dates, I order that the interest arising from these expenses shall run from the date of this decision to the date of payment.

F. Sexual Harassment Training and Counselling

[148] The Respondent has attended several sexual harassment awareness courses, most of which occurred prior or during the period when he harassed the Complainant. His most recent course was taken in compliance with the reprimands issued by Canada Post after Ms. Hine filed her investigation report. The Commission submits that despite this training, the Respondent never altered his

¹² *Canada (Attorney General) v. Hebert* (1995), C.H.R.R. D/375 at para. 23 (F.C.T.D.)

behaviour and continues denying to this day that he ever sexually harassed the Complainant. The Commission points out that the Respondent's prior sessions were of a relatively short duration, never lasting more than one day. For this reason, the Commission requests that the Respondent be required to attend a series of more intensive and comprehensive training sessions, in accordance with s. 53(2)(a) of the *Act*.

[149] I agree that such training is warranted. I therefore order the Respondent to attend a course on sexual harassment that will comprise at least three full-day sessions. The course will be selected by the Commission. The reasonable cost for this training session will be paid by the Respondent.

G. Retention of Jurisdiction

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

Signed by

Athanasios D. Hadjis
Tribunal Member

Ottawa, Ontario
June 5, 2003

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T720/2502, T721/2602 and T722/2702

Style of Cause: Connie Bushey v. Arvind Sharma

Decision of the Tribunal Dated: June 5, 2003

Appearances:

Connie Bushey, for the Complainant

Ceilidh Snider, for the Canadian Human Rights Commission

Arvind Sharma, for himself