

CANADIAN HUMAN RIGHTS ACT
R.S.C. 1985, c. H-6 (as amended)

HUMAN RIGHTS TRIBUNAL

BETWEEN:

CHARLOTTE POND

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

CANADA POST CORPORATION

Respondent

TRIBUNAL DECISION

TRIBUNAL: Jacinthe Th  berge - Chairman
Ram Jakhu - Member
Lise Leduc - Member

APPEARANCES BY: Nathalie Fricot, Counsel for the Complainant

Odette Lalumi  re, Counsel for the Canadian Human Rights
Commission

Marc Santerre, Counsel for the Respondent

DATES AND PLACE

OF HEARING: July 14-15, 1993
September 15, 16 and 17, 1993
December 2-3, 1993
at Montr  al, Quebec

Introduction

On November 26, 1992, a Tribunal composed of Jacinthe Théberge, Chairman, Ram Jakhu and Lise Leduc, Members, was appointed pursuant to subsection 49(1.1) of the Canadian Human Rights Act to inquire into the complaint filed by Charlotte Pond on March 9, 1989, as amended on September 13, 1989, against the Canada Post Corporation.

The Tribunal heard the complaint on July 14-15, September 15, 16 and 17, and December 2 and 3, 1993, at Montréal and is unanimous in adopting the reasons for this decision.

The Complaint

On March 9, 1989, Charlotte Pond filed a complaint with the Canadian Human Rights Commission against the Canada Post Corporation. She alleges that she was the victim of a discriminatory practice under section 14(1) and (2) of the Canadian Human Rights Act in that she was sexually harassed in the course of her work in October 1986 by Roger Côté, her immediate supervisor, who used a pornographic statue as the basis for making offensive comments about her and permitted posters of naked women to be put up in the workplace.

On September 13, 1989, the complaint was amended to add a further paragraph alleging that Playboy calendars were posted in the workplace at all times in 1988, and up until January 1989, and that the sexual harassment of the complainant was accordingly continual between October 1986 and January 1989.

The complaint filed as Exhibit HRC-1 reads as follows:
Canada Post has discriminated against me in the course of employment by harassing me on the basis of my sex in contravention of section 14 of the Canadian Human Rights Act. I have been working for Canada Post since 1978 and as a letter carrier since 1980.

In October 1986, I transferred from Verdun Station to station "E". My immediate supervisor was Roger Côté. He had a pornographic statue on his desk. There was also two posters in different areas of work at Station "E". I protested verbally about the pornographic material to my immediate supervisor, to Union representatives and to the station managers. On December 10, 1986, I called Luc Mercier from Pay & Benefits to complain about the sexually explicit

offensive material. He said he would get the material removed. He mailed me the sexual harassment policy at Canada Post but the pornographic material was not removed.

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On March 24, 1987, I called back Luc Mercier and the material was removed the next day. However, I have been subjected to general harassment in the course of employment as a consequence of complaining against the sexual harassment. For many months, there existed two (2) sets of regulations, one for me and one for others. This selective enforcement of regulations was evident in many areas despite repeated verbal complaints for equality of treatment and one grievance.

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Over a period of months, I was requested to stay and punch the clock at 2:30 p.m. after a full 8 hour day, while others who were also on light duty or working inside were allowed to leave the building up to 2-1/2 hours before their shifts were over. I was not allowed to take prolonged breaks and to go out to breakfast like others. I was not allowed access to telephone nor to receive personal phone calls like others did. I was not allowed access to the supervisor's office without permission while others came and went freely. I was not allowed access to 1st aid kit. I was not allowed to wear headphones (walkman) while working in a sitting position while others were allowed when working standing and walking around. I was not called to station meetings by immediate supervisor. Mr. Roger Côté had a table set up for me in a isolated area, and kept other people from talking with me. Mr. Côté refused to accept routine leave forms for vacation, overtime, physiotherapy and so on. Finally on the 14 of August of 1987, I was called to the Main Ottawa Plant for a meeting with André Stafford, an official from Canada Post and Léopold Côté, president of the Union. I repeated my basic complaint of being harassed at work by Roger Côté as a revenge for complaining about the pornographic material at the work place.

Instead of taking the appropriate actions to solve the problem, they informed me that I would be working at Station "K" from now on while Roger Côté kept on working as a supervisor at Station "E". I started working at Station "K" on the 17 of August 1987.

When I arrived at Station "K", there was a far more pornographic material. I did not formally complain because of the previous experience encountered at Station "E" and how my complaints about the harassment fell on deaf ears.

On the 17 of November 1987, I obtained a position at Verdun Station. There was a playboy calendar in 1988 on a case close to my working area, which was removed in January 1989. Now there is a pornographic poster in the canteen area. I did not object for the same reasons stated above.

I believe that Canada Post should insure a work place free of all pornographic material.

The complaint must be considered in the light of s. 14 of the Canadian Human Rights Act, R.S.C. 1985, c. H-6 (as amended).

Section 14 of the Act reads as follows:

14. (1) It is a discriminatory practice,

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(a) in the provision of goods, services, facilities or accommodation customarily available to the general public,

(b) in the provision of commercial premises or residential accommodation, or

(c) in matters related to employment, to harass an individual on a prohibited ground of discrimination.

(2) Without limiting the generality of subsection (1), sexual harassment shall, for the purposes of that subsection, be deemed to be harassment on a prohibited ground of discrimination. 1980-81-82-83, c. 143, s. 7.

Preliminary question

Counsel for the Canada Post Corporation, Mr. Santerre, raised a preliminary question concerning the jurisdiction of the Tribunal appointed on November 26, 1992, under section 41(e) of the Canadian Human Rights Act, which reads as follows:

41. Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to the Commission that

(e) the complaint is based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances, before receipt of the complaint. 1976-77, c. 33, s. 33.

Mr. Santerre submits that, if the question before the Tribunal is based on the principal fact of the working conditions and general harassment of Ms. Pond at Station "E" between October 1986 and August 1987, those events occurred more than one year before the filing of the complaint, which was signed on March 9, 1989.

However, if the proceedings are based on the amended complaint, signed on September 13, 1989, that Ms. Pond was the victim of sexual harassment due to the presence of posters of a sexual nature in her workplace over a continuous period between October 1986 and January 1989, the complaint would be consistent with section 41(e) of the CHRA.

This Tribunal does not have jurisdiction to decide whether or not the complaint filed by the complainant Ms. Pond satisfies the time requirements of section 41(e) of the CHRA.

According to section 44(3)(a)(ii), the Canadian Human Rights Commission is to decide the status of the case after the investigator has submitted his report and may request the President of the Human Rights Tribunal Panel to appoint a Tribunal if "the complaint to which the report

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relates should not be referred pursuant to subsection (2) or dismissed on any ground mentioned in paragraphs 41(c) to (e)...."

After the Canadian Human Rights Commission made its decision, the Canada Post Corporation could, pursuant to section 18.1 of the Federal Court Act, have applied for a review of the administrative decision within 30 days, but it did not do so.

As a result, this Tribunal was lawfully appointed under section 49 of the CHRA and has jurisdiction to hear the evidence on the complaint as amended on September 13, 1989.

Facts

Charlotte Pond began working for the Canada Post Corporation in 1978 as a full-time clerk in the region of Halifax, Nova Scotia. In 1981, she moved to Montréal and began working as a letter carrier at Côte St-Luc Station. She is at present an employee of the Canada Post Corporation.

In August 1986, Ms. Pond had a work-related accident in which she injured her back. She was no longer able to perform her regular work as a letter carrier at Verdun Station, and the Canada Post Corporation's physicians recommended that she be placed "on light duty", which meant that she was to do clerical work in a seated position and was neither to lift nor to carry heavy objects, as was mentioned in Exhibit R-3:
[translation]

...In our opinion, Ms. Pond should continue to do light duty, keeping the following restrictions in mind: she should do her work in a seated position most of the time, although she might also move around a bit for short periods....

In August 1986, Ms. Pond applied for a letter carrier's route at Station E. In view of her seniority, she obtained the new position and was transferred to Station E in mid-October 1986.

When Ms. Pond arrived at Station E in October 1986, she had to do "light duty" as recommended by the medical report. It can be seen from the evidence that she was on light duty until October 2, 1987.

Charlotte Pond claims to have been sexually harassed by Roger Côté, her immediate supervisor at Station E, and alleges that the said harassment was based on the fact that Mr. Côté had a pornographic statue on his desk and that he used the statue as the basis for making inappropriate offensive comments of a sexual nature about her.

In addition, there were two posters of naked women at two different places in the workplace, which led Ms. Pond to complain to the person in charge of the office to have him remedy the situation.

According to Ms. Pond's testimony, when she arrived at Station E, Roger Côté, her immediate supervisor, harassed her by making obscene comments. She said that he then began treating her differently from her co-workers because he was upset with her for having complained about the statue and posters.

According to what Ms. Pond said during her counsel's examination, Mr. Côté forced her to stay at her workstation until 2:30 p.m. whereas all the other employees left at 12:05 p.m.; she was not allowed to use the telephone in Mr. Côté's office; nor, unlike her co-workers, was she allowed to take prolonged breaks or lunches.

In addition, Mr. Côté had a work table set up for her in a part of the office where she was completely isolated from her co-workers. She was not allowed to wear headphones for her walkman while working even though some letter carriers listened to music while sorting mail.

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Things got even worse after she complained to Luc Mercier, the person responsible for human resources at the Canada Post Corporation, on December 10, 1986. In her telephone discussion with Mr. Mercier, Ms. Pond says that she told him she wanted the statue on Roger Côté's desk removed along with the posters of naked women.

In response to Ms. Pond's request, Luc Mercier sent her the sexual harassment policy in effect in December 1986. Ms. Pond had to call Mr. Mercier back in late March 1987 to ask him why the statue was still on Mr. Côté's desk.

As for the posters of naked women, only the minimum had been cut out, and the posters were still on the wall in the registered mail office, as can be seen from the photograph filed as Exhibit C-1.

In mid-August 1987, Charlotte Pond was informed that she was being transferred against her will to Station K, which has more employees (50 to 60) and is much farther from her home. The reasons given by her employer were that she was a problem employee who required constant supervision.

Ms. Pond proved that there were also posters of naked women at Station K at the time by filing three photographs to that effect as Exhibit C-2. She admits that she did not formally complain about the said posters because she did not want to relive the same stressful and oppressive experience as at Station E.

On November 17, 1987, Ms. Pond was transferred back to Verdun Station. She was no longer on light duty and returned to work as a letter carrier. There too, there was a 1988 Playboy calendar on the wall, which was finally removed in January 1989.

Charlotte Pond filed her complaint under section 14 of the Canadian Human Rights Act on the basis of allegations of sexual harassment. She testified that where objects or posters of a sexual nature are allowed in a workplace they serve as a catalyst or inducement for people to make offensive comments about women. Her explanation is found at page 123 of the transcript:

Q. At a ny time while you were employed at Station "K", were there conversations that would arouse relating to this material?

A. Yes, because the mere presence of this type of material in a mixed workplace, in a workplace, just the mere presence of these photos, this type of material serves as a catalyst for gesture, words and jokes. so just having those photos there puts in the mind of the other co-workers gestures and jokes and comments that would make women feel unwelcome and would diminish the women's chances of being taken seriously in a workplace -- women's chances of being taken, you know, seriously in a workplace.

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During Ms. Pond's cross-examination, counsel for the Canada Post Corporation shed light on the chronology of the events and extracted clarifications as to how Ms. Pond's working conditions differed from those of her co-workers.

After a number of questions and a long discussion, Ms. Pond recognized that when a letter carrier is on "light duty" he does not have the same rules of work and is in theory supposed to remain at the office until 2:30 p.m. and perform his eight hours of work.

As a general rule, a letter carrier's normal day goes as follows: arrival at the station at 6:30 a.m. and sorting of mail until 8:30 or 9:00, which is followed by departure from the station to distribute the mail. It happens that the letter carrier finishes at about 12:00. Sometimes he goes back to the station to return registered letters, but he is not required to go back. There is an agreement in principle that letter carriers do not

stay at the station until 2:30 p.m., but on the other hand they do not claim overtime if there is more work to be done.

However, when a letter carrier is on "light duty", he does office work, answers the telephone or helps the other letter carriers sort the mail.

Ms. Pond complains that she was treated differently from the other employees and that Roger Côté had established a set of special rules for her, namely:

- (a) she had to work in the office until 2:30 p.m.;
- (b) she was not allowed to wear headphones while working;
- (c) she was isolated from the other letter carriers, as a table had been set up for her in a corner of the station;
- (d) she was not allowed to use the telephone in Mr. Côté's office without permission;
- (e) she had difficulty in getting Mr Côté to sign her forms for leave, holidays or sick leave;
- (f) she filed a grievance (which was dismissed) that she had been denied access to the first aid kit to get adhesive bandages;
- (g) she was also criticized for reading English-language newspapers and writing letters after having finished her work;

The Tribunal asked the complainant how she considered the differential treatment she was given at work to be related to her sexual harassment.

She answered as follows at page 563 of the transcript:

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THE WITNESS: I believe that because I complained about the statue on Roger Côté's desk and also the posters, that there was retaliation taken against me for even thinking of complaining about that and asking that the material be removed from the workplace.

I feel that it was not only the sexually -- Mr. Côté, and I'll bring a witness in this week, used to say to me "how did you make love with your boyfriend with your bad back?" in front of my male co-workers and my female co-workers. That in and of itself is sexual harassment.

I feel that also the fact that after I complained to Luc Mercier, after I went through the normal channels and asked that the statue be removed off his desk, then he made life very difficult for me as a retaliation process for even thinking about or filing the complaint in the first place, or complaining about the status quo.

However, it can be seen from Mr. Santerre's cross-examination that the events surrounding the changes in Ms. Pond's working conditions did not occur after her complaint of December 10, 1986, about the statue and the posters but after Mr. Côté's order that Ms. Pond not wear headphones while she worked because he had to give her instructions.

It was in November 1986 that Mr. Côté set up a table and chair in the hallway to permit Ms. Pond to work while seated in accordance with the medical report mentioned above.

Where the Chinese statue on Roger Côté's desk is concerned, it was Ms. Pond herself who picked it up to look under it when she was in her boss' office in early December 1986. In doing so, she discovered that the genitals of the Chinese woman and man were visible.

When Mr. Santerre asked her if the statue itself constituted sexual harassment when sitting on the desk, Ms. Pond admitted that the statue was not in itself offensive, although it was of a Chinese woman who was serving wine to a Chinese man. However, what was offensive was how it was used, and the comments Mr. Côté made in relation to the statue, at page 391 of the transcript:

A. He would say, "Women are only good for two things: secretarial work and house work." So it wasn't necessarily the statue that I found as offensive as such, either on the desk or when you picked it up and saw the novelty, but it was actually the words, jokes and gestures that this statue brought on.

As for the posters of naked women, from which the minimum had been cut out, evidence was adduced that they were located in the registered mail

office and that, in general, the letter carriers and employees were not supposed to enter it.

However, it was admitted that in everyday life the employees went into the office several times a day and that in 1986 this was tolerated by management at Station E.

On December 10, 1986, Charlotte Pond phoned Luc Mercier, the Director of Human Resources at the Canada Post Corporation and complained that she was being sexually harassed by Roger Côté and that there were posters of naked women in the registered mail office. Mr. Mercier sent her the Canada Post Corporation's policy on sexual harassment in the workplace.

On December 12, 1986, Ms. Pond filed a grievance (Exhibit R-4) against Roger Côté based on the facts that she was not being treated equally or equitably at work and that Mr. Côté had asked her to carry documents that were too heavy for her back.

After this, according to the documents filed as Exhibit R-5, Ms. Pond was on sick leave from December 12, 1986, to January 2, 1987, on holiday in Mexico from January 5 to 23, 1987, and on compensatory leave at home from January 26 to March 17, 1987.

When Ms. Pond returned to the station on March 17, 1987, the statue was still on Mr. Côté's desk and the poster was still up on the wall in the registered mail office. She phoned Mr. Mercier once again to ask for explanations, and the objects were removed a few days later.

It is not the Human Rights Tribunal's job to assess the grievances and working conditions of employees in their place of work.

On the basis of the evidence, the fact that Ms. Pond was given differential treatment as a person "on light duty" cannot be considered to be related to her complaint about the statue, as the complaint was filed on December 10, 1986, whereas her working conditions were already in existence in November 1986. Privileges that are granted to persons working as letter carriers cannot constitute rights for the employees.

As a result, what the Tribunal has to determine is not whether the differential treatment of Charlotte Pond in the workplace is discrimination on the basis of sexual harassment but whether the use of the statue and the presence of posters of a sexual nature in the workplace were the cause of sexual harassment against Ms. Pond.

Ms. Fricot, counsel for the complainant, called three witnesses who confirmed that there were posters of naked women in Station E and in both Station K and Verdun. Jacques Côté, who worked with Ms. Pond at Station E, heard some comments made by Roger Côté, as can be seen at pages 689-90 of the transcript:
[translation]

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A. Where the statuette is concerned, it was much more the look.... It was full of jokes. There were always jokes....

THE WITNESS: For example, comments of a sexual nature, like when he said "how can you make love with your bad back?" He might say "I dreamed all night that my wife was named Charlotte," or "I shouted Charlotte during the night, and my wife was surprised." It was pretty much like that. It wasn't very polite.

The witnesses also confirmed the fact that the employees regularly go into the registered mail office in spite of the policy that they are not authorized to go there.

In his defence, Mr. Santerre called a number of employees of the Canada Post Corporation, who explained the corporation's policies on sexual harassment in the workplace and the action that was taken in respect of Ms. Pond's case.

Testimony of Marc Morin

Marc Morin arrived at Station E in February 1987 to replace Mr. Normandin as supervisor of clerks.

When he arrived at Station E, Ms. Pond was on leave. She came back in March, and he confirms that she was only able to do office work and that the place where her work table had been set up was the only safe place in the office for her.

He had to deal with a number of complaints by Ms. Pond, and he barred her from going into Roger Côté's office. He also looked after the removal of the Chinese statuette from Mr. Côté's desk in March 1987, and he says that the poster of naked women in the registered mail office had been cut so that only the lower part could be seen.

Testimony of Luc Mercier

In December 1986, Luc Mercier was the Canada Post Corporation manager responsible for fringe benefits and human resources, and, more specifically, for problems related to the official languages.

He acknowledges that Charlotte Pond contacted him on December 10, 1986, to ask what language her supervisor was supposed to use in speaking with her, and to complain that she had been isolated from the other employees and that there was an offensive object on Roger Côté's desk.

Mr. Mercier called André Stafford, the Director of Station E and asked him to look into the dispute between Ms. Pond and Roger Côté. He also contacted Jean-Pierre Doré to ask him to send the Human Rights Policy to Ms. Pond. He heard nothing more about Ms. Pond until March 1987.

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Testimony of Jean-Pierre Doré

In December 1986, Jean-Pierre Doré was the person responsible for human rights relations at the Canada Post Corporation.

After Luc Mercier's call, he sent the Human Rights Policy to Charlotte Pond on December 19, 1986, and called André Stafford to ask him to have the offending statue removed from Roger Côté's desk.

Mr. Doré received a second call in March 1987 and was told that the statue had not been removed. He then ordered that the statue be removed. After the complaint was filed with the Canadian Human Rights Commission, he had the statue brought to his office, and he found it inoffensive in itself.

Mr. Doré filed the Canada Post Corporation's amended Human Rights Policy as Exhibit R-10. Although the policy makes no express reference to posters of a sexual nature, there were internal directives asking that images of a sexual nature not be posted.

Mr. Doré did not conduct an investigation in March 1987 because no action was taken on a complaint unless it was made in writing. He explains the failure to remove the statue until March 1987 by the fact that André Stafford did not go to Station E in person to verify.

Testimony of Lise Dumont

Ms. Dumont is a Canadian Human Rights Commission investigator and was given responsibility for Charlotte Pond's case in 1989.

She met with Ms. Pond between five and ten times during her investigation and also met with representatives of the Canada Post Corporation, who said at all times that to describe posters from Playboy magazine as "pornographic" was an exaggeration. Jean-Pierre Doré sent a letter to this effect, as can be seen at page 1000 of the transcript:

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[translation]

Finally, we want to say that we consider the adjective "pornographic" to be an exaggeration, as it has not been proven that Playboy magazine deserves to be described as such. On the substantive issue, we feel that management took prompt action to ensure the removal of what might have been considered offensive to certain persons.

As Ms. Dumont confirmed in her testimony, her investigation report indicates that Claude Normandin, who was in charge of Station E in 1987, told her that he had met with Ms. Pond on three occasions and that she had complained about sexually provocative objects, namely a statuette on Roger Côté's desk and a calendar in the registered mail section.

In addition, paragraph 25 of the investigation report demonstrates, and this is confirmed by Ms. Dumont's testimony at page 1001 of the transcript, that André Beauregard of the Verdun postal unit acknowledged the presence of a poster described as a nude, but according to him it is a nude that appears in magazines that are available to everybody everywhere.

Lise Dumont mentions in paragraphs 34 and 35 of her report that André Champion, the co-ordinator of Station K, where Charlotte Pond worked from August to November 1987, told her that it had been necessary for him to take Ms. Pond into his unit because she was a problem case and because, he had been told, she had had behavioral problems and problems involving sexual harassment.

Mr. Champion acknowledged that there was a poster of a naked woman in the registered mail office but said that the place in question was not accessible to employees and that the other women had never complained about it.

It can be deduced from the investigation report, which was filed in evidence as Exhibit R-11, that the sexual harassment alleged by Ms. Pond is related to the pornographic posters and photographs and to the statuette on

Roger Côté's desk. The report does not mention any offensive comments made about her.

Ms. Dumont admits that it was clear from her investigation that Ms. Pond had experienced labour relations problems. However, she was unable to establish a connection between the harassment and the labour relations problems, which led her to the following conclusion in paragraph 38 of the investigation report:
[translation]

A. Charlotte Pond experienced labour relations problems prior to the events mentioned in the complaint, that is, before 1986. Thus, the investigation was unable to prove that the labour relations problems she experienced were related to the sexual harassment.

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The Tribunal concurs with the opinion that the differential treatment of Charlotte Pond and her labour relations problems do not constitute sexual harassment.

Issue

The question the Tribunal must decide is whether the presence of objects and posters of a sexual nature were a cause of sexual harassment in the case of Charlotte Pond, who describes her situation at Station E in 1986-87 as follows at page 566 of the transcript:

R. What I would like to say is that the statue being there served as a catalyst for Mr. Côté to pick up the statue and walk out of his office in front of all my co-workers, mostly male co-workers, and hold the statue in the air and say "look, women are here on this earth just to serve men. Women are only good for secretarial and housework."

What I'm saying is the posters -- that statue itself wasn't sexual harassing. He used that statue -- the presence of that statue became an object where he could ridicule or humiliate me directly as a woman and all women in general by calling all women no -- we weren't able to do the letter carrying job, we should be secretaries or housework. We should be serving men. This sort of thing.

Did the respondent Canada Post Corporation, by failing to act and by failing to ensure the removal of the offending posters and of the statuette on Roger Côté's desk in 1986, 1987 and 1989, act in violation of section 14 of the Canadian Human Rights Act, which, in its first subsection, prohibits sexual harassment in matters related to employment and, in its second subsection, provides that "sexual harassment shall ... be deemed to be harassment on a prohibited ground of discrimination."

Burden of proof

The burden of proof in discrimination cases has been discussed in a number of cases. The burden of proof and order of presentation of evidence appear to be the same in every case of employment-related discrimination. The complainant must first present prima facie evidence of a discriminatory practice. It is then up to the employer to justify his apparently discriminatory behaviour. Finally, the burden of proof once again lies on the complainant, who must prove that the explanation given is only a "pretext" and that discrimination is the real basis for the employer's acts. This is a summary of what is found in *Etobicoke*, [1982] 1 S.C.R. 202, at p. 208, second paragraph:

Once a complainant has established before a board of inquiry a prima facie case of discrimination, in this case proof of a mandatory retirement at age sixty as a condition of employment, he

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is entitled to relief in the absence of justification by the employer. The only justification which can avail the employer in the case at bar, is the proof, the burden of which lies upon him, that such compulsory retirement is a bona fide occupational qualification and requirement for the employment concerned. The proof, in my view, must be made according to the ordinary civil standard of proof, that is upon a balance of probabilities.

Where discrimination on the basis of sexual harassment is concerned, it was held in *Bouvier v. Métro Express*, 17 C.H.R.R., D/326, paragraph 59, that the evidentiary burden on the victim is only that of establishing that the conduct complained of was (1) of a sexual nature, (2) unwanted and (3) humiliating to her:

[59] In short, sexual harassment consists in unwelcome behaviour of a sexual nature which is an affront to the personal dignity of another person. It may be blatant or subtle, and may take many

forms, but the evidentiary burden on the victim is only that of establishing that the conduct complained of was (1) of a sexual nature, (2) unwanted and (3) humiliating.

The law

In this case, the Tribunal must answer three separate questions:

(a) What does sexual harassment consist of, and should the term "sexual harassment" be defined broadly to permit the Tribunal to find that the complainant has presented prima facie evidence that she has in fact been discriminated against?

(b) Has the employer succeeded in proving that the alleged acts were justified and that he took every necessary action to remedy the situation?

(c) Has the complainant established that the conduct about which she is complaining is of a sexual nature, unwanted and humiliating to her?

A- Was the complainant sexually harassed?

The first question to be considered is whether the presence in the workplace of a statuette and posters of a sexual nature in combination with the making of comments with sexual connotations constitute discrimination on the basis of sex, and more specifically whether they constitute sexual harassment.

To answer this question, it is first of all necessary to try to define "sexual harassment". Section 14 of the Canadian Human Rights Act prohibits harassment in matters related to employment, but it gives no definition of what is considered to be sexual harassment.

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It is therefore necessary to refer either to the authorities or to articles by learned authors to find an interpretation of the term "sexual harassment".

Mr. Aggarwal has written an article entitled "Sexual Harassment in the Workplace", 2nd Edition, Butterworths, Toronto, 1992, p.395, that gives a

fairly detailed description of what might constitute sexual harassment, including comments, jokes and posters of a sexual nature that might affect the image of women:

Sexual behaviour that a person finds personally offensive may be considered sexual harassment. Such behaviour may be subtle or obvious, verbal or non-verbal. Its scope may cover a wide range of behaviour that runs the gamut from patting women's bottoms when they walk down the hall; to pinching; to repeated, intrusive, insistent arms around the shoulder, couched in friendliness, but with a hidden agenda underneath; to an atmosphere contaminated with degrading comments, jokes, or innuendoes, and/or reference to women's bodies, to male prowess, and questions about women's sex lives; to public displays of derogatory images of women; to the requirement that women dress in costumes that leave them the target of sexual comments...

Thus, according to the author, there is a wide range of types of behaviour that might be included in the definition of "sexual harassment":

Sexual harassment in this context is employment discrimination by means of sexual blackmail, being a comprehensive pattern of hostile behaviour meant to underscore women's difference from and, by implication, inferiority with respect to the dominant male group. It is closely analogous in form and in effect to race discrimination. It is a systemic, arbitrary abuse of male power and authority used to extract sexual favours, remind women of their inferior ascribed status, and deprive women of employment opportunities and equality. Sexual harassment in this context is an infringement of an employee's right to work in an environment free from sexual pressure of any kind.

The author also explains that there are two different types of sexual harassment: the first is more direct and is based on propositions and sexual advances, while the second is more indirect and is related to behaviour that is intimidating and makes the work environment very difficult. Ms. Pond's case lies more in the second type of sexual harassment, which is described at pages 9, 10 and 11 of the article:

Sexual coercion is sexual harassment that results in some direct consequence to the worker's employment status or some gain or loss of tangible job benefits.

Sexual harassment of this coercive kind can be said to involve an "employment nexus".

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Then there's sexual annoyance: Sexual annoyance, the second type of sexual harassment, is sexually related conduct that is hostile, intimidating, or offensive to the employee, but nonetheless has no direct link to any tangible job benefit or harm. Rather, this annoying conduct creates a bothersome work environment and effectively makes the worker's willingness to endure that environment a term or condition of employment.

Guidelines issued by the Canadian Human Rights Commission on February 1, 1983, describes sexual harassment as :

1. verbal abuse or threats;
2. unwelcome remarks, jokes, innuendoes or taunting;
3. displaying of pornographic or other offensive or derogatory pictures;
4. practical jokes which cause awkwardness or embarrassment...;

Listed below are examples of unacceptable verbal behaviours that may constitute sexual harassment. The behaviours listed below do not necessarily have to be specifically directed at the victim to constitute sexual harassment...

The breadth of this definition is striking. Sexual harassment therefore includes any unwelcome conduct of a sexual nature that detrimentally affects a person in his work environment.

Applying this broad definition of sexual harassment to the case of Charlotte Pond, to use a statuette depicting the genitals to make offensive comments, namely that women are only good for serving men or for doing office work or housework, can be said to constitute sexual harassment.

In addition, the presence in a workplace of posters from Playboy magazine or of posters of naked women that co-workers use as the basis of

comments and jokes of a sexual nature about the size of their breasts, about their figures, etc., definitely causes embarrassment and lowers the status of women. This is what the nature of Ms. Pond's complaint is based on.

The Canada Labour Code provides in its definition of "sexual harassment" in s. 247.1 that it includes any comment or conduct of a sexual nature that is likely to cause humiliation to any employee.

The definition of "sexual harassment" must be interpreted broadly if we are to attain the objectives pursued by the various provincial and

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federal statutes, namely to eliminate sexual harassment in the workplace, as was confirmed by the Supreme Court in *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252, at p. 1284:

Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. It is, as Adjudicator Shime observed in *Bell v. Ladas*, supra, and as has been widely accepted by other adjudicators and academic commentators, an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

In *Commission des droits de la personne du Québec v. Linardakis et al.*, 3 C.C.L.T. (2d), at p. 224, which also refers to *Janzen*, it was established that the tests for assessing sexual harassment are also based on an objective definition, and as a result, the fact that a given poster or comment does not offend every employee does not mean that it cannot be a source of discrimination against a specific employee:

[translation]

That only certain employees were sexually harassed at the restaurant does not mean it is valid to conclude that the sexual harassment in question cannot constitute

discrimination on the basis of sex. Sex-based discrimination is not limited to cases in which sex is the only element of the discriminatory practice and, as a consequence, every person of the sex in question is treated equally badly. Although the concept of discrimination is based on the treatment of an individual because he belongs to a particular group rather than because of his personal characteristics, it is not necessary, for discrimination to exist, that all members of the group in question be treated in the same way. It is enough for the attribution of a characteristic of the group in question to a specific member of the group to be a factor in the treatment he received. If, to reach a finding of discrimination, it was necessary for every member of the group concerned to be treated identically, statutory protection from discrimination would be of little or no value.

We have no doubt that the complainant's version of the facts is credible and corresponds to the reality she experienced between October 1986 and January 1989. Photographs of the posters of naked women and of the Playboy calendar have been filed in evidence. Furthermore, the statuette was used as the basis for humiliating comments about the

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complainant which were intended to belittle her and to show that as a woman she was only good for serving and for doing office work. These comments were confirmed by witnesses, who even heard Roger Côté tell Ms. Pond that he had dreamed at night that his wife's name was Charlotte.

A number of supervisors working for the Canada Post Corporation confirmed in turn that Charlotte Pond had phoned them to complain about the Chinese statuette, about Roger Côté's behaviour and about the presence of pornographic posters in the various stations in which she worked between October 1986 and January 1989.

Thus, the comments, conduct, objects and posters were clearly sexual in nature. The Tribunal therefore finds that the complainant has presented prima facie evidence that she was in fact a victim of discrimination under section 14 of the Canadian Human Rights Act.

B- Are the employer's explanations justified, and what is the employer's liability?

The defence raised an initial question as to the validity of the complaint, which concerned two problems: Ms. Pond's working conditions at the Canada Post Corporation's Station E and the presence of posters and pornographic material at the three stations in which Ms. Pond worked between October 1986 and January 1989.

On the first part of the complaint, the Tribunal has concluded that it was a labour relations matter and that it does not have jurisdiction to remedy the situation.

On the presence of posters and pornographic material in the workplace, however, the Tribunal is of the view that the tests for discrimination under section 14 of the Canadian Human Rights Act are met if the definition of "sexual harassment" is given a broad objective interpretation.

The defence tried to attack Ms. Pond's credibility on the ground that her complaint does not mention her having been the target of offensive comments due to the presence of the Chinese statue and of the posters of naked women. Their argument is that this changes the nature of the complaint and that so important a point would not have been left out if it were really true.

Ms. Pond admitted several times in her testimony that the Chinese statue was not in itself offensive, but she said that it was how it was used as the basis of comments of a sexual nature that was offensive.

Referring to the testimony of Ms. Pond and other witnesses, who mentioned the offensive comments of Roger Côté and of certain co-workers, we would adopt the argument from *Robert Le Blanc v. Canada Post Corporation*, 18 C.H.R.R., D/60, paragraphs 10 and 11, that not everything need be mentioned in the complaint for evidence to be accepted:

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[10] At the beginning of the hearing, Mr. Engelmann indicated his intention to lead evidence of other incidents of alleged discrimination which occurred in 1986 and which were not set out in the complaint form. Mr. Dumoulin objected to this evidence.

[11] We determined to hear the evidence. We concluded at the time that the evidence appeared to be the continuation of the story of Le Blanc's complaint of adverse treatment by his employer. While it would have been preferable if the Commission had provided the respondent with particulars of every incident of discrimination being relied upon in the complaint form, in an administrative

hearing such as this one, the Commission and the complainant are not necessarily restricted to the four corners of the complaint form. The Divisional Court of Ontario in a professional discipline proceeding took a similar view: see *Re Cwinn and Law Society of Upper Canada* (1980), 28 O.R. (2d) 61.

The Tribunal is of the opinion that not to admit this evidence would be unfair to the complainant, especially because the respondent had advance knowledge of the nature of the offensive comments since Ms. Pond had mentioned them to her superiors and because the Canada Post Corporation had every opportunity to rebut the additional allegations on cross-examination.

For these reasons, the Tribunal is of the opinion that the evidence presented to it should not be limited to that described in the complaint, and we adopt the position adopted in *Ghosh v. Domglas Inc.*, 17 C.H.R.R., D/222, paragraph 40:

...Having already rejected the argument that only evidence of episodes of alleged behaviour specifically referred to in the complaint may be adduced and, since Mr. Harrison's various comments made on a number of occasions were clearly of offensive character, I find that he, too, indulged in a course of vexatious comment or conduct.

The explanations given by the employer, the Canada Post Corporation, regarding the actions taken in Ms. Pond's case are as follows:

(a) When Charlotte Pond telephoned Luc Mercier on December 10, 1986, Mr. Mercier told her that he would take action to remedy the situation. Then, on about December 17, 1986, Jean-Pierre Doré sent her the Canada Post Corporation's human rights policy.

(b) It is clear from the evidence that nothing was done before Ms. Pond returned to work on March 17, 1987, and that Mr. Stafford did not go to Station E to check out the situation.

(c) It was only in March 1987 that the Chinese statue was removed and that a minimum was cut out of the poster, although the poster remained.

(d) To solve the problem, Ms. Pond was transferred against her will in August 1987 to Station K, where there were other pornographic posters, and then to Verdun Station.

The Canada Post Corporation's policy contains no rules as such on posters of naked women, although directives have been sent to postal station supervisors, who are responsible for applying the policy.

The failure of the Canada Post Corporation to act in Ms. Pond's case is based on the fact that the supervisors or heads of the stations where she worked felt that she "[translation] complained about everything", as can be seen from Mr. Morin's testimony at page 848 of the transcript: [translation]

A. I didn't say insignificant. I said about everything. I mean that she complained about a lot of things. I didn't say that it was insignificant.

The respondent also argued that sexual harassment must be unsolicited and unwanted, as per *Bouvier v. Métro Express*, 17 C.H.R.R., D/326, paragraph 59:

...establishing that the conduct complained of was (1) of a sexual nature, (2) unwanted and (3) humiliating.

The respondent stressed the facts that it was Ms. Pond herself who picked up the Chinese statue up and discovered its sexual nature on her own after having entered Roger Côté's office without his authorization, and that in the various stations where she worked the posters of a sexual nature were located in the registered mail office, which is a place employees are not authorized to enter. The Canada Post Corporation used this evidence to submit that Ms. Pond solicited the sexual harassment against her by going to the unauthorized places herself. Is it possible to go so far as to say that she also deserved the offensive comments about her?

The Tribunal cannot accept these arguments, as all the witnesses admitted that, in spite of the restrictions prohibiting employees from entering various rooms, in reality all the employees regularly went every day into their supervisor's office or into the registered mail office.

To tolerate posters of naked women or objects of a sexual nature that might lead to offensive comments about women working in a male-dominated environment poisons the work environment, and the result in this case was that Ms. Pond felt unequal, isolated and belittled in comparison with her male co-workers.

The Tribunal therefore finds that the Canada Post Corporation's explanations do not justify the discrimination against the complainant Charlotte Pond and that the Corporation acted contrary to section 14 of the Canadian Human Rights Act, which prohibits sexual harassment in matters related to employment.

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Thus, we will now assess the employer's responsibility in harassment matters. A number of judicial decisions have recognized that an employer is responsible for its employees' acts involving discrimination or harassment. The Supreme Court had to rule on this question in *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84, and *La Forest J.* held that a large and liberal interpretation based on the remedial objective of the Canadian Human Rights Act is aimed not at determining fault or punishing those who discriminate but at eliminating the curse of harassment and discrimination in the workplace. To attain that objective, it is necessary to compensate the victim for any physical and psychological injury he suffered, as can be seen at page 92 of the judgment:

...the Act, we saw, is not aimed at determining fault or punishing conduct. It is remedial. Its aim is to identify and eliminate discrimination. If this is to be done, then the remedies must be effective, consistent with the "almost constitutional" nature of the rights protected.

It should also be mentioned that subsection 65(1) of the Canadian Human Rights Act expressly provides that "any act or omission committed by an ... employee ... of any person, association or organization ... shall ... be deemed to be an act or omission committed by that person, association or organization." Subsection 65(2) sets out the conditions the employer must satisfy to discharge its obligations related to discriminatory practices engaged in by its employees. The employer must establish that it "exercised all due diligence to prevent the act or omission from being committed" and that it subsequently acted "to mitigate or avoid the effect thereof."

It can be seen from the evidence that, while the harassment took place without the consent of the Canada Post Corporation's management, which had sent a directive on posters of a sexual nature to the managers of the various postal stations, it neither checked nor took appropriate action to apply the directive. It did not exercise diligence to avoid the effect after having been informed of Roger Côté's harassment of Charlotte Pond; it tolerated posters of naked women in the workplace in three different stations, namely Station E, Station K and Verdun Station, for the periods

between October 1986 and January 1989, as mentioned in the complaint signed on September 13, 1989, in response to which this Tribunal was appointed.

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C- Assessment of the complainant's evidence and of the injury sustained.

Has Charlotte Pond proven to the Tribunal that the discrimination referred to in her complaint was of a sexual nature, was unwanted and was humiliating to her, as required by *Bouvier v. Métro Express*?

The Tribunal does not doubt that the presence in the workplace of posters of naked women and the presence in a supervisor's office of a Chinese statue under which the genitals of a man and women were visible, which objects served as catalysts for offensive comments about Ms. Pond, form the basis for a complaint of a sexual nature, as is mentioned at page 123 of the transcript:

A. Yes, because the mere presence of this type of material in a mixed workplace, in a workplace, just the mere presence of these photos, this type of material, serves as a catalyst for gestures, words and jokes. So just having those photos there puts in the mind of the other co-workers gestures and jokes and comments that would make women feel unwelcome and would diminish the women's chances of being taken seriously in a workplace -- women's chances of being taken, you know, seriously in a workplace.

As has already been mentioned, the Tribunal has not accepted the defence's argument that Ms. Pond herself provoked or solicited the offensive comments about her because she went into Roger Côté's office and the registered mail office without authorization.

Such unauthorized entry in no way justifies comments by a representative of the employer about another employee's sex life for the purpose of humiliating and ridiculing her, as was mentioned at page 100 of the transcript:

A. The comments had to do with everything from my private life, my private sex life with my boyfriend, to -- you know, anything; linguistic comments -- one time Roger Côté told me that I shouldn't be reading the

English newspapers; all sorts of comments, unwelcome and unsolicited comments that were derogatory, were meant to humiliate me, were meant to alienate me...

Evidence was also tendered that the said sexual harassment of Ms. Pond had poisoned her work environment. There were rumours about her. She was uncomfortable and under stress among the other male employees. Later, she did not dare complain about the posters of naked women in the other stations because she did not want to go through the same stress and humiliation she had endured at Station E. She felt that she could do nothing to change the situation.

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As can be seen from Ms. Pond's testimony at pages 128 et seq. of the transcript, she gives a very clear explanation of how she felt during that period of her life and of how she was humiliated:

A. Well, it touches a realm of feelings, because it angers you that this is still, in some peoples's minds, appropriate. It made me feel -- it didn't take away any self-esteem, but somehow I realized that my male co-workers viewed women a little differently with these posters around. Somehow, subtly, it takes away from the credibility or the dignity of all women, and me in particular. When you have walls full of this sort of type of nude photography and the dressings that go with it, I don't think women in that building would be given the respect that they deserve as human beings. So I feel by having to work with this, it was hard because it angered me that, you know, I couldn't do anything about it, and it was sort of sad in one sense that the system didn't work for me and that, you know, I had so much trouble when I complained the first time. So it was a whole realm, you know -- I was frustrated I couldn't get it removed.

At page 143, she also explains how this whole situation affected her work:

A. Okay. I felt that at any minute any one of my male co-workers or my bosses could suddenly say, "Look at this poster. are you bigger or smaller? Doesn't she have this? Do you have that?" I felt that it was like a firecracker situation where, because these posters and

this type of material were there, at any minute that would kind of be a catalyst or incite a gesture or a comment of a joke. I felt uncomfortable working around it, very uncomfortable.

For all the reasons set out above, the Tribunal concludes that the complaint of discrimination on the basis of sexual harassment under section 14 of the Canadian Human Rights Act has been established.

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Damages and Ms. Pond's claims for compensation

The provision of the Canadian Human Rights Act concerning remedies is section 53. The provisions that concern Ms. Pond's claims for relief are paragraphs 53(2)(c) and (d) and subsection 53(3), which read as follows:

53(2) If, at the conclusion of its inquiry, a Tribunal finds that the complaint to which the inquiry relates is substantiated, it may, subject to subsection (4) and section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in that order any of the following terms that it considers appropriate:

(c) that the person compensate the victim, as the Tribunal may consider proper, for any or all of the wages that the victim was deprived of and for any expenses incurred by the victim as a result of the discriminatory practice; and

(d) that the person compensate the victim, as the Tribunal may consider proper, for any or all additional cost of obtaining alternative goods, services, facilities or accommodation and for any expenses incurred by the victim as a result of the discriminatory practice.

53(3) In addition to any order that the Tribunal may make pursuant to subsection (2), if the Tribunal finds that

(a) a person is engaging or has engaged in a discriminatory practice wilfully or recklessly, or

(b) the victim of the discriminatory practice has suffered in respect of feelings or self-respect as a result of the practice,

the Tribunal may order the person to pay such compensation to the victim, not exceeding five thousand dollars, as the Tribunal may determine.

It goes without saying that the employer is liable for any discriminatory practices engaged in by its employees in the course of their employment: *Robichaud v. The Queen*, [1987] 2 S.C.R. 84.

Ms. Pond submitted that she is entitled to compensation for the expenses she has incurred. However, according to *Attorney General of Canada v. Morgan*, [1992] 2 F.C., compensation may only be awarded in respect of those material losses that are the direct result of the discriminatory practice. Thus, there must be a direct connection between the compensation that is awarded and the discriminatory practice. As a result, we will in considering her claims distinguish the direct injuries she sustained from her indirect injuries.

1- Direct damages

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Ms. Pond has claimed as direct damages the amounts incurred for photographs, photocopies of documents and various lawyers' and investigators' bills together with the bill of her counsel in this case.

In the Tribunal's opinion, the expenses for photographs, postage stamps and photocopies are directly related to paragraph 53(2)(c). They amount to about \$300. Ms. Pond is clearly entitled to recover this amount due to the conclusion we have reached.

2- Indirect damages

As for the expenses related to hiring an investigator to monitor a co-worker's comings and goings and her bills for the counsel who represented her in her labour grievances, on the other hand, we are of the view that this claim does not flow directly from the discrimination experienced by Ms. Pond in this case but is the result of labour disputes, which are not within this Tribunal's jurisdiction.

3- Reimbursement of legal fees

The complainant is also asking the Tribunal to reimburse the cost of her counsel, Ms. Fricot, whom she retained to represent her in this case, in the amount of \$8,653.30.

In support of her claim, the complainant refers us to two cases, the first of which concerns representation by counsel other than that of the Canadian Human Rights Commission. The first is *Grover v. National Research Council of Canada*, T.D. 12/92, in which the Tribunal awarded the reimbursement of counsel's fees, but on the basis of the rates awarded by the Federal Court, as can be seen at pages 110-11:

If the purpose of remedies is to fully and adequately compensate a complainant for the discriminatory practices, then surely the consequence of costs is part and parcel of a meaningful remedy for a successful complainant. We consider the representation by Mr. Bennett of Dr. Grover, to be totally necessary, and an extremely helpful part of the presentation of this total case. We are not in any way suggesting that the Commission case was not handled in a totally satisfactory manner represented throughout by its counsel, Mr. Engleman. Indeed, his presentation was equally of assistance to the Tribunal. We would accordingly, therefore, award Mr. Grover's counsel his costs of this proceeding to be assessed on the Federal Court Scale.

The second case submitted by the complainant in support of her claim for payment of Ms. Fricot's bill is that of *Thwaites v. Canadian Armed Forces*, T.D. 9/93, in which, at page 100, the Tribunal concluded that the hiring of an actuary had been necessary to establish the complainant's evidence and that the expenses incurred by the victim as a result of the discriminatory practice under section 53(2)(c) could include reasonable fees paid to the actuaries and costs assessed on the Federal Court scale:

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If the purpose of remedies is to fully and adequately compensate a complainant for the discriminatory practices, then surely the consequence of costs is part and parcel of a meaningful remedy for a successful complainant.

Accordingly, in the circumstances of this case, we order the CAF to pay the reasonable legal costs of Thwaites, including the actuarial fees incurred in support of the presentation of his case. If the parties cannot agree as to the amount, the costs should be assessed on the Federal Court scale.

However, the respondent has respectfully submitted the Cameron case, C.H.R.R., D/2197, to the Tribunal. According to paragraph 18534 of

Cameron, the complainant has a duty to reduce her costs and expenses unless they are essential to her case:

A complainant is under a duty to take reasonable steps to mitigate her loss.

The respondent stressed the fact that Odette Lalumière, Counsel for the Canadian Human Rights Commission, was assigned and was available to present the case. No reason was given why it was essential for Ms. Pond to hire Ms. Fricot and why Ms. Pond, by personally hiring another counsel, failed to mitigate her loss. As a result, the Canada Post Corporation claims that this was a totally unnecessary expense and that it does not have to reimburse this expense.

The Tribunal acknowledges that Ms. Fricot's observations have been useful but is of the view that hiring Ms. Fricot was Charlotte Pond's personal decision. Having analyzed the authorities on this point, the Tribunal concludes that this expense is redundant because there is no conflict between the Canadian Human Rights Commission and the complainant. As a result, this expense may not be taken into consideration pursuant to section 53(2)(c) of the CHRA, as was decided in *Potapczyk v. MacBain*, 5 C.H.R.R., D/2285, decision 389, para. 205:

The complainant was not awarded costs for the independent counsel hired. It was found that there was no conflict between the Commission and the complainant and therefore no justifiable reason for the incurring of this redundant cost. A complainant has the right to competent counsel without incurring personal expenses. If such counsel can be provided by the Commission, there is no justification for awarding costs for the unnecessary expenses of independent counsel.

4- Psychological injury - Section 53(3)(b)

Ms. Pond has also claimed compensation under section 53(3)(b) of the Act for having "suffered in respect of feelings or self-respect". According to that section, the maximum amount she may obtain in this respect is \$5,000.

A review of the authorities of the last few years on psychological damages awarded in sexual harassment matters shows that it is necessary to take into consideration the nature of the harassment (verbal or physical),

the duration of the harassment, the frequency of the acts, the victim's age and vulnerability, and the psychological impact of the harassment on her.

Taking all these factors into consideration, the Tribunal is of the opinion that the complainant is entitled to the amount of \$4,000 for the psychological injury she suffered in the course of her employment at the Canada Post Corporation between October 1986 and January 1989.

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5- Interest

According to *LeBlanc v. Canada Post Corporation*, T.D. 7/92, the Tribunal has jurisdiction to award interest in respect of amounts claimed under sections 53(2)(d) and 53(3)(b) for the period beginning with the signing of the claim, or as of September 13, 1989, in this case. Bank interest rates have fluctuated between 11% and 4% over the last six years, so we consider it appropriate to use an average rate, which we set at 7%.

We therefore award Charlotte Pond the amount of \$4,300 (\$4,000 + \$300) plus interest at the rate of 7% since September 13, 1989, and order the respondent Canada Post Corporation to pay the complainant the amount of \$5,700.

SIGNED AT AYLMER ON MARCH, 1994.

JACINTE THÉBERGE, Chairman

SIGNED AT MONTRÉAL ON MARCH, 1994.

RAM JAKHU, Member

SIGNED AT MONTRÉAL ON MARCH, 1994.

LISE LEDUC, Member