

THE MANITOBA  
HUMAN RIGHTS  
COMMISSION



LA COMMISSION DES  
DROITS DE LA PERSONNE  
DU MANITOBA

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## **Business owner found responsible for sexual harassment in the workplace**

In a recent decision, a human rights adjudicator appointed by the Attorney General of Manitoba, found that a business owner was in contravention of the Manitoba Human Rights Code when, instead of responding properly to complaints that a male manager was mistreating a female employee for rejecting his sexual advances, the owner fired the woman. In his ruling Adjudicator Arne Peltz wrote that although Clifford Neufeld had never harassed the employee, “his responsibility flows from the mishandling of a difficult situation.”

Adjudicator Peltz was not convinced that the first direct sexual advance by the manager met *The Code's* definition of harassment. Given a series of text messages exchanged between the two, he found that they had a flirtatious relationship that could have led the manager to think his advances were welcome. However, once the woman, Ms Jackie D'Heilly, clearly turned the manager down, the manager's continuing advances and eventual hostility towards Ms D'Heilly in the workplace did constitute sexual harassment as reprisal for her rejection.

When Mr. Neufeld found out about the harassment, he had a duty to investigate and to act on his findings. Adjudicator Peltz found that he did make some good faith efforts, but noted that there was no formal or professional investigation. While employers can conduct their own investigations of harassment complaints, according to Adjudicator Peltz, “one who takes on such a task does so at his own peril” and this employer's response fell short in a number of respects.

The ruling emphasized that employers are duty bound to take the issue of sexual harassment seriously. In this instance, it was found that Mr. Neufeld delayed confronting the accused harasser, lacked the professional expertise as an investigator, and was too close to the subject in his role as owner. Adjudicator Peltz also found that Ms D'Heilly was terminated primarily because she filed a complaint of sexual harassment with the Human Rights Commission. “Dismissal of an employee because she is pursuing her legal rights under the Code is simply unacceptable,” he wrote.

During the hearing, no evidence was heard from the person who was found to have sexually harassed the complainant because The Human Rights Code provides that the business owner is responsible for the harassment of employees when he or she is aware or ought to be aware that harassment has occurred. Ms D'Heilly was awarded lost wages of \$3,250 and damages of \$1,500.00.

Counsel to the Commission Sean Boyd and Sarah Lugtig represented the Manitoba Human Rights Commission.

The Manitoba Human Rights Commission offers human resource professionals and business owners a one day course on how to investigate a human rights complaint.

The complete decision can be found on the Commission's web site at [www.gov.mb.ca/hrc](http://www.gov.mb.ca/hrc)

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