

IN THE MATTER OF: The adjudication of a complaint under section 19(1) of
The Human Rights Code, C.C.S.M. Cap. H175.

BETWEEN:

J.D.,

Complainant,

- and -

C. N., operating as
M. and C.A.G. of C.,

Respondent

REASONS FOR DECISION

Appearances

S. B. and S. L., Counsel for the Complainant.
C. N., on his own behalf.

Nature of the proceedings and the issues

On February 26, 2002, the Complainant J.D. filed a complaint (Ex. 1) under the Manitoba *Human Rights Code* ("the Code") alleging that the Respondent had violated section 19(1) of the Code by (a) failing to take reasonable steps to terminate reported sexual harassment and reprisals from a co-worker, and (b) dismissing the Complainant as a result of her reporting the harassment. The harassment allegedly occurred between late April 1999 and late June 1999. The Complainant was dismissed by the Respondent on June 23, 1999. Initially, a complaint was made to the Canadian Human Rights Commission ("the federal commission") in or about February 2000. For some time, the federal commission pursued the matter. The Respondent retained legal counsel and filed a detailed reply in February 2001 denying the allegations and asserting that the Respondent had just cause to dismiss the Complainant (Ex. 2). Ultimately, it was ascertained that the Manitoba Human Rights Commission ("the Commission") had jurisdiction notwithstanding the Respondent's type of business - sales and service of cellular

phones and related telecommunications equipment. The file was transferred to the provincial commission on January 2, 2002 (Ex. 5). The Respondent was still represented by counsel at the time but it was decided not to object. The complaint was assigned for investigation on June 18, 2002 (Ex. 6) and there was an attempt at mediation. I was designated as a Board of Adjudication by the Minister of Justice on March 31, 2004 (Ex. 1).

The hearing took place in Winnipeg on February 20, 21 and 22, 2005. Due notice of the hearing was given to the parties and the public (Ex. 3). The Respondent appeared without legal counsel but C.N., the owner, confirmed his awareness that he was entitled to counsel. He explained that he has experienced financial difficulties and was unable to afford a lawyer. He stated that he was prepared to proceed with the hearing. No preliminary objections were raised by any party. The complaint was amended on consent to read as set forth above in the style of cause.

At the material times, Mobital.ca operated three retail outlets - one in downtown Winnipeg at the TD Centre, one in Winkler, Manitoba and a third at 1014 St. Mary's Road in Winnipeg.

The events in this case took place in and around the Respondent's St. Mary's Road outlet ("the store"), with one alleged incident in the Complainant's home. The issues were largely factual. The Commission alleged that the Complainant was sexually harassed by C.G., the Respondent's Sales Manager, and that when she rebuffed his advances, he continued the harassment and engaged in demeaning behaviour towards the Complainant in the workplace.

The Complainant eventually reported the problem to C.N. ("C.N.") but he took no direct action and allowed the harassment to continue. When she pressed for protection, the Complainant said she was fired by C.N.

This account was disputed by C.N. He maintained that the Complainant engaged in inappropriate conduct in the workplace, that she led C.G. into thinking she wanted a sexual relationship and that the conflict between the Complainant and C.G. was actually a sales dispute. C.N. stated that he took reasonable steps when the harassment allegation surfaced and that the dismissal was justified.

The Commission called the Complainant and two co-workers as witnesses: B. J. (formerly B. W., referred to hereafter as "B."), who was employed in sales and service at the store and worked there from the fall of 1997 to September 2000; and J.R. ("J."), an administrative employee who was on maternity leave and returned to work in May 1999 at the store. She left about six months later. C.N. testified on his own behalf and called no other witnesses.

No evidence was heard from C.G., the alleged perpetrator. He was not named as a respondent in the complaint as, in the Commission's view, there is doubt as to whether section 19(1) of the Code permits the naming of a respondent other than the employer or other person "who is responsible for an activity or undertaking". Thus, C.G. was not served with notice under section 35 of the Code but I was assured that Commission staff had spoken to him and that he was aware of the proceedings.

It is understandable that C.G. was not called as a witness by either party. The Complainant condemned C.G.'s conduct and presumably he would have been hostile as a witness for the Commission. C.N. indicated that Mobital is no longer operating as a business and there is litigation ongoing between himself and C.G.. Thus, C.N. was not prepared to present C.G. as a witness, despite needing C.G.'s evidence for some aspects of the defence in this case. As a result, these reasons must be read with the understanding that C.G. did not participate in the proceedings.

In my respectful view, this is not a satisfactory state of affairs, for several reasons. If C.G. committed acts of harassment as alleged, the Code should have allowed for him to be named and relief should have been available against him in addition to C. N./Mobital, the named respondent. Beyond that, C.G. should have had some opportunity to defend his reputation, whether as a witness or a party. I urge the Minister to consider a legislative amendment which clarifies these issues for the benefit of parties in the future.

Evidence on behalf of the Commission

The Complainant

The Complainant testified that she began working for the Respondent on April 4, 1999. She had purchased a cell phone from C.G. and C.N. sometime earlier and found them to be sociable people. Then she ran into C.G. downtown and he took her out for coffee, which again was an enjoyable outing. The Complainant expressed an interest in doing some part-time sales for extra money. At the time, she was employed by TD Bank downtown. Soon afterward, she learned of impending layoffs at TD so she approached C.G. and inquired about full-time work with Mobital. She met with both C.G. and C.N. and was quickly hired. The plan was to do outside sales work on a commission basis eventually but at first, the Complainant was assigned sales and administrative tasks in the store, replacing an employee who had left on a maternity leave. She started at a salary of \$2,000 per month.

The Complainant said that the working environment was good and she felt she had a very positive relationship with C.G.. He was very supportive of her aspirations in the job. There was a lot of banter in the store among the staff, including sexual content, and everyone participated. It was not taken too seriously and there was never an objection or reprimand. The Complainant described her chatter back and forth with B.J. as "chick talk".

Text messaging between Mobital employees was frequent and the text of many messages was preserved and entered in evidence (Ex. 8, Ex. 16). The Complainant and B. often communicated in this manner and shared personal information and various concerns (#179, 222, 225, 247, 289, 319, 329, 332, 340, 356, 381, 394).

The Complainant acknowledged that initially, her exchanges with C.G. were warm and familiar. Some examples of text messages sent by the Complainant to C.G. in the last week of April were as follows:

Hey Handsome... Smile!!! Need a Hug? J. (#120, Apr 22 1:17 pm)

CG, Thanks for the messages yesterday. They meant a lot to me. If you need to vent, or HUG ... I'm here for you!!! J (#135, Apr 23 10:43 am)

Santa??? I NEED a special present!!!! J (#142, Apr 23 12:48 pm)

Hey there CG, is your day going well? Miss you and your smile ... Hurry back!!!! J (#187, Apr 28 1:52 pm)

C.G.'s replies were similar in tone, ending with "sweet dreams ... your bud" (#197) and "chow sweetie" (#231). The Complainant agreed that they called each other "buds".

In her testimony, the Complainant said that at the time, she was dating a man and it wasn't working out. C.G. and B. were aware of her troubles and were being supportive. Hence her comment (#233, May 3 to C.G.) "I don't know what I've done to deserve you ... but I feel so lucky!!!!!!!!!!!!!! The saying is true that the good ones are taken." In turn, the Complainant listened to C.G.'s work stress problems and complaints about C.N. and empathized. She called him her "Best Bud" (#234, May 3).

In cross examination, it was suggested that some of the Complainant's messages would likely have been taken by C.G. as an invitation to a sexual relationship:

Hey, did you hear the forecast is calling for SEVERE THUNDERSTORMS for tonight ... that totally sucks especially when you don't have anyone to CUDDLE with!!!!!! It's just not fair!!!!!! Someday!! J (#238, May 4)

The Complainant explained that this was a reference to the recent bad ending of her relationship with the man she had been seeing.

Some time during the first 4-6 weeks on the job, the Complainant was approached by C.G. and told that she should let him know if she ever needed money or help in an emergency. On one occasion, he handed her his business card with \$20 clipped to it. Written on the back was "Dinner on me, you relax, CG." She felt it was odd at the time.

The Complainant characterized the relationship with C.G. in this initial period as “like a big brother, a father figure”. She thought he was “really a great guy” and insisted that their messages should be understood in that way. At one point, C.G. left a highly personal and inappropriate message for the Complainant on her phone. He felt he could share intimate details of his life with her but she testified that she didn’t know why he made such calls to her.

The last recorded friendly exchange between the Complainant and C.G. was on Saturday May 8, 1999 (#271), as follows:

Good morning little buddy ... Work has been busy, but always fun on a Saturday. Once again if I don't talk to ya, have a wonderful Mother's Day with your kids and remember your (*sic*) in my thoughts ... CG

Everything changed when C.G. requested a meeting with the Complainant in her home in early May. He suggested an off-site meeting to discuss outside sales issues because things were always so hectic in the store during the day. In her written complaint (Ex. 1), the Complainant placed this event in late April, but she conceded in cross examination that the text message record was inconsistent with that time frame. She agreed she could be wrong on the timing.

The visit began outside in the yard with social conversation and then moved inside the Complainant's house. They never did get to the topic of sales. C.G. sat beside the Complainant on the loveseat. She felt this was far too close physically and she moved away immediately. She told him she was tired and he should leave. At the door, C.G. turned, grabbed her, put his hands on her buttocks and said that he wanted to make love to her. She replied that he had to leave and he did. The whole visit lasted perhaps an hour and the Complainant made no notes. She testified that she “felt like trash, dirty” and wanted to forget that it happened. He was married and she was a single mother. The Complainant testified that she did nothing to provoke the advance by C.G.. She was quite worried about working with him on her outside sales training, where she would have to be alone with him in a car. This was the first and only time they had an off-site meeting.

The next morning, the Complainant disclosed the incident to B., who was upset but not very surprised. The Complainant had told B. about C.G.'s planned visit beforehand. The Complainant did not tell C.N. at that point. She hoped C.G. would let it go and she could carry on doing her job. She left C.G. a phone message saying that his behaviour was unacceptable and tried to avoid him at work. She felt that he just brushed off the incident and her protest. Whenever they were alone, he would whisper in her ear, "You know what I want." He seemed to become jealous whenever she had male callers, complaining that "You've got time for them." The previous joking atmosphere in the store was no longer a joke.

The Complainant found that C.G. was getting angry with her now, discrediting her in front of customers and accusing her of stealing his sales. When she listed her number on a sale, which she thought was proper procedure, he would get upset and scratch it out, writing in his own number. She was on salary but C.G. was on commission. When C.N. was away from the store, C.G. was "a tyrant". He was moody and abrasive. It was very difficult to put in 8-9 hours of work in the store. Previously, the Complainant related to C.G. as a "best buddy, a father figure, he wanted me to succeed", but now it was all changed.

Later in May, the Complainant broke down during a meeting with an outside consultant hired by C.N. to do a business review. The consultant worked for George S. May International and was identified only as A.. A. said the behaviour was unacceptable and urged the Complainant to confront C.N. with the information. He said he would tell C.N. himself, including C.G.'s identity, and the Complainant testified that she authorized him to do so. Around that time, the Complainant had a conversation with C.N. after work during which he indicated that he had learned something morally upsetting. This prompted the Complainant to disclose the incident with C.G. in her home and the ensuing mistreatment at work.

According to the Complainant, C.N. said he had just heard about the problem from A. and offered her counselling. She replied that she was OK and declined. C.N. said that talking to C.G. would only make things worse. The Complainant expressed the hope that it would blow over. They ended the conversation by agreeing that they would take no action but C.N. would "keep the door open".

In fact, things got worse, not better. C.G. became more angry and abusive, especially when C.N. was away. In early June, C.N. was leaving for a vacation and the Complainant told him she was concerned about being left alone with C.G.. C.G. was in charge during C.N.'s absences. C.N. gave her a phone number to contact him. She didn't need to use it but during the vacation, C.G. was again behaving badly toward her. He interfered with her customers and criticized C.N. in the presence of other staff.

The Complainant said she observed the relationship between C.N. and C.G. and found it unusual. C.G. berated C.N. behind his back, calling him a dreamer. C.G. claimed he had saved C.N.'s business. For his part, C.N. said that they were neighbours, that he helped C.G. when he lost his job and that C.G. came aboard to generate sales. C.N. told the Complainant that he and C.G. got along fine.

On June 3, 1999, while he was on the plane heading to his vacation resort, C.N. wrote a set of corporate goals, policies and operating rules (Ex. 7, "the Policy"). The lengthy document was sent by text message to C.G. and distributed to the staff. Later C.N. told the Complainant that he hoped the new policy would prevent further incidents of harassment. In the section entitled "Respect and Dignity" (at p. 4), the document required employees to treat each other respectfully, with disciplinary action up to termination in case of violations. Harassment per se was not mentioned. The policy was expressly applicable to personal activities after hours. It also threatened discipline for repeated late arrival at work and personal use of computers or phones. Staff were required to wear professional attire at work. With respect to this latter item, the Complainant said that she was accustomed to a business environment; she had suits and she wore them at the store. She was never cautioned about the clothing she wore.

When C.N. returned from vacation near the end of June, he took the Complainant across the street to Tim Horton's to talk and she informed him that the situation with C.G. was "really bad". C.N. replied that she should speak to C.G. off-site and confront him about his behaviour. But as it turned out, C.G. refused to speak to the Complainant about it. The Complainant testified that C.N. was very supportive in his attitude at this stage. He reiterated that C.G.'s conduct was

unacceptable and suggested that he (C.N.) might have to take over the Complainant's outside sales training.

By Tuesday June 22, as the situation at work continued unchanged, the Complainant decided that she could not handle any more. She spoke to C.N. and he said he would confront C.G.. At noon, she sent the following text message to C.N. (Ex. 16):

C., I have been nothing but patient throughout this whole ordeal and I have to admit that at this time it has run out. I deserve some consideration in this and this is unacceptable. I made a choice not to pursue this, at this time, and I am feeling like nobody deserves this special treatment. I will be at home until such time that this issue is addressed. I am trying to move past this, but I am not getting the cooperation I need, and at this point, I deserve to be selfish. As well, when this TALK does take place, it's unlikely I will be returning to work after as I am sure this is going to take its toll on me and I will be a mess. I'm sorry it has to be this way, but I never ASKED FOR THIS!!! I am tired of having to live with this alone!!!
J.

(Emphasis in original)

At 5:55 pm the same day, C.N. sent the following response (Ex. 16):

You have been patient with the situation J., but please understand these matters are sensitive and now is the time we need to work together to best clear things up. I will be in touch with you re a time for a meeting and dealing with this. You have never been alone.

I am always here, and you know that I fully support you. C.

The next morning, June 23, 1999, C.N. asked to meet the Complainant at Smitty's Restaurant. He told her that her work was inadequate, she was abusing the computer and her services were no longer required. She was shocked, "I freaked out." She walked out of the restaurant. She had

been expecting that action was finally going to be taken about the harassment complaint, but instead, C.N. said that C.G. was not going to be part of the conversation at all. As for the criticisms of her work, they had never been raised before by C.N., although she acknowledged that it had been difficult to be enthusiastic at work while this issue remained unresolved. She may have been late on some occasions as a result. C.N. handed her a termination letter (Ex. 10) which provided no grounds or reasons for her dismissal and enclosed two weeks salary "as a gratuitous payment."

The Complainant testified that she was devastated. First she felt like "trash" when C.G. made a sexual advance; then she was fired over the incident. She said that in her subsequent employment, she was unable to be alone with male co-workers and was apprehensive about starting friendships. She lost weight and was "stressed out financially". She had hoped to use her severance pay for some special family purchases but instead had to use it for basic living costs. Crying as she testified, she said she's had to live with this for a long time.

On July 5, 1999, the Complainant applied for Employment Insurance benefits. Her claim was allowed effective June 27 but no actual payments were received until August 22, 1999 because of a prior lump-sum severance payment from TD Bank (\$6,500 plus 4 weeks in lieu of notice) which EI deemed was available as if paid out weekly. The Complainant listed "dismissal" on her EI application form but added that she was pursuing legal action for an unlawful dismissal and sexual harassment (Ex. 11). She wrote a summary for EI outlining the C.G.'s harassment and C.N.'s response, namely, indications of support followed by a surprise dismissal (Ex. 12).

The Complainant searched for work and found a position with Sky Cable, but not until September 1999. In May 2000 she was hired by Human Resources Development Canada and continues to work there at the present time. During the period from her dismissal on June 23, 1999 until the commencement of EI payments on August 22, 1999, she had no income and was forced to rely on her severance monies.

The Complainant was cross examined at length concerning the recording of codes and allocation of sales commissions. She said C.G.'s code was frequently entered on her sales transactions but

maintained that she had no objection because she was paid a salary, whereas he received commission on all sales - or so she was told at the time. She wasn't sure if C.N. was aware of this practice. She insisted the employees did not discuss each other's pay and she did not know how much C.G. was earning, except that it was substantial. Nor did she know what C.N. himself was earning.

B. J.

B. was hired after an informal process similar to the one described by the Complainant. She liked the casual, fun atmosphere. It was a laid back, low-key workplace but still professional. There were jokes and comments, but she wasn't sure about sexual content. In any case, it was nothing serious or offensive to anyone. B. stated that the Complainant had been spoken to by C.N. about the way she dressed at times. She was told her attire was inappropriate.

C.N. was the owner but in his absence, it was clear to all the staff that C.G. was in charge. At that time, C.N. and C.G. were very close, "they were like brothers". C.N. trusted C.G., believed in him and gave him what he wanted. By contrast, C.G. was always running C.N. down and the staff got used to hearing it.

In direct examination, B. was asked to describe the Complainant's relationship with C.G. and gave a detailed reply. B. said it was "fun and flirtatious" at first. He was a very attractive older man who liked coming on to women. "He made anyone feel like a queen." B.J. said C.G. had "tried it with me too but I shot him down." C.G. had e-mailed her at home and invited her to meet him at a bar. B. saw some of the text messages passing between C.G. and the Complainant. She noted that it's good when any woman gets attention but the Complainant went along with it, not realizing that C.G. was taking it more seriously than she was. As well, B. thought that some of the talk - for example, about cuddling - was "not cool" given that C.G. was married.

Asked in cross examination about how C.G. would likely have taken these messages, B. agreed that he definitely would have seen them as a sexual invitation by the Complainant. "In his mind, she was telling him she might be open to sex someday, taking it to the next level." B. said that

the Complainant was lonely at that time and wanted someone to make her feel special. She was leading him on "until he broke down" and made an advance. Then she turned him down.

B. testified that the Complainant and C.G. had been seeing each other outside work. Then he asked for sex when he was at her house and their relationship changed. "It was night and day, ... We knew it was because she refused him sex." B. said that the Complainant asked her to drive by her house the night C.G. was over. The idea was to confirm he was there, in case anything came of it. B. expressed the view that she herself would never have invited C.G. to her home: "If you dangle something, he'll go for it." She thought maybe she should have warned the Complainant but decided she "wasn't going to say don't flirt with him."

After the incident, C.G. would interrupt the Complainant with customers and make her look bad. He wouldn't speak to her. Things were especially bad when C.N. was away on his vacation. In cross examination, however, B. said that C.G. was a problem even before his falling out with the Complainant: "anger was his hallmark." If he didn't get his way, he would have fits, throwing things in the office and banging around. B. could recall being afraid at times. But generally it would blow over after a while. The difference with the Complainant was that it didn't blow over. C.G. was consistent in mistreating her: "It was awful ...". After the incident at the Complainant's home, B. never saw advances made by C.G. at work. She said that there was never a time when C.G. would have been alone in the store with the Complainant. B. never heard the Complainant say that she was apprehensive about being alone with C.G.

B. said that C.N. wasn't around the store much and didn't know how severe the problem had become. C.N. was overloaded and stressed with running the business. B.J. remembered that C.N. came to talk with her about these issues at some point after Allan, the consultant, was retained, but she was unsure about time frames. It may have been after the Complainant was fired. She agreed that the Complainant's performance at work suffered after the incident with C.G.. She used to be very happy but she became angry and frustrated. However, there was no procedure at Mobital for documenting staff performance issues.

B. confirmed receiving the Policy although she said it was unclear what was meant by the clause on respect and dignity (p. 4, para. 3), since it referred to time outside working hours. She felt that was her own time. Despite the Policy, B.J. said that she and other staff were afraid to stand up for themselves and would not go to C.N. with a complaint against C.G.. In their perception, C.N. and C.G. were friends, C.N. owed C.G. a lot and therefore C.N. would believe C.G.. There was an impression created that C.G. was a part-owner. The staff were young and they needed their jobs. The Complainant asked them to approach C.N. about her problem with C.G. but they declined.

B. said she did not know too much about the sales and commission issues. She was aware that C.G. was taking over the Complainant's sales and receiving the commissions. At one point in her evidence she characterized this as "stealing" and "totally wrong", and said that the Complainant was upset at C.G. for this reason. She also theorized that J. and C.G. were involved in theft from the company, without providing any details.

J. R.

J. was away on maternity leave when the Complainant was hired and she returned to work in mid-May 1999. In J.'s understanding, C.N. was the owner of Mobital and C.G. was the manager. J. did not believe that C.G. was a part-owner. When C.N. was away, C.G. was in charge. Their relationship ran hot and cold. They were friends as well as business associates, and their disagreements were expressed openly in front of the staff. The store was an open plan and there was no privacy except in C.N.'s office at the back. C.G. was loud and could get angry, throwing things around in his cubicle. His tantrums could last for days unless he got what he wanted. He maintained that C.N. owed him a lot. C.N. was usually passive in response and gave in to C.G.

The working atmosphere at Mobital was good at first, with lots of joking and sexual content in which everyone participated. It never crossed the line, however, and no one was corrected by C.G. or C.N.. J. was never shown a personnel or harassment policy, and was unaware of a policy whereby new staff would receive money for meals.

She and the other employees were all on salary, except for C.G., who earned commission on all the sales at first. She said she complained to C.N. about C.G.'s commissions and this caused C.G. to react in anger. She testified that C.N. had promised her a bonus or commission, but it never materialized.

J. recalled several occasions when the Complainant was late but wasn't sure that it was a regular occurrence. Once it was because she was doing outside sales and C.N. reminded her to keep him informed in those cases. J. didn't think the Complainant was ever admonished over her style of dress. The Complainant did dress differently than the other employees. "She had a nice body and she dressed to that ...". J. observed that people differ in their comfort levels regarding clothing.

According to J., she saw the text messages between C.G. and the Complainant and considered they were just part of a positive working relationship. She herself had hugged C.G.. She couldn't say whether the Complainant's messages might be construed as an enticement by C.G.

The Complainant confided in J. that C.G. was making advances and basically wanting to have an affair. The Complainant also disclosed the incident at her home and said she was going to approach C.N. about it. J. said that before the incident, C.G. was helpful to the Complainant and treated her well. After she rejected him, however, he wouldn't speak to her, he glared, he wouldn't help her and he turned cold in his demeanor. C.G. did not treat any other employee in the store in the same way. It made J. and the other staff uncomfortable. The Complainant was obviously frustrated.

It was plain to see how the Complainant was being treated. However, J. didn't know if the Complainant had told C.N. about her problems with C.G.. J. was never asked by C.N. whether she had witnessed any advances by C.G. towards the Complainant. In fact, she had not seen any advances and had never been subjected to advances herself. However, she was afraid to come forward about C.G.'s behaviour and believed that she might lose her job. C.G. was known to be the firms' top seller.

Evidence on behalf of the Respondent

C.N. testified that he first learned about problems in the store when the business consultant he had retained in May 1999 reported back to him. The consultation was intended to deal with issues arising from the company's rapid growth and expansion to three locations. C.N. placed the date of the meeting at around May 25. Initially the consultant (Allan) met with C.N. and C.G. and sales topics were discussed. C.N. also had an evening session with the consultant and at that point, he was told that an undisclosed employee was complaining of sexual harassment by C.G.. The employee was choosing to remain anonymous. Nothing was reported about any other mistreatment of any staff by C.G..

C.N. said he was shocked by the revelation. In response, he set the store computers to record all keystroke activity. He contacted a lawyer and had a preliminary conversation about steps he should take. He was advised to speak with each female employee to ensure they were comfortable coming forward to disclose the complaint, after which he would have to wait. He also began keeping a close eye on C.G.. Contrary to the evidence given by his staff, he and C.G. were not friends, only business associates. They did have breakfast together early every morning but that was to review business matters. They did not socialize.

C.N. testified that over the next few days he met with all female employees including the Complainant, spending between 5 and 25 minutes with each one. He urged them to bring forward any issues including any problem of sexual harassment. No one disclosed. However, around June 1, the Complainant stayed after work and did reveal her accusation against C.G.. C.N. said she was emotional and distressed. He himself was shocked and distraught. He felt that C.G.'s behaviour was unconscionable and his first thought was to fire C.G..

C.N. offered the Complainant counselling and tried to calm her down. Because he was leaving on vacation the next day, he and the Complainant agreed that nothing would be done until his return. However, when she said she was worried about being alone with C.G. at work, C.N. offered to transfer her to the downtown location. He arranged for other staff to be on duty with her. He forwarded his phone to the resort so she could contact him directly. He arranged for an insurance agent friend to drop into the store in his absence and authorized him to fire anyone

who was engaging in misconduct. Finally, while on the plane, he drafted a detailed document (the Policy) and had it sent to C.G. on June 4 for distribution to all employees. C.N. testified that he did everything he could under the circumstances.

In cross examination, C.N. conceded that he never had a written harassment policy which assured employees of safety and confidentiality. But he said it was assumed or implied, and in fact, he did protect confidentiality. At the time, he also believed that his staff would feel safe coming forward to him with problems. He commented that apparently he was mistaken in this regard, having listened to the evidence of the Complainant, B. and J. during the hearing.

C.N. returned from vacation late on June 15 and was in the store by June 17. He immediately noticed a difference. The atmosphere was tense, people were distraught, there was whispering and everyone except C.G. seemed to be aware of the allegations. When he had his regular breakfast with C.G., C.G. complained that the staff were snickering behind his back and he felt alienated. He couldn't do his job but he was "clueless" as to the cause. C.G. did say that the staff were now demanding raises and he accused the Complainant of substandard performance. C.G. told C.N., "You won't believe what happened while you were gone." C.N. did not confront C.G. with the harassment allegation but spent the next several days getting back into his work.

At that point, C.N. and the Complainant had another talk and she told him that C.G. was treating her horribly at work. C.N. responded by asking her to leave it with him. He spoke with several employees informally but could not get any insight into the problem. Then he began what he called a forensic analysis and discovered the various personal text messages by the staff, including the exchanges between C.G. and the Complainant. C.N. said that he regarded the Complainant's behaviour, revealed by the messages, as totally inappropriate. She was acting aggressively toward C.G. and leading him on. This was completely opposite to the version he had been given by the Complainant when she disclosed her harassment allegation. C.N. saw C.G.'s behaviour as "somewhat improper". He did not confront either C.G. or the Complainant with the messages in order to hear their explanation or interpretation.

C.N. could see no continuing harassment or misconduct by C.G. in the workplace. He did give some thought to the Complainant's performance as a new employee, noting that she had been late a number of times and had come to work dressed inappropriately. Once she was sent home for wearing a near mini-skirt. She regularly raised personal matters such as boyfriend problems despite being warned not to bring up such topics at work.

C.N. next began to examine the issue of employee raises and commissions. He learned that in fact J. and B. *were* asking for more money. There was talk of people "stealing deals". When he reviewed the accounting records, he discovered that he was being shortchanged. C.G. was taking commission on the full amount of the Rogers invoices without netting out the cost to Mobital of the "free phones" given to customers. This would artificially inflate C.G.'s earnings and there would be a strong incentive to hide the facts from C.N..

Moreover, C.G. was upset over the Complainant's code being entered for her sales. C.G. wanted credit for all sales including those by the Complainant. C.N. testified that he had an altercation with C.G. over these issues. He began to wonder if C.G. was mistreating the Complainant because of rage over losing part of his commission, rather than a sexual rejection as alleged by the Complainant. He didn't know which was the true explanation.

In cross examination, C.N. admitted that the records he used in his analysis (filed as a batch, Ex. 19) were never mentioned during the Commission's investigative process and had not been seen by the Commission until the hearing. He explained that the documents involve sensitive financial and staffing information. As well, he agreed that at that point in time, C.G. was entitled to demand all the sales commissions generated in the store, as other staff were intended to support the sales effort but not earn commission themselves.

In response to my question, C.N. confirmed that at this stage, he did not confront C.G. directly about the harassment allegation. He decided to wait. The Complainant had agreed to give him some time. He wanted to let C.G. play out his hand. Also, C.N. interviewed a female ex-employee to see if she had experienced any problem with C.G. but her report was favourable to C.G.. In C.N.'s view, therefore, his investigation was in process. He was trying to "figure it out".

It was now June 22. According to the text message record, the Complainant sent C.N. a message at noon (cited at p. 10-11 above) saying she couldn't go on, and at about 6 pm the same day, C.N. replied, reiterating his support and asking for more time. In his oral testimony, C.N. stated that the Complainant stayed after work and pressed C.N. for immediate action on her complaint. He pleaded for more time to investigate but she said no. She refused to wait any longer and told him she could file a sexual harassment complaint and "we can deal with it that way". C.N. testified that the Complainant was angry and swearing at him. He felt she was threatening him. He pointed out that since his return from vacation, he'd had only five working days to deal with the problem. He reminded her that he was supporting her but he needed to look at it from a number of perspectives. She "flew off the handle" and left the store. Thinking things over, C.N. decided to confront C.G.. C.N. and C.G. met the same evening. In the Respondent's reply (Ex. 2, at p. 4), the following depiction of the meeting appears. C.G. was incredulous at the accusation and "flatly denied" it. C.G.'s story was that he went to the Complainant's home at her request to drop off some material she had left at the store. In discussing the incident with C.N., C.G. became angry and upset and said he did not want to meet with the Complainant.

C.N.'s account in oral evidence differed somewhat. C.N. testified that C.G. did not blow up but rather broke down and became very emotional. He was contrite. He said he had been set up and it was his own fault. C.G. vehemently maintained his innocence but admitted that he had acted stupidly in going to the Complainant's home.

Later that evening, C.N. discussed the situation with his wife and she reacted strongly, telling him that the Complainant was trying to control him with a threat of court action or a complaint to the human rights commission. C.N. considered the Complainant's actions - she had technically quit her job by saying she would not be coming back to work, and her conduct during their talk earlier in the day had been insubordinate. He made a chart comparing C.G. and the Complainant, noting the pluses and minuses for each employee. C.G. was clearly Mobital's main salesperson - "C. was, without a doubt, my top guy," with sales around \$281,000, far more than everyone else combined. C.N. testified that

... I had a political situation going on where I had this female staff running on the other side of the office and preventing anyone from doing anything, and there was productivity losses galore. At first, Jackie was saying that she was going, not going to rock the boat and wouldn't press the matter, and that was great. That's fine. Thank you very much. Suddenly there's threats that if I don't do something in a period of time real quickly that she's going to change her mind. That was an interesting way of dealing with it, but the way she did it was insubordinate. ... (Tr., p. 54)

While conceding that there had been no prior written warnings to the Complainant regarding lateness and dress issues, C.N. decided to dismiss her. He took into account her unwillingness to work, her lack of cooperation in dealing with the harassment complaint, her past record, her brief length of service, her sales and her threat towards him. He conceded in cross examination that the Policy called for docking of pay when employees were late and that the Complainant's pay had never been docked. He admitted as well that he had been lax during April and May in dealing with minor transgressions by employees. He agreed he would not have fired B.J. or J. for dress code or tardiness problems unless there was a history of problems. Moreover, but for the Complainant's harassment complaint and her probationary status, he would not have terminated her (Tr., p. 64).

The next morning, as recounted by the Complainant in her evidence, they met in Smitty's restaurant and C.N. notified her that she was being terminated. He expected her to be somewhat upset because he was changing his mind, contrary to what they had talked about the day before. He was doing "what's best for the company". He still hoped she would leave amiably. However, the Complainant went into a tirade when she received the news and began yelling at C.N.. He got up and left the restaurant but she followed and the argument continued in the parking lot until he drove away.

In cross examination, it was suggested to C.N. that the key factor in the dismissal was the fact that the Complainant was threatening to make a formal sexual harassment complaint. He responded that "I sensed it as manipulation ... and I felt threatened, and I was really not sure what the heck to do." He said that his decision was based on "the combination of things" -

insubordination, lateness, inappropriate dress, gossiping, the fact that basically she had already quit, and the fact that “she was forcing my hand” regarding the harassment issue.

Arguments of the parties

The Commission summarized its case in the following terms. The complainant experienced a sexual advance by C.G., a person in authority, followed by continuing advances and mistreatment in the workplace. She was then terminated primarily because she made a complaint of harassment. The other reasons given by C.N. were a pretext. This clearly falls within section 19 of the Code as well as the judicial definition of harassment: “... unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victim of harassment.” *Janzen v. Platy Enterprises Ltd.*[1989] 1 S.C.R. 1252 at para. 56. Moreover, by his own admission, C.N. engaged in reprisal, contrary to section 20 of the Code, making this an even more serious case than the Commission originally envisioned. The Commission acknowledged that it would be unfair to amend the complaint at this stage but argued that the fact of reprisal underlines the seriousness of the harassment suffered by the Complainant.

The text messages between C.G. and the Complainant showed that there was a friendship between the two employees and may be relevant to the welcomeness of C.G.’s advance. However, the Commission argued that once C.G. committed a sexual assault in the Complainant’s home by grabbing her, the messages became legally irrelevant to the case and should be disregarded.

Based on the agreed evidence, the Commission said that the Respondent knew about the first sexual advance by no later than the end of May 1999 when the Complainant reported it to C.N.. He may have known earlier when the consultant spoke to C.N.. The Commission urged that I accept the Complainant’s evidence that she authorized the consultant to identify her to C.N.. Once “the specter of harassment was raised”, there was a duty to act: *Budge v. Thorvaldson Care Homes*, (2002) 42 C.H.R.R. D/232 (Peltz, Man. Bd. Adj.) at para. 100.

The Commission asked for a finding that, as claimed by the Complainant, sexual suggestions by C.G. continued in the store. The Commission also argued that C.N. must have known about C.G.'s mistreatment of the Complainant, given the open store set-up and the evidence of B. and J. that it was plain to see. Therefore, as soon as the Respondent received the complaint, was under a duty to take preventive and investigative steps. He failed to act before departing on vacation for two weeks, leaving the accused in charge of the store. There was no proper harassment policy in place and no mechanism to protect the safety and security of employees, who testified that they were fearful of C.G. On the evidence, C.G. was a power inside the business, being both the main salesperson and apparently a friend of the owner. In these circumstances, C.N. was not entitled to rely on the Complainant's agreement that they would leave things until his return from vacation.

The Commission cited *Jones v. Amway of Canada Ltd.*, [2001] O.H.R.B.I.D. No. 9 (DeGuire, Bd. Of Inq.), aff'd [2002] O.J. No. 1504 (Ont. Sup. Ct. of Jus.) for the six-part standard applicable to employers: awareness that sexual harassment is prohibited conduct; complaint mechanism in place; act with alacrity in handling the complaint; deal with the matter seriously; provide a healthy work environment; inform the complainant of the response. The Commission submitted that on this test, the Respondent's action fell far short.

When C.N. did return, he failed to question other staff members directly and failed to confront C.G.. The Commission described the investigation as cursory. C.N. was hoping nothing would turn up. The evidence of a sales commission motive for C.G.'s mistreatment of the Complainant was never raised by C.N. in his reply or at any point during the pre-hearing process and should be discounted. On June 22, the Complainant demanded action but C.N. stalled. In the afternoon, he promised to support her and undertook to take over her sales training. The next day, he fired her in an obvious act of reprisal. The reasons listed by C.N. for dismissal do not ring true and there was never any proof of a probationary status, which in any case would be irrelevant: *Korthe v. Hillstrom Oil Company Limited* (Unreported, December 22, 1997) (B.C. Council of Human Rights) at p. 11.

As held in *Drummond v. Tempo Paint and Varnish Co., Division of Towers Chemical Ltd.*, [1998] O.H.R.B.I.D. No. 11 (Laird, Bd. Of Inq.) at para. 47, "the question to be determined is whether or not discrimination and harassment on the basis of sex were among the factors which resulted in the dismissal." Also cited to the same effect was *Cameron v. Girogio and Lim Restaurant*, [1993] N.S.H.R.B.I.D. No. 1 (Girard, Bd. Of Inq.) at para. 32. The Commission submitted that on this basis, the respondent was liable.

The Commission sought lost wages for 6 ½ weeks, totaling \$3,250. The human rights process is intended to be restorative. While the Complainant had other funds during this time because of her severance from TD, she would have earned the wages in addition, but for her unlawful dismissal by the Respondent. The Commission characterized this case as serious and requested damages for injury to dignity, at a level similar to *Budge v. Thorvaldson (supra)*, in the range of \$4,000 - \$5,000.

On behalf of the Respondent, C.N. stressed the difficult situation faced by small business employers in responding adequately to cases of alleged harassment. He said that better guidelines are needed from the Commission. In this case, he did obtain legal advice and follow it.

He made clear that harassment was intolerable. He gave support to the Complainant. He took the complaint and dealt with it seriously and as expeditiously as possible. While there are no specifications on how to conduct an investigation, he did investigate and he concluded that the Complainant was the probable cause of the sexual advance. In this respect, he took into account the text messages, the invitation of C.G. to come to the Complainant's home, the absence of other female staff complaints and the lack of any ongoing, visible acts of harassment. Nevertheless, C.N. said he took steps to foster a healthy environment and avoid any repetition. Admittedly, C.G. did have authority while C.N. was away. But C.N. argued he was unaware of the extent to which C.G. had inflated his own authority in the eyes of the staff, which led to their unwillingness to forward complaints against C.G.. Once he was told how C.G. was mistreating the Complainant, he reasonably concluded that the motive was anger over commissions, not sexual rejection.

As to the need for a harassment policy in the workplace, C.N. argued that he did produce one (Ex. 7). He communicated it to all employees. The Policy required that people be treated with dignity and respect, with disciplinary sanctions for violators. In this case, he never reached the point of informing the accused harasser, completing the investigation and considering sanctions. He was forced to deal with the termination and defended his actions in doing so. C.N. denied that he simply chose to retain C.G. in order to maintain company sales. He argued that C.G. could have been replaced. But there was no proven basis on which to find C.G. guilty. He was a longstanding employee. By contrast, the Complainant was new. She was dismissed because of a combination of factors, mainly her insubordination in telling him how to run the business.

Responding on the question of damages, C.N. emphasized the time and expense he has incurred over several years in dealing with this complaint, both before the federal and provincial commissions. The experience has been very stressful and by publishing his name on the Commission website, his reputation has been sullied.

Findings and conclusions

The complaint in this case (Ex. 1) alleges that the Respondent violated the Code in two respects: first, by failing to take reasonable steps to terminate reported sexual harassment and reprisals, and second, by dismissing the Complainant as a result of her action in reporting the harassment. My initial task, therefore, is to consider whether the Commission has proven that the Complainant was subjected to sexual harassment and reprisals. If so, I must determine whether the Respondent is liable for permitting the harassment or failing to take reasonable steps to end the harassment.

Considering the evidence in its entirety, I am not satisfied that the full scope of the allegation against the Respondent has been established by the Commission. However, the Respondent did violate the Complainant's rights under the Code and a remedial order is required. It bears mentioning that the Respondent was never accused of harassing the Complainant directly. His responsibility flows from his mishandling of a difficult situation. I am satisfied that he made a number of good faith efforts but in the end, he failed to meet his legal obligations.

The sexual advance made by C.G. at the Complainant's home

The Complainant testified that her relationship with C.G. was like having a big brother or father figure. She said she did nothing to provoke the advance he made towards her in her home. I find the content and tenor of the messages exchanged between the Complainant and C.G. to be inconsistent with her evidence. The text messages suggest a flirtatious relationship in which the Complainant invited C.G. to believe that she might well be open to moving onwards into a sexual affair. As Mr. Boyd acknowledged during final argument, the text messages may be relevant to the Complainant's "welcomeness" towards a sexual advance by C.G..

B.'s evidence contradicted the Complainant's version of the relationship. B. was a close confidant of the Complainant at work. She was explicit in testifying that C.G. would have seen the messages as a sexual invitation. B. noted that the Complainant and C.G. had been seeing each other outside work, the Complainant was lonely at the time, she wanted to feel special and she led him on until he broke down and made an advance. All the foregoing evidence was tendered as part of the Commission's case. B. added that she thought about warning the Complainant not to "dangle something" but decided in the end that it wasn't her place to tell the Complainant not to flirt.

There was another aspect of the Complainant's testimony which caused me to doubt her credibility. She insisted that she always dressed appropriately for work. By contrast, C.N. said her attire was a problem and she had to be warned, even sent home once to change out of a near mini-skirt. B. confirmed the Respondent's position on this issue. She stated that the Complainant had been informed that her style of dress was inappropriate. J. could not say that the Complainant had been cautioned over her attire, but she did testify that the Complainant dressed differently than the rest of the staff, saying in essence that the Complainant showed off her body. This too contradicted the Complainant's evidence. I conclude from the conflicting evidence on this point that the Complainant was less than candid on the clothing issue.

Generally with respect to the nature of the relationship between the Complainant and C.G. before the advance in her home, I do not accept the Complainant's characterization.

I do, however, accept the Complainant's contention that when C.G. was at her home (whatever may have been the basis for his arrival there), he made a sexual advance and put his hands on her body. According to the Respondent's reply filed with the federal commission, C.G. denied the allegation. As noted earlier, C.G. did not testify in this case. On the evidence I heard, I find as follows. C.G. felt that an advance might be welcome and made his move. He had a reasonable basis for thinking that the Complainant was interested but he was wrong. The Complainant rejected his advance and told him to leave, which he did. The Commission characterized the incident as an assault. I would not be inclined to find, under these particular circumstances, that C.G.'s act was an assault. Mistaken belief in consent is a recognized defence.

In any case, this is not a criminal proceeding and the relevant question is whether C.G.'s act constituted harassment under the Code. As a single sexual solicitation, the act would have to fit within the definition in subsection 19(2)(C) of the Code. The Commission must show that the person making the advance "knows or ought reasonably to know that it is unwelcome." On the facts as I have found them, C.G. did not know, nor should he reasonably have known, that the advance was unwelcome.

I therefore find that the sexual advance did occur, as the Complainant claimed, but I find as well that C.G.'s act on that occasion did not amount to harassment under the Code.

Advances and reprisals by C.G. against the Complainant in the workplace

The Complainant testified that C.G. continued to make sexual suggestions or invitations to her at the store. No eyewitness could corroborate this claim, despite the open style of the premises and the close quarters in which the staff worked. On the other hand, J. said that the Complainant confided to her that C.G. was pressing her to have an affair. On balance, notwithstanding my reservations about earlier parts of the Complainant's evidence, I conclude that the Commission has proven this allegation on a balance of probabilities. In this regard, I have taken into account

C.G.'s conduct after the rejection of his initial advance. I have no doubt that C.G. subjected the Complainant to mistreatment in the workplace as a reprisal for the rejection. Both B. and J. confirmed this point. I have considered C.N.'s evidence and argument that C.G. was actually motivated by anger over the loss of commissions. This explanation does not ring true, given that the Complainant was receiving straight salary at the time, as were all the staff. The role of the staff was to facilitate sales and C.G. was the primary sales engine. This sales dispute - if it was a dispute at all - would not likely have caused the kind of abuse which C.G. directed at the Complainant.

In summary, under subsection 19(2) of the Code, C.G.'s continuing advances and mistreatment of the Complainant constituted harassment.

Did C.N. take reasonable steps to stop the harassment?

I find that C.N. was advised by his consultant (A.) that there was a harassment issue but did not learn the specific identity of the Complainant in the first instance. The evidence of C.N. and the Complainant was somewhat conflicting. C.N. said the consultant would not mention a name. The Complainant said she authorized release of her name to C.N.. She did not and could not say whether the consultant actually disclosed her name. A. may have decided to let C.N. work it out, even if he did have permission to name the Complainant.

In the interim, according to C.N., he sought and received legal advice and followed it. He spoke to the female staff and encouraged them to come forward. This assertion was not directly denied by the Commission's witnesses. It is true that there was a climate of fear as a result of C.G.'s tirades and his perceived closeness with C.N.. The Respondent is ultimately responsible for such a climate as part of his obligation to prevent harassment. However, the significance of the Respondent's initial response is lessened since only a few days later, the Complainant herself approached C.N. and made the full disclosure personally.

On the evidence regarding the period prior to the Complainant's disclosure directly to C.N., I am unable to find that C.N. did know or should have known, from his own observations, that C.G.

was mistreating the Complainant at work. It may have been plain to see when it was happening, but C.N. was often away from the store. He had two other locations to operate and was obviously struggling to manage the business. I accept his statement that he was unaware of the degree to which staff members felt intimidated by C.G. and therefore would be unlikely to come forward with complaints.

I would not be prepared to say that C.N.'s *initial* response after hearing from the Complainant personally was unreasonable. He was about to leave on a family vacation when the Complainant informed him about the alleged harassment. The Commission said that he should have cancelled the trip and attended to the allegation. In my view, that was not a fair demand to make of a small business person, especially when C.N. did take a number of reasonable steps on an interim basis. He expressed support for the Complainant and condemned the behaviour alleged against C.G. He offered counselling, which was declined. He offered a transfer downtown when the Complainant said she was apprehensive about being alone in the store with C.G. When that was declined, he put in place a staffing pattern to ensure another staff member was in the store with the Complainant and C.G.. He arranged for the Complainant to have direct phone contact while he was away. He claimed he arranged for a business associate to check on the store, although I recognize that this was never independently verified in the evidence. While on vacation, he wrote and arranged for distribution of a new personnel policy.

C.N. argued that he did everything he could to respond under the circumstances. In my view, even though the response was less than perfect, it was an acceptable set of measures. It met the spirit of the Amway standard, at least as an interim measure. In my view, the principal deficiency was C.N.'s failure to initiate a formal and professional investigation of the harassment allegation, such that C.G. would have been confronted in a timely fashion and employees would have been properly cautioned and protected. This would have been the preferred course of action but I am unable to say that it was legally required. C.N. was clearly aware of his responsibility to safeguard the Complainant's interests in the interim period and he did take steps.

C.N. was the business owner and was entitled to the view that he should be present during the investigation. He was within his rights to carry out the investigation himself, though one who

takes on such a task does so at his own peril. In the end, the test is a test of reasonableness, and I do not find that C.N. acted unreasonably at this stage.

Once C.N. was back from his trip, he began to deal with the problem, but he focused on "forensic" analysis and delayed confronting C.G., the accused harasser. This was a serious failing. I have considered the fact that C.N. quickly located the text messages and was then perplexed about the Complainant's behaviour. As I have found earlier in these reasons, the messages created a reasonable basis for wondering whether the Complainant's full story was true. However, it is inherent in the process of untangling harassment complaints that there will be twists and turns along the investigative path. In this case, C.N. became enmeshed in sales and financial issues. He lacked professional expertise as an investigator and he was too close to the subject in his role as owner. He lost his focus on the matter at hand - a complaint of sexual harassment in his business. As adjudicators have said repeatedly, employers are duty bound to take this issue seriously. They must act with alacrity once they receive a complaint.

Ultimately, C.N. came to the conclusion that he must choose between the Complainant and C.G.. That fateful decision was ill advised, as discussed further below. I can appreciate C.N.'s basic point that he was given only 4-5 working days following his return before the Complainant forced the issue. He was admittedly sympathetic to the Complainant's situation. But having left her exposed in the workplace while he vacationed for two weeks, he ought to have moved rapidly upon his return to deal decisively with the issue. At a minimum, it was time to read the riot act to C.G. and order him to cease any mistreatment and advances. Actual culpability could have been sorted out in due course.

I therefore find that the Commission has established liability under subsection 19(1)(b) of the Code for the period June 17 to June 22, 1999, though not before.

Dismissal of the Complainant

While some aspects of this case were difficult to determine, I have no hesitation in finding that the Complainant was terminated primarily because she advanced a complaint of harassment. I

reject C.N.'s evidence and argument that he made the decision for a variety of reasons, including infractions such as lateness and improper attire at work. The Complainant may well have been guilty of these offences but none of them were documented at the time. As suggested by the Commission, these grounds were merely a pretext. C.N.'s notion that the Complainant had already quit was unreasonable and unfounded. He ought to have seen these comments by the Complainant as a sign of her stress over workplace problems, a cry for help. The "quit" would likely have amounted to a constructive dismissal in any event.

C.N. referred several times to "insubordination" as a ground for termination, but in reality, he was discharging the Complainant because she insisted on action and was prepared to file a formal complaint with a human rights commission or a court. In his testimony, C.N. was forthright in saying that he took this as a threat and decided that he would not allow the Complainant to tell him how to run his business. Such candour is rare among witnesses and may be related to the fact that the Respondent appeared without legal representation. Nevertheless, dismissal of an employee because she is pursuing her legal rights under the Code is simply unacceptable.

I find that termination of the Complainant was a breach of the Respondent's duty under subsection 19(1)(b) of the Code.

Remedial orders

The Complainant is entitled to her lost wages in the claimed amount of \$3,250.

While I have not sustained the full scope of the complaint against the Respondent, the Complainant did suffer mistreatment at the hands of C.G. for a period of time during which the Respondent ought to have ended the harassment. This was an affront to the Complainant's dignity and self-respect, and the injury was compounded when C.N. dismissed her after seeming to promise action against the perpetrator. Under all the circumstances, I order the Respondent to pay damages under subsection 43(2)(C) in the amount of \$1,500.

Jurisdiction is reserved to deal with any issues which may arise from the implementation or interpretation of this decision.

DATED at the City of Winnipeg this 19th day of August, 2005.

ARNE PELTZ, Adjudicator