

***Mancusi v. 5811725 Manitoba Inc. o/a Grace Cafe City Hall***  
**- November 2012**

[COMPLETE DECISION PDF](#)

SUMMARY

The respondent made an application, pursuant to section 37.1 of *The Human Rights Code* that the adjudication of this complaint be terminated on the basis that the it had made a reasonable settlement offer which the complainant has rejected.

The respondent offered the complainant an all-inclusive amount of \$4,000, which it argued was more than reasonable and ought to be sufficient to settle the complaint. The respondent argued that if the complainant is unwilling to accept that amount, the complaint ought to be dismissed pursuant to section 37.1.

In a joint submission, the Commission and the complainant argued that the offer was not reasonable and asked that the complaint proceed to adjudication as scheduled.

The Adjudicator set out the background information or facts contained in the materials submitted to her by counsel, but clarified that she was not making any findings of fact or findings on the merits of the complaint. She noted that the complaint was one of sexual harassment by the respondent owner against the complainant, who was only employed for approximately five months by the respondent. She confirmed that in deciding whether the Respondent's settlement offer is reasonable on this application, she had to proceed on the basis that the allegations as set forth in the complaint are proven.

The Adjudicator noted that the concept of reasonableness is different from that of appropriateness confirmed that the offer must therefore be assessed in the context of what the complainant could reasonably be expected to achieve before a board of adjudication, based on the allegations and any admissions which have been made, and the available remedies. She considered the range of general damages awards in Manitoba and what compensation, if any, might reasonably be awarded to the complainant for financial losses sustained, expenses incurred or benefits lost. She noted that because the allegations of the complainant suggested that the complainant was effectively forced out of her employment or constructively dismissed, as opposed to having quit, the respondent would reasonable be expected to put the complainant in the position she would have been in if the discrimination had not occurred, which differs from the remedy of reasonable notice or wages in lieu of notice in a claim for wrongful dismissal at common law, which depends on the length of time that an employee was employed. The Adjudicator noted that the offer does not contemplate any remedial measures in the public interest such as training or the circulation and posting of a harassment policy, but did not comment in detail on this point. The Adjudicator ultimately determined that the respondent's offer did not adequately address the relief which the complainant could reasonably expect to obtain under *The Human Rights Code*.