

BETWEEN:

COLLEEN DANIELS

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

STAN MYRON

Respondent

REASONS FOR DECISION

T.D. 08/01

2001/07/16

PANEL: J. Grant Sinclair, Chairperson

I. INTRODUCTION

[1] Colleen Daniels filed a complaint with the Canadian Human Rights Commission dated November 10, 1994. In her complaint, she alleged that the respondent, Stan Myron, discriminated against her on the grounds of sex by not providing her with a work environment free of harassment, contrary to sections 7 and 14 of the *Canadian Human Rights Act*.

[2] The matter was referred to the Canadian Human Rights Tribunal on January 17, 2001, and the hearing was held in Winnipeg on May 28, 2001.

[3] At the commencement of the hearing, the Tribunal called for appearances. Both the Commission and the

complainant were represented by counsel. The Tribunal also asked whether the respondent, Stan Myron, or anyone appointed to represent him was in attendance at the hearing. There was no response to this question.

[4] The Tribunal adjourned for fifteen minutes and resumed after that time. The Tribunal again requested whether Mr. Myron or if a representative for Mr. Myron was in attendance at the hearing. Again, there was no response.

[5] The Tribunal sent Mr. Myron a letter by registered mail on April 10, 2001 confirming hearing dates established, receipt of which was acknowledged. A Notice of Hearing dated April 24, 2001, was sent by registered mail and an acknowledgement of receipt was signed.

[6] Michael Glynn, Registrar of the Canadian Human Rights Tribunal, spoke to Mr. Myron on May 4, 2001. In that conversation, Mr. Myron confirmed that he had received the documentation sent to him by the Tribunal including the Notice of Hearing. He also advised Mr. Glynn that he would not be appearing at the Tribunal hearing. Accordingly, the Tribunal proceeded with the hearing in his absence.

II. FACTS

A. Colleen Daniels

[7] Ms. Daniels began work as a summer student on August 2, 1994, at the Long Plain Health Centre. The Health Centre is located on the Long Plain First Nation Reserve, about 40 kilometres west of Portage La Prairie, Manitoba. She was hired by and supervised by Mr. Myron, the Health Administrator at the Health Centre. Both Ms. Daniels and Mr. Myron are members of the Long Plain First Nation. Ms. Daniels knew Mr. Myron from the time she was very young. She had been a close friend of his daughter and she visited their family home frequently.

[8] Ms. Daniels had completed the first year of the Bachelor of Arts program at the University of Brandon and planned to return for the second year of the program.

[9] The facts leading to Ms. Daniels' complaint are as follows. On August 18, 1994, Mr. Myron invited her and another summer student, Melanie Assinaboine, to accompany him to Winnipeg that evening so that they could attend an early morning meeting with him. Mr. Myron would often ask the summer students to accompany him to meetings and they would take minutes and do other clerical duties. It takes about one and one-half hours to go from the Long Plain Reserve to Winnipeg.

[10] Ms. Assinaboine was not able to make the meeting. Ms. Daniels told Mr. Myron that she was not free to leave until late that evening and that it would be better if he made the trip alone. Mr. Myron, however said that he would wait until she was ready to leave.

[11] Mr. Myron picked up Ms. Daniels at about 9:30 p.m. They drove to Winnipeg and arrived at the hotel where Mr. Myron had arranged accommodation. It turned out that Mr. Myron booked only one room with two double beds. Ms. Daniels understood that she would have her own room and the reason for the overnight stay was that the meeting was to be the next morning, some distance beyond Winnipeg.

[12] Ms. Daniels accompanied Mr. Myron to the room. Ms. Daniels testified that at that point she wanted to leave, but she had never been to Winnipeg before by herself, did not know anybody there and did not have any money with her. She was stuck and there was nothing that she could do.

[13] Mr. Myron offered to buy her a drink but she had refused. Nonetheless, Mr. Myron went downstairs and purchased two, twelve packs of beer. Ms. Daniels said that she drank one beer to be polite and Mr. Myron drank about eight beers.

[14] At around midnight, Ms. Daniels told Mr. Myron that she wanted to go to sleep. Mr. Myron laid down on the bed beside her and told her that he wanted to be with her and put his arms around her. Ms. Daniels tried to rebuff him by turning her back to him and covering herself with her arms. Mr. Myron kept asking her to turn around to be with him. Ms. Daniels repeatedly told him no and asked him why he was behaving like this because it wasn't like him.

[15] Finally, Mr. Myron moved over to his own bed and insisted that Ms. Daniels join him there. She again refused and told him that he should go to sleep. Eventually he passed out.

[16] Ms. Daniels slept very little that night. She was very agitated and upset and got up at about 5:30 in the morning and watched television until 9:00 or 9:30.

[17] Ms. Daniels' reaction that evening was that she was somewhat confused. Initially, she thought that she may have done something that had encouraged Mr. Myron to act this way. On reflection however, she rejected that conclusion and believed that Mr. Myron took advantage of her because she trusted him.

[18] The next morning after Mr. Myron got up, they went to the offices of the Assembly of Manitoba Chiefs. There was only one person in the office at the time. Mr. Myron went into the office leaving her standing outside. When he came out he told Ms. Daniels that the meeting had been cancelled.

[19] Mr. Myron then drove Ms. Daniels to the bus depot and told her that she could have the rest of the day off. He also told her that she was not to mention this episode to the other summer students.

[20] Ms. Daniels did not go back to work at the Health Centre. For the remainder of the summer, she worked at the Band Office on the Long Plain Reserve. She returned to Brandon University in September 1994.

[21] Ms. Daniels' evidence was that she was significantly affected by this experience. She didn't want to be around people, she didn't trust anybody. She had trusted Mr. Myron but the way he had treated her was not right. She began drinking quite heavily and associating with like-minded people.

[22] Academically, her performance was very poor and significantly below that of the previous year. Her university transcripts show that, in the 1994-1995 session, Ms. Daniels failed one course, got very low marks in two other courses, and voluntarily withdrew from another course because she was failing.

[23] Ms. Daniels rarely attended classes, whereas in the previous year she had never missed a class. She didn't want to go to class she said because she didn't trust anybody, was very embarrassed about what had happened to her and didn't want to be around people.

[24] Eventually Ms. Daniels consulted with Dr. Arthur Blue, a psychologist. She saw Dr. Blue on four occasions, April 13, 1995, April 21, 1995, May 18, 1995 and May 26, 1995. In his medical assessment, Dr. Blue described Ms. Daniels as suffering from post-traumatic stress disorder, feelings of uncertainty about social life, denial of the sexual harassment episode, loss of basic trust in others and feelings of shame and guilt. Ms. Daniels reported that it was very difficult for her to come to the appointment to discuss the event with Dr. Blue. Such avoidance is not uncommon with trauma.

[25] Dr. Blue concluded that the event was a very frightening experience for Ms. Daniels, but she has come to understand why she reacted with withdrawal and isolation and has made excellent progress. There is little reason to expect that she would not make a complete recovery.

[26] In April 1995, Ms. Daniels moved to Winnipeg and enrolled at the University of Winnipeg. Her academic performance improved considerably and she obtained her Bachelor of Arts degree in 2000. She now works at the Dakota Ojibway Community Future Developments Corporation as an economic development officer, youth intern, at the Corporation's offices in Winnipeg.

[27] By way of remedy, the Commission and Ms. Daniels are seeking an apology from Mr. Myron, the maximum compensation for hurt feelings, reimbursement for legal costs, \$480 for lost wages, and an order that Mr. Myron attend a training program dealing with harassment in the workplace.

III. DECISION

[28] The burden of proof is on the Commission and Ms. Daniels to establish a *prima facie* case of discrimination. A *prima facie* case is one which covers the allegations made and, which, if believed is complete and sufficient to justify a verdict in favour of the complainant in the absence of an answer from the respondent.⁽¹⁾ The standard of proof in discrimination cases is the ordinary civil standard of the balance of probabilities.

[29] Section 7 of the *Act* makes it a discriminatory practice to differentiate adversely in relation to an employee on a prohibited ground of discrimination. Section 14 makes it a discriminatory practice in matters related to employment to harass an individual on a prohibited ground of discrimination. Section 14(2) of the *Act* deems sexual harassment a prohibited ground of discrimination for the purpose of section 14(1).

[30] The Commission referred the Tribunal to the leading case in the area of sexual harassment, *Janzen v. Platy Entreprises*,⁽²⁾ a decision of the Supreme Court of Canada. In that case, the Supreme Court characterized sexual harassment in the workplace as being unwelcome conduct of a sexual nature that adversely affects the work environment or leads to adverse job related consequences for the victim of the alleged harassment.

[31] In *Canada (Human Rights Commission) v. Canada (Armed Forces)*,⁽³⁾ the Federal Court elaborated upon the content of sexual harassment as being a demeaning practice in the workplace that has a profound effect on the dignity of the employee affected by such actions. It goes to the self-respect and dignity of the person affected both as an employee and as a human being. Sexual harassment includes unwelcome conduct which is sexual in nature and can reasonably be seen as creating a negative psychological and emotional work environment.

[32] In this case, Ms. Daniels was 20 years old, Mr. Myron in his forties. She trusted and had a great deal of respect for him.

[33] He invited her to attend a meeting away from home in Winnipeg, which she had never visited alone. This required an overnight stay at a hotel and, it appears that in fact, no meeting was scheduled. A fair inference from the evidence is that Mr. Myron intended to involve Ms. Daniels in some form of sexual activity with him.

[34] I have concluded that the conduct and actions of Mr. Myron amounted to a contravention of both section 7 and section 14 of the *Act*. By engaging in the actions that he did, Mr. Myron differentiated adversely vis-à-vis Ms. Daniels in the course of her employment. I have also concluded that Mr. Myron's actions amounted to sexual harassment as defined by the courts, again in the course of Ms. Daniels' employment.

[35] Accordingly, both the Commission and Ms. Daniels, have made out a *prima facie* case of discrimination which has not been rebutted by Mr. Myron.

IV. REMEDIES

[36] The evidence of both Ms. Daniels and Dr. Blue is that Ms. Daniels suffered significant emotional trauma. She was unable to relate to people. She was very withdrawn. She had feelings of uncertainty about social life, loss of basic trust in others and feelings of shame and guilt. She limited her relationships to a minimum, and she began drinking heavily.

[37] As a result she lost her academic year and the situation was only resolved in a positive way after she received counselling from Dr. Blue and moved to Winnipeg when her life stabilized. However, she continues to be affected negatively by recollection of the event.

[38] In my opinion, having regard to all of these facts, I order the following remedies:

(a) Mr. Myron shall provide Ms. Daniels with a letter of apology in the form and content attached to this decision as Schedule A within one month of receiving this decision;

(b) Mr. Myron shall pay to Ms. Daniels \$5,000 for hurt feelings and lost of self-respect experienced by Ms. Daniels as a result of his actions. This maximum amount is justified considering the violation of dignity, the trauma and the humiliation experienced by Ms. Daniels;

(c) Mr. Myron shall pay to Ms. Daniels the sum of \$480 for lost wages, calculated at the rate of twelve dollars per hour for five, eight hour days, being the time Ms. Daniels was off work to research and prepare for this hearing and meet with her counsel;

(d) As to reimbursement for legal costs, there are conflicting Federal Court decisions as to the jurisdiction of the Tribunal to award legal costs.⁽⁴⁾

[39] In *Thwaites*, the Federal Court concluded that there was no reason to restrict the ordinary meaning of the expression "expenses incurred" found in section 53(2)(c) of the *Act* and the Court concluded that legal costs are included in that section.

[40] The Court came to the opposite conclusion in the *Green* case. The Court reasoned that if Parliament had intended to give the Tribunal the power to award legal costs, it would have specifically provided so in that subsection. As there is no reference to legal costs, the result must be that the Tribunal lacks this power.

[41] In *Nkwazi*, the Tribunal, in dealing with this issue preferred the reasoning in *Thwaites*, and decided that the ordinary meaning of "expenses incurred" included legal expenses and there was nothing in the context of that section that requires a different interpretation.

[42] I agree with the conclusion reached by the Tribunal in *Nkwazi* and have concluded that this Tribunal does have the legal authority to award costs. I order that Mr. Myron reimburse Ms. Daniels for legal costs in the amount of \$2,559.64.

[43] Interest shall be payable on both the lost wages and on the legal costs at the rate of five per cent/annum from the date of this decision.

[44] Both the Commission and the complainant have asked that Mr. Myron take sensitivity or awareness training with respect to sexual harassment in the workplace. In this respect, I order Mr. Myron to attend a one-day program in Winnipeg designed or directed to providing an understanding of and sensitivity to harassment issues in the workplace. Mr. Myron shall attend this program at his own expense, and if available, within four months from the date of this decision. The program shall be chosen in consultation with and with the approval of the Commission. If a program is not offered within that time period, then within a time approved by the Commission.

J. Grant Sinclair, Chairperson

OTTAWA, Ontario

July 16, 2001

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T544/0200

STYLE OF CAUSE: Colleen Daniels v. Stan Myron

PLACE OF HEARING: Winnipeg, Manitoba

(May 28, 2001)

DECISION OF THE TRIBUNAL DATED: July 16, 2001

APPEARANCES:

Catherine Dunn For Colleen Daniels

Philippe Dufresne For the Canadian Human Rights Commission

1. Ontario Human Rights Commission and O'Malley v. Simpsons Sears Limited, [1985] S.C.R. 536, 558
2. [1989] 1 S.C.R. 1252
3. [1999] 3 F.C. 653
4. See Canada (Attorney General) v. Thwaites, (1994) 21 C.H.R.R. D/224; Canada (Attorney General) v. Green, [2000] 4 F.C. 629; Nkwazi v. Correctional Services of Canada, Ruling No.3, 2001/03/29.