

File Name: In the matter of Tara Leigh Hazelwood against Mondart holdings Limited (Formerly known as Taylor Ford Lincoln Sales Limited)

Date of Decision: March 30, 2005

Area(s): Employment

Ground(s): Sex (pregnancy)

Complaint: In April 2000, Tara Leigh Hazelwood (now known as Ms. Eagles) was hired a salesperson by Taylor Ford. In May 2000, Ms. Eagles told the Sales Manager that she was pregnant and, upon the baby's birth, would like to take maternity leave of approximately 2 months. Taylor Ford fired her, telling her she was unable to meet the "time commitment" of the job. After her baby was born and she had been home for a few months, she asked for her job back and was told to go through the normal application process. She did this but the job was given to another application. She alleged that was fired (and not rehired) because of her pregnancy.

Decision: Ms. Eagles was dismissed because of discrimination.

Probationary Period

An employer cannot "contract out" of the *Human Rights Act* by using an employee's probationary status to justify firing them for a reason covered by the Act (in this case, sex/pregnancy).

Accommodation to the Point of Undue Hardship

Employers have a duty to accommodate pregnant employees to the point of undue hardship. The employer would need to show that continuing to employ Ms. Eagles, and re-employing her on her return from maternity leave, would cause them undue hardship.

The Board accepted the employer's evidence that they tried unsuccessfully three times to reoffer Ms. Eagles her job in September, 2000 (Ms. Eagles said she was not contacted) and went on to hire another candidate. However, the Board found that they did not accommodate Ms. Eagles to the point of undue hardship in allowing a maternity leave, and did not try hard enough to rehire her.

Remedy: The board awarded the following remedies:

- **General damages (emotional harm):** \$3,000
- **Special damages (lost wages):** \$2,150 plus interest

2005-NSHRC-3

IN THE MATTER OF: The Nova Scotia Human Rights Act

IN THE MATTER OF: A complaint of Tara Leigh (Eagles) Hazelwood against Mondart Holdings Limited (Formerly known as Taylor Ford Lincoln Sales Limited)

HEARD BEFORE: Board of Inquiry: Honourable Donald H. Oliver, Q.C.

DATE HEARD: September 13, 2004
January 24-25, 2005

DECISION: March 30, 2005

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[1]This matter first came on for hearing on the 13th of September, 2004, and was adjourned to Monday, the 24th day of January, 2005, at 9:30 a.m.

[2]Before the calling of evidence, there were two conference calls for pre-hearing conferences, the first of which was Wednesday, the 30th of June, 2004, where there was agreement on preliminary matters, such as changing the style and cause of the action and comment about a potential witness Tyler Robbins.

INTRODUCTION

[3]This is a claim of discrimination on grounds of “sex”. The complainant, Tara Leigh (Eagles) Hazelwood herein after “Eagles” was employed as a salesperson at what was then called Taylor Ford Lincoln Sales Limited (now Mondart Holdings Limited) and her

employment was terminated. She makes claim under the Nova Scotia Human Rights Act, section 5 (1)

No person shall in respect of (d) employment
Discriminate against an individual or class of individuals on account of
(m) sex.

“Sex” is specifically defined in the Act as follows: 3 in this Act
(n) “sex” includes pregnancy, possibility of pregnancy
and pregnancy-related illness.

[4]Discrimination is defined at section 4 of the Act as follows:

“For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic referred to in clauses (h) to (v) of sub-section (1) of section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.”

FUNCTION OF BOARD

[5]In this case, there are issues of fact, credibility, law, damages and costs. There is some conflicting evidence from witnesses who testified and these differences will have to be resolved by the Board of Inquiry. Before reviewing the evidence, it would be useful, therefore, to comment on the role and function of a Board of Inquiry in relation to issues of credibility and witness assessment.

[6]Counsel for the Human Rights Commission, Mr. Michael J. Wood, Q.C., of Burchell Hayman Parish, Barristers & Solicitors, said the following of witnesses’ credibility in his pre-hearing submission:

“It is not uncommon at a Board of Inquiry hearing for parties and witnesses to present different evidence in relation to the complaint. Assessment of witness credibility is essential in determining whether a complaint has been made out. It is the Board of Inquiry’s function to determine witness credibility and to accept or reject portions of the evidence presented by a witness on the stand.

One of the most frequently-cited passages concerning the assessment witness credibility comes from the British Columbia Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at paragraphs 8 – 11:

...[T]he validity of evidence does not depend in the final analysis on the circumstance that it remains uncontradicted, or the circumstance that the judge may have remarked favourably or unfavourably on the evidence or the demeanor of a witness; these things are elements in testing the evidence but they are subject to whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time; see *In re Brethour v. Law Society of B.C.* (1951), 1 W.W.R. (NS) 34, at 38-39.

If a trial judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, see *Raymond v. Bosanquet Tp.* (1919), 59 S.C.R 452, at 460. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial judge and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd person adept in the half-lie and of long and successful experience in combining skilful exaggeration with partial suppression of the truth. Again a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial judge to say "I believe him because I judge him to be telling the truth," is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a court of appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of other, but is based on all the elements by which it can be tested in the particular case.

[7]Additional factors to be considered in assessing witness credibility are listed by the tribunal in *Hadzic v. Pizza Hut Canada* (1999), 37 C.H.R.R. D/252 at para. 36:

Others factors that must be weighed include the witnesses' motives, their powers of observation, their relationship to the parties, the internal consistency of their evidence, and inconsistencies and contradictions in relation to other witnesses' evidence."

[8]In this case, as a Board of Inquiry, I was blessed by having three very experienced counsel present evidence by both direct and cross-examination and by the use of exhibits and other documentary evidence. Their professionalism and experience aided immeasurably in the proceedings.

[9]I must now decide whether the evidence is consistent with the probabilities based upon the sincerity of the witnesses and I must make a decision about the truthfulness of their assertions. And most of all, I am mindful that I must bear in mind witnesses' motives, their powers of observations and the relationship to the parties to one another. And in the end, my conclusions will be based on a preponderance of probabilities.

[10]I will now deal with the facts.

THE FACTS

[11]Tara Leigh Hazelwood (Eagles) resides at 119 Etter Road in Mount Uniacke, Nova Scotia and is married with two children. She has a grade 12 education. She had worked at other jobs such as Smith Books and she circulated her resume to other places seeking full-time employment.

[12]By letter dated the 28th of March, 2000, she wrote Taylor Lincoln Mercury enclosing her resume. She received a response from Tyler Robbins, a manager, indicating he noticed that she had some previous sales experience and wanted to know if she would be interested in a sales position with Taylor Lincoln Ford Mercury. As she said:

“I actually jumped at the opportunity. It was always something - - it wasn't something that I had ever really thought that I would enjoy doing, but it was something that at that point I actually was interested in, so I said that, yes, I would be interested and he scheduled a date and time for me to come in for a first interview.”

[13]In addition to an oral interview, there were several written tests that were conducted.

[14]On cross-examination, Eagles was asked about the response to the question whether she was prepared and available to work 50 to 60 hours a week. She answered affirmatively.

[15]She was also asked why she responded as she did to the written question “Is there anything we may discover that we should discuss at this time?” Counsel for the defendant said “You never thought to say, well, I'm pregnant and I will be leaving again in six weeks?” The complainant answered “No, that's not the interpretation I took on that question.” She said the reason for that response is that the question also referred to a complete background check and she felt that related to a possibility of any previous criminal behavior, not whether she was pregnant.

[16]At the time she sent in her resume to Taylor Ford on the 31st of March 2000, she was more than six months pregnant. The due date for the birth of child Madisyn was the 22nd of June 2000. She did not recall whether there was any discussion with Mr. Robbins about either her pregnancy or whether she was pregnant.

Q. Do you recall was there any discussion with Mr. Robbins about your pregnancy or whether you were pregnant?

A. No. There was no discussion at that time like in the interview.

Q. Did the topic of your pregnancy or whether you were pregnant ever come up in any discussions between you and anybody with Taylor Ford prior to your being hired?

A. Prior to being hired? No.

[17]She later had another interview for the same job with Jim Batt, who was a used car manager at the time, and the interview was held in the same cubicle on the premises where Mr. Tyler Robbins interviewed her. There is no evidence they discussed the pregnancy. The behavioral assessment was completed and the next thing she remembers is receiving a call from Mr. Tyler Robbins offering her a job as a Sales and Leasing Consultant in the early part of April 2000. She was being hired as a permanent, full-time Sales and Leasing Consultant with Taylor Ford Lincoln. She was paid a guaranteed commission of \$500 every two weeks.

[18]The hours of work varied from week to week. One week, it would be from 9 to 5 Monday, 11-9 Tuesday, 9-5 Wednesday, 11-9 Thursday, 9-5 Friday and there were sales meetings on Tuesday morning at 8:00. Attendance was mandatory.

[19]There were no benefits with the job until after she had been employed for 90 days and the probation period had ended.

[20]She officially began work on the 24th of April, In the time she was there, she said In 2000. she sold and delivered six cars and had a 7th terms of feedback from others at pending. Taylor Ford Lincoln, she said:

A. I do remember on a few occasions hearing from Tyler Robbins and Mike LaCroix that I was doing a great job and - -

Q. Okay. In that - - in the period of your employment with Taylor Ford Lincoln, did you ever have any formal evaluation of your job performance?

A. No.

Q. Other than the feedback that you have mentioned from Mr. Robbins and Mr. LaCroix, who's Mr. LaCroix?

A. Mr. LaCroix would be - - he was the general manager at the time.

[21]Ms. Hazelwood had a sales partner, Mr. Chad Creaser.

[22]She was adamant that there was no criticism about the nature of her work performance or hours of attendance. Her evidence indicates the following:

Q. So my understanding of your evidence to this point is everything was pretty positive. Did you ever get any negative feedback from any of your supervisors?

A. No.

Q. Did you ever get any negative feedback from Mr. Taylor?

A. No.

Q. Mr. LaCroix?

A. No.

Q. Mr. Robbins?

A. No.

Q. Mr. Batt?

A. No. More - - if there was anything, it was more or less constructional criticism more or less. You know, this is the way you should - - it should be done, but it wasn't a negative feedback. It was more or less, you know, you kind of did it this way. It would work better if you did it this way. It wasn't negative. It was more or less like a helping- -

Q. Okay. So what - - type of thing you're thinking of there, can you indicate what type of thing that you were given guidance upon?

A. Usually sales procedures, you know, get out there as soon as you see somebody on the lot, approach them right away, stick to the guidelines that were taught to you, that you were taught. Be a little more aggressive when it came to closing the deal. Things like that.

Q. Okay. What discussion did you have with anybody with - - discussion did you have with Mr. Robbins about meeting the requirements so far as hours and attendance at work?

A. I was never advised negatively towards my attendance. Tyler Robbins never mentioned anything negative towards my attendance or my ability to be there. I was there everyday.

Q. Okay. What were you ever told about your hours and attending at work by Mr. LaCroix?

A. No.

Q. "No" meaning it never came up?

A. Never came up.

Q. Okay. Did anybody else at Taylor Ford Lincoln ever discuss that topic with you?

A. No. There was never a discussion and it's something I would have remembered. I tend to be a person who prides myself on being on time and somewhere when I'm supposed to be there.

Q. Did you miss time from work when you were working?

A. No.

Q. Okay. Were you late?

A. No.

[23]She was terminated from her employment on May, the 29th, 2000, having began April 24, 2000.

[24]She says there was little talk about her pregnancy, but she originally told her sales partner Chad Creaser she was pregnant. She believes it was around the 11th of May. In her original letter to Francine Comeau of the Human Rights Commission, she said the following:

"I started working with Taylor Ford as a Sales and Leasing Consultant on April 24, 2000. At that time my employer and my coworkers did not know that I was pregnant. It wasn't until two weeks after on May 11, 2000 that I asked my Sales Manager, Tyler Robbins, for a meeting, and in that meeting, told him that I was pregnant. I told him that the baby was due on June 22, 2000 and that I planned to work right up until the baby was due. I told him that I was a single Mom and needed to work to support my new baby and myself. He asked me how much leave I planned to take and told me that I was not entitled to any maternity benefits through the company because I hadn't been there long enough. Tyler figured that first babies are usually late and that I would be able to work until at least the 25th of June. He asked me personally, how I was and how the baby was doing. Tyler then asked me if anybody else knew that I was pregnant. I told him that I had told my sales partner, Chad Creaser, earlier that day. Tyler then told me that I was to keep this between him and I, and for me to ask Chad to do the same. At the end of the meeting I told him that I would let him know, the next day, when I

planned to return to work after the baby. I left the meeting with the sense that everything was all right. The next day I let Tyler know that I planned to return to work on September 1, 2000. He told me that that would be all right.”

[25]At the hearing, she gave evidence that she approached Tyler Robbins for a private meeting. It took place at 5:00 on the 11th. She told him she was pregnant, at that point, about eight months. She testified that:

A. And it was then that I had told him that I was pregnant. He asked how far along I was and I told him that I, at that point, was eight months. He had asked me in the - - in that meeting when I planned on returning to work as well as expressing concern, you know, personally like I remember him asking how I was, how the baby was.

Upon discussion of when I would return to work and when I would leave, I do remember him saying something like to - - along the lines of how first babies are usually late, so we could schedule you here until approximately the 25th and then had asked me how much time I planned on taking off. At that point, I told him I didn't know. I would have to think about it and I would let him know the next day.

[26]She testified that Robbins asked her not to tell anybody about the condition. Tyler Robbins did not respond to a subpoena on two occasions and did not present any oral evidence. He did not appear to contradict or deny any of these allegations.

[27]In her words:

A. He asked who knew and asked me not - - to keep it between him and I and to ask - - because I had told him I had told Mr. Creaser that morning. He said to also ask Chad to do the same.

Q. To not tell anybody.

A. To not tell anyone.

Q. Okay. Did Mr. Robbins give you any explanation of why he wanted you - -

A. No.

Q. - - to keep this a secret?

A. No.

Q. Was there any discussion about how long you would be continuing to work?

A. He had said that first babies are usually late, so I do remember him saying that he could probably count on me to be there until about the 25th of June, 2000.

Q. Okay. Did you say anything about that?

A. I had said that - - I had told him my due date was the 22nd and having it being my first baby I didn't know whether or not - - what the circumstances were. Like I wasn't sure if first babies were late. I was completely new to this. And I had said I will work right up to the time

that I can't, right up to the time I go into labour. I needed to work. I was a single mother and I had expressed that to him in the meeting. I was a single mother and I needed to work to support myself and my baby.

Q. Okay. And you recall telling him that in that meeting?

A. Yes, I do.

[28]She told him she wanted to remain off until the 1st of September, 2000.

[29]On the 29th of May, 2000, at 5:00, she had finished delivering a vehicle and she was asked by Tyler Robbins to go upstairs and have a meeting with him. Present in the room was another female employee, Leslie Ward. Eagles says she was told it had nothing to do with her or her job performance but "because of the situation, he was going to have to make today my last day."

[30]She was told to turn over all her pending sales files to her partner, Chad Creaser. The meeting lasted no more than ten minutes. She was shocked and stated that there was no reason given for her dismissal. She testified the baby was born the 22nd of June and she was ready to return to work on September 1.

[31]Some time passed before she received her record of employment. She proceeded to Taylor Ford Lincoln, it had not been prepared. She met with Leslie Ward who filled it out on the 7th of July. The reasons for issuing the record of employment are marked "M". (M means dismissed)

[32]Eagles was asked what "M" stands for at the hearing, she said:

A. I do, and it was something I won't forget because Leslie Ward actually turned to me and asked what I wanted put on my record of employment and I told her to put dismissed and that's what "M" means, is dismissed.

Q. And why was it you thought that dismissal was the appropriate thing to put on your record of employment?

A. Because I was dismissed.

Q. Okay. And I had asked you before about whether any - - at the time of the termination meeting on May 29th, whether you were given the reason for dismissal and you indicated no. At any time up until getting this record of employment or when you got the record of employment, did you receive any information from Taylor Ford Lincoln as to the reason for your dismissal?

[33]The question is "Should the complainant, Tara Hazelwood, have disclosed earlier that she was pregnant and expecting a child in June and seeking maternity leave." When this was put on cross-examination, the exchange went this way:

Q. Do you not think that you were deceptive when you did - - when you answered those questions and did not refer to your pregnancy?

A. It's my understanding that I didn't have to disclose that I was pregnant because that then would give them - - it could possibly give them a basis not to hire me.

Q. Okay. So you didn't disclose that you were pregnant in order that they'd not be in a position not to hire you on that basis.

[34]In cross-examination, it was asked:

Q. I see. But I would suggest, not only were you not really truthful; indeed, evasive on their initial interview, you weren't truthful when you filled out your application for employment, were you?

A. I noticed that, as well, and that was a mistake on my part. It wasn't untruthful. It wasn't done purposely.

[35]Later, it was put this way:

Q. Well, I'm going to suggest to you what you did was that you were devious in terms of not advising the employer as to your situation and availability for work. You simply were. Correct?

A. No.

A. I was never asked if I was pregnant. I was never asked anything along those lines; therefore - -

Q. You were untruthful - -

A. - - the absence - -

Q. - - in your application because you indicated you had a qualification you did not.

A. That was a mistake, not an untruth.

[36]On the 27th of December, 2000, she filed a formal complaint to the Human Rights Commission that she had been discriminated on on the basis of sex, namely her pregnancy. There was a great deal of conflicting evidence about whether she was invited to come back to work. She gave evidence that she wrote a letter to Taylor Ford Lincoln stating that she was ready to come back to work and that she was reapplying for the same position. She indicated she was ready for immediate re-employment as a full-time Sales Associate and at the top of the letter, it was written "Received September 22, 2000". It was requested that she go through the interview process once again. She was requested to contact Tyler Robbins to set up an interview and she did. She completed the application for employment, behavioral assessment at an interview with Tyler Robbins and Jim Batt.

[37]She was subsequently contacted by the new Sales Manager, Ken Gerrard, because Mr. Tyler Robbins had left the company. She gave evidence that the interview with Mr. Gerrard went extremely well. It took place November 6th, 2000. At the end of the interview, Mr. Gerrard said he would phone her. Her evidence was that she heard nothing further. Mr. Gerrard, on the other hand gave evidence and said that he phoned

three times. This evidence will be explored in detail later in terms of mitigation and damages.

[38]She was a probationary employee and was not entitled to benefits. She made a demand that she wanted her job back or \$20,000. But when adding interest plus costs, it totaled \$42,000. On cross-examination, Counsel asked her whether that was fair. She stated:

A. Yes, I do.

[39]During the second interview, in the rehiring process, defendants' hand-written notes made at the time state:

“Seems to be going through the motions. Interviewed very poorly. Seemed very uninterested and somewhat exasperated by even coming in, in her mind. She was 45 minutes late for the interview, as well. She had 12:00 noon written down.”

[40]But she said: “No. I didn't feel that I interviewed poorly.”

[41]There is a conflict in the evidence about when and where telephone calls were made to Eagles. Her evidence is “I didn't receive any phone calls.” The Defense pointed out that she started working for Darmouth Dodge on October the 23rd, didn't finish there until the end of November, but Eagles said that her telephone at home had an answering machine and there were no messages. The defense argues she would be working and not home to answer the phone for a job. There was no preponderance of evidence that she was home to receive the messages.

[42]Eagles' mother, Linda Lee Eagles, of 1438 Beaverbank Road in Nova Scotia, a 37-year employee of the Federal Government gave evidence that her daughter was very, very upset and totally surprised at being fired for her pregnancy.

[43]She gave evidence (somewhat self-serving) and to some extent opinion evidence, which must be discounted to the effect that Tara had “always been very outgoing and positive in her thinking. And the whole episode of being let go was so surprising - -it just sort of took her feet out from underneath her in a way”.

[44]She did not give evidence about the three telephone calls from Mr. Gerrard.

[45]Michael LaCroix was called for Eagles. He is now General Manager of Valley Ford and was formerly General Manager for the Taylor Ford Lincoln agency in Halifax. LaCroix remembers Tyler Robbins scoring Tara “fairly high” as far as whether she would be a good candidate for commission salesperson. He remembered him “very much recommending her”.

[46]He said she seemed personable with customers, pleasant and professional.

However, LaCroix gave evidence that Robbins had reported problems with Eagles' performance.

A. Not being able to work some evenings of her shift, that type of thing. But later, he said:

Q. And do you know how often that happened, how often she was not able to work a particular evening?

A. No. He only - - there was only the one time that he mentioned it to me that she wasn't able to work in the evening or couple of evenings. I'm not quite sure.

Q. All right.

[47]He did not know whether her missing time had anything to do with her pregnancy. After Robbins reported to LaCroix about Tara's missing time, he recommended to let her go. LaCroix did not disagree with the recommendation.

[48]Again Robbins did not respond to a subpoena to present his own version of events to the Board of Inquiry. I find as a fact that she was not dismissed for "missing time".

[49]Some critical evidence was the following:

A. Well, I asked him what was the problem and why she was missing some time.

Q. Right.

A. And it was in that - - those conversations that I - - that he disclosed to me that he had heard that she - - or that she had told him she was pregnant.

Q. Was it your impression, based on the discussion, that her pregnancy had something to do with her missing time?

A. Could you repeat that, please?

Q. Sorry. Was it your impression, based on this discussion with Mr. Robbins, that her pregnancy had something to do with her missing the time?

A. I'm not quite sure. I can't remember what he was inclining or - -

Q. Who made the decision to let her go?

A. Well, the ultimate decision to hire or fire anyone would have been my boss, Terry Taylor.

[50]In reporting the Eagles case to the owner of the company, Mr. Taylor, Michael LaCroix testified he remembered telling him specifically that Tara had been asked in the interviewing process whether there was "anything that she needed to disclose to us" or anything that might interfere with her being able to do the hours required by a commission salesperson and LaCroix told Taylor what she had told us that there was "nothing interfering with her being able to do the hours required for a salesperson."

[51]The defendant company felt she had been untruthful in her interview, not disclosing something that would interfere with her being able to do the hours required. They testified that they wanted her to disclose that she had a “medical condition”, the medical condition being pregnancy. LaCroix told Taylor that he felt she should have disclosed her pregnancy. He also indicated that they’d like to have her back when she was in a position to do the hours required.

[52]The defendants’ official position for the dismissal is “not being able to do the hours required for a commissioned salesperson”.

[53]LaCroix had never had experience of a salesperson who had been pregnant. It was a new experience for him. LaCroix also testified that there was little if anything in her personal files about her missing time and that she had not received a letter of warning.

[54]Leslie Jennifer Ward, former Office Manager of the defendant, gave evidence she sat in the final meeting in which Eagles was terminated. She found out from Tyler Robbins a couple of days before the meeting that Tara was pregnant and she said:

“I really don’t recall what he said. I remember him telling me, and it was more of a shock factor for me than anything because I didn’t know that she was.”

[55]She said that she didn’t believe there was any concern about her time commitment prior to Tyler Robbins’ finding out she was pregnant. Leslie Ward also gave evidence that Robbins did not tell her anything about any problems about missed time or anything like that.

[56]The preponderance of the evidence seems to point to the conclusion, therefore, that pregnancy was the ground for her termination. Ms. Ward put it this way:

Q. And did he explain what he meant by that term, “she could not commit to the time required”?

A. Yes. Basically if - -

Q. How did he explain it?

A. Well, that’s where the pregnancy does come in, being that with a child there - - and I’m not saying after the birth, I’m saying the time - - Tara had gone to Mr. Robbins, I believe to ask for, like, a sabbatical, a couple of months or so.

Q. Uh-huh.

A. And then to come back.

Q. Right.

A. And he told her - - this is - - how he told this to me was at that time they needed someone in the position and they wanted someone - - they would have to hire someone for that position.

Because she could not commit to the time, he had to let her go, get someone else in that position. And if a position became available after she was done her couple of months at home, then she would certainly be the

one that they would seek to have that position. That's exactly how that was supposed to go.

[57]Her replacement was hired a week after she was dismissed.

[58]In a statement of August 9th, 2000, Leslie Ward said the conversation was short. Tyler said he would have to let her go, and she said she understood.

[59]When asked by the Board of Inquiry, she said the following:

A. Yes, she did.

Q. And she actually used those words.

A. Yes, she did.

Q. And what is it that she said she understood?

A. That she could not commit to the time requirements.

[60]Chad Creaser, her partner, was called to give evidence and said that he could recall Eagles having to leave periodically. He added that it could have been for lunch or could be for anything.

[61]Kendall Dick Gerrard was called by the defense. He is now General Sales Manager with Steele Ford Lincoln, has been in the automobile industry for 20 years and was employed with the defendant at all material times.

[62]He recommended that the company hire Eagles because he felt she had great potential to be a good salesperson. He reported to Mike LaCroix and then to Mr. Taylor with the recommendation. He said that he felt good about her and he was going to hire her, that he made three attempts to phone her, twice with no answer. He said he left a message asking Tara to give him a call back and that it was good news. He said he's absolutely certain that he made those calls but that is denied by Eagles. He testified he phoned three days in a row and when he didn't get her, he moved on and hired another salesperson. Gerrard was clear and unequivocal in his evidence and I accept his evidence that he did in fact make the calls. He did not waiver in cross-examination.

[63]Even though there were two questions he wanted to ask, his evidence was "my intentions were to hire her regardless".

[64]Terrance Taylor is the owner of the defendant company in question, gave evidence that he wanted to hire Eagles. He indicated that her paperwork implied she would be available not only to do the hours on her shift but for the long haul, so there "would be help for us to sell cars over the summer months and well into the future. Then he said: "And all of a sudden, she tells us that she's not going to be available to do this." He said that because the Gerrard recommendation was so high, "he was given permission, if he was satisfied, to proceed and hire her".

Q. Can you tell us about the follow-up?

A. I specifically asked him if he had called and he said he had. And he had left messages and she had not returned the calls.

[65]In cross-examination, he said the following:

“As a matter of fact and let me just interject here because, quite frankly, if Ms. Eagles had of come back to the dealership in August or September and said, I’m ready to go to work, that would have been the end of it.”

[66]Of the pregnancy, Taylor said the following:

“History says that, you know, these days with the medical practices, you know, birth/deaths are bound because they look after themselves and the mother. And the days of working in the field and having your baby and continuing plowing are finished. So we knew that it was going to be short-lived.”

[67]And later, he said:

Q. But the concern about her taking time off over the summer would be there, would it not, if she was six or seven months’ pregnant at the time of her interview?

A. Yes.

Q. And would that have been an impediment to you hiring her?

A. At that time it would have been, because she would not have been able to commit to the time and days there.

Q. So your answer to her at that stage might have been come back in September, or whatever, after you’ve delivered the baby and we’ll talk to you then?

A. Absolutely.

[68]There is preponderance of evidence to suggest Eagles was competent, a good salesperson, a good performer, with no real complaints of missed time from work and, indeed, they wanted her back.

[69]Therefore, the only reason for dismissal was “sex” or “pregnancy”.

CONCLUSIONS

[70]On these facts, I find the defendant discriminated against Eagles on grounds of “sex”. The defendant said because of the “situation” she could not commit the time required. These actions on the part of the defendant had the effect of imposing burdens, obligations and disadvantages on Eagles and had the effect of withholding access to opportunities contrary to the Human Rights Act.

[71]Therefore, I find that a case of discrimination has been made out against the defendant. This is an issue of Human Rights and Equality. This is a matter of Law and Justice. On April 17, 1985, section 15, the Equality provisions of the Canadian Charter of Rights and Freedoms came into effect. In two sub-sections and in approximately 100 words, section 15 outlines the Canadian concept of equality.

[72]The inclusion of equality rights in our Charter was a significant milestone in Canadian History - - one that put us at the forefront of nations committed to safeguarding Human Rights.

THE LAW

Is there a defense to this finding of discrimination?

[73]The prohibition against discrimination in the *Nova Scotia Human Rights Act* on grounds of “sex” has been interpreted under section (n) to include pregnancy, possibility of pregnancy and pregnancy-related illness. The plaintiff was more than seven months pregnant when her employment was terminated by the defendant. Under section 4 of the Act, discrimination is defined as follows:

“For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic referred to in clauses (h) to (v) of sub-section (1) of section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.”

[74]The plaintiff worked at the defendant company for 18 days. She was, in effect, a probationary employee. The defendant argues that Taylor Ford Lincoln had a contractual right to dismiss the complainant within the 90-day period without cause and without notice. The plaintiff argues that the defendant cannot rely upon this contractual provision to contract out of its obligations under the *Nova Scotia Human Rights Act*. The Supreme Court of Canada dealt with this issue in *Parry Sound (District) Social Services Administration Board v. the Ontario Public Service Employees’ Union, Local 324* (2003), 2 S.C.R. 157 (S.C.C.)

[75]In that case, the plaintiff was a probationary employee of the appellant employer and a member of the respondent union. Her terms of employment were governed by a collective agreement which stated that “a probationary employee may be discharged at the sole discretion of and for any reason satisfactory to the employer and for such action by the employer as is not subject to the grievance and arbitration procedures and does not constitute a difference between the parties.” Before the expiry of her probationary term,

she went on maternity leave and within a few days of her returning to work, her employer discharged her.

[76]The majority of the Board of Arbitration found that the section 48 (12)(j) of the *Ontario Labour Relations Act, 1995* (“LRA”), empowers a board of arbitration to interpret a collective agreement in a manner consistent with the *Human Rights Code* and imports the substantive rights of the *Human Rights Code* into a collective agreement over which an arbitrator has jurisdiction.” On the basis of that, the Board ruled that it was entitled to consider whether the claimant had been a victim of discrimination under the *Human Rights Code*.

[77]The matter went to the Supreme Court of Canada. The Court said that the Board was correct to conclude that the substantive rights and obligations of the *Human Rights Code* are incorporated into each collective agreement over which an arbitrator has jurisdiction.

[78]On the basis of that decision, Taylor Ford Lincoln cannot contract out of the provisions of the *Nova Scotia Human Rights Act* by relying upon the 90-day probationary period to dismiss a probationary employee and escape the provisions section 4 of the *Act*.

BURDEN OF PROOF

[79]Who has the burden of proof in these cases? It is clearly upon the claimant Eagles who must establish on a preponderance of credible evidence she was discriminated against by the defendant on grounds of sex, namely on grounds of pregnancy, possibility of pregnancy and pregnancy-related illness. She must establish that she was dismissed not because she was only 18 days into a probationary period or because she missed time from work but because she was pregnant. When she establishes this *prima facie* case then the burden shifts to the respondents to show that they were justified in not continuing to employ Eagles or that continuing to employ her until maternity leave would have caused undue hardship.

[80]The Supreme Court of Canada has commented on what is a *prima facie* case of discrimination in *O’Malley v. Simpson-Sears Ltd* (1985), 7 C.H.R.R. D/3108:

A *prima facie* case of discrimination...is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour in the absence of an answer from the respondent employer.

[81]In a case involving pregnancy and sex discrimination, the onus is on the complainant to show that she was pregnant, and that she was treated adversely by the respondent employer, and that there was evidence from which it is reasonable to infer that the pregnancy was a factor in the adverse treatment. It is not necessary that pregnancy be the only factor in the adverse treatment. On this point, see *Sidhu v. Broadway Gallery*

(2002), 42 C.H.R.R. D/215 (B.C.H.R.T.) at para. 58, and *Vestad v. Seashell Ventures Inc.* (2001), 41 C.H.R.R. D/43 (B.C.H.R.T.) at para. 39.

[82]Once the burden shifts, what is the obligation of the defendant, Taylor Ford Lincoln Sales Limited, to be successful in a defense to the shifted burden? They rely upon a test first adopted by the Supreme Court of Canada in *British Columbia v. B.C.G.E.U.* The test deals with determining what is a *bona fide* occupational requirement. If as a result of pregnancy, the individual could not meet the *bona fide*'s occupational requirement, then discrimination will not be proven even where pregnancy forms one of the reasons for dismissal.

[83]Taylor Ford Lincoln Sales wanted an employee not only able to do the hours on her shift but for the long haul - - - so there would be sales help to sell cars over the summer months and well into the future.

[84]Counsel for Taylor Ford Lincoln Sales Limited correctly cites the British Columbia authority for the proposition that where an employer has expectations that an employee is unable to meet, termination is justified where those expectations are classified as a *bona fide* occupational requirement ("BFOR").

[85]In *British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U.*

(1999), 35 C.H.R.R. D/257 (S.C.C.) (referred to as *Meiorin*), the Supreme Court of Canada advocated a unified approach to discrimination which did away with the former distinction between direct and adverse effect discrimination. The Court described a three-part test for determining whether a standard or qualification is *bona fide*. At paragraphs 54 and 55, the Court said:

...I propose the following three-step test for determining whether a *prima facie* discriminatory standard is a BFOR. An employer may justify the impugned standard by establishing on the balance of probabilities:

- (1) that the employer adopted the standard for a purpose rationally connected to the performance of the job;
- (2) that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose; and
- (3) that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship on the employer.

This approach is premised on the need to develop standards that will accommodate the potential contributions of all employees insofar as this

can be done without undue hardship to the employer. Standards may adversely affect members of a particular group, to be sure. But as Wilson J. noted in *Central Alberta Dairy Pool*, *supra*, at 518, “[i]f a reasonable alternative exists to burdening members of a group with a given rule, that rule will not be [a BFOR]”. It follows that a rule or standard must accommodate individual differences to the point of undue hardship if it is to be found reasonably necessary. Unless no further accommodation is possible without imposing undue hardship, the standard is not a BFOR in its existing form and the *prima facie* case of discrimination stands.

[86]In order to satisfy the three-step test outlined in *Meiorin*, the Respondents will have to determine what the impugned standard is generally designed to achieve and demonstrate that there is a rational connection between the purpose and the objective requirements of the job (*Meiorin* at paras. 57-58). If the Respondents are able to show that the standard was rationally connected to the job, then they have to demonstrate that the standard was adopted in good faith and that it was necessary for fulfillment of the purpose, without any intention to discriminate against Eagles (*Meiorin* at para. 60). If the Respondents are able to meet these two hurdles, then they must show that they attempted to accommodate Eagles to the point of undue hardship.

[87]Did the respondents show the firing of Eagles was not done to discriminate? Or did they attempt to accommodate her?

The court in *Meiorin* noted at para. 67 that if individual differences can be accommodated without imposing undue hardship on the employer, then the standard is not a BFOR (or *bona fide* qualification), and the discriminatory actions are indefensible.

The question of what constitutes accommodation to the point of undue hardship in the context of pregnant employees has been canvassed in a number of cases.

[88]In *Sidhu v. Broadway Gallery* (2002), 42 C.H.R.R. D/215 (B.C.H.R.T.) where a pregnant employee of a bonsai tree nursery requested that she be exempted from heavy lifting and pulling and from spraying herbicides and pesticides. The respondent offered to remove the complainant from her full-time position in the nursery and said it would offer her a significantly reduced part-time position in the show gallery. The complainant had notes from her doctor saying that she was ready, willing and able to work full-time, but that she should not be exposed to the spray chemicals and should not lift anything heavier than 40 pounds.

[89]Unlike *Sidhu*, Eagles did not ask for an easier or lighter job. And the defendants did not make any offer or accommodation.

[90]The defendant must at law, as employer, take all responsible steps to accommodate an employee short of undue hardship to it or to others.

[91]The tribunal in *Sidhu* found that given the nature of the work in the nursery and other work available in the gallery, the respondent could have accommodated the complainant in her request to continue full-time work which did not involve spraying or heavy lifting. The tribunal made the following observations at para. 82:

In small workplaces, it might be more difficult to move employees around and to modify work duties to accommodate an employee with special needs or special restrictions. However, in following the principles laid out in *Meiorin*, an employer must take all reasonable steps to accommodate an employee short of undue hardship to it or others. In this case, the work could have been reorganized, as there was more than one task to be done at the nursery. Not only did the respondent not reorganize the work, it failed to make inquiries to see if it was possible... Finally, the respondent led no evidence that making such adjustments would cause it undue hardship, financial or otherwise.

[92]The tribunal also considered the obligation of a complainant to assist in the search for accommodation, saying at para. 84 that “employees have an obligation to speak to their employer about their ability and desire to work and what, if any accommodation they may need.” The complainant had fulfilled her duties in this regard. The tribunal found that the respondent had discriminated against the complainant and awarded lost wages and \$3500 in general damages.

[93]The duty to accommodate pregnant employees was also canvassed in *Woo v. Fort McMurray Catholic Board of Education* (2002), 43 C.H.R.R. D/496 (Alta H.R.P.). In that case, a complainant was appointed vice-principal of a school for a one-year term contract. The complainant was pregnant and indicated to the respondent employer that she would be taking maternity leave effective February 12, 1998. The respondent board replied that her employment was terminated “due to maternity reasons.” The complainant contacted the respondent board in April and said she was ready to return to work, but the respondent refused to re-hire her.

[94]The tribunal hearing the complaint discussed the duty to accommodate at paras. 29-31:

It has been well established in law that an employer has a duty to accommodate an employee to the point of undue hardship. The duty to accommodate was adopted by the Supreme Court of Canada in *Ontario (Human Rights Commission) and O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536...

Reasons for this duty to accommodate are set out in *Janssen v. Ontario Milk Marketing Board* (1990), 13 C.H.R.R. D/397 at D/401 [S30] (Ont. Bd. Inq.) as follows:

[T]he Ontario *Human Rights Code* is meant to foster a society which will allow diversity to flourish. It is designed to protect and accommodate the needs and interests of those who differ from the dominant majority group. Although the *Code* does not require that any individual or group accommodate others to the point of undue hardship, severe suffering, or disproportionate privation, it does conceive of inconvenience, and some degree of disruption and expense. Insofar as we want to make space within our communities for the comfortable coexistence of those who differ by religion, sex, sexual orientation, race, disability, and family grouping, there will be commensurate costs to be borne by all of us.

With regard to the duty of an employer to accommodate a pregnant employee, the Ontario Board of Inquiry in *Crook* found the following (*Crook v. Ontario Cancer Treatment and Research Foundation (No. 3)*, [1996] O.H.R.B.I.D. No. 28 (QL) at S 60):

...To fail or refuse [to accommodate pregnant employees] imposes and reinforces economic and workplace disadvantage against women and sends the implicit message that they should bear the costs of pregnancy and childbirth. It also sends the message that they are less value employees than those employees who do not face exclusion from health-related benefit plans for health-related reasons.

[95]The tribunal also pointed out that the Supreme Court of Canada has stated that discrimination on the basis of pregnancy is socially unconscionable (at para. 32). In *Woo*, the tribunal pointed out that the respondent did not provide the complainant with a leave of absence as contemplated under the terms of the collective agreement. This failure to accommodate was fatal and resulted in a finding of discrimination (with remedy to be determined at a later date). See also *Jakhelka v. Fort McMurray Catholic Board of Education* (2002), 44 C.H.R.R. D/90 (Alta. H.R.P.), where *Woo*'s successor to the vice-principal position was also subsequently discriminated on the basis of her own pregnancy and was not accommodated for the 1998-99 school year.

[96]In *Brown v. M.N.R., Customs and Excise* (1993), 19 C.H.R.R. D/39 (Can. Trib.), a female customs inspector was required to do shift work as part of her job description. When the complainant became pregnant and experienced medical difficulties, she requested (on the basis of her physician's recommendation) that she be able to work weekday shifts only. The complainant's initial request was made to a departmental supervisor who denied the request. The complainant enlisted the help of her direct supervisor two months later and made the request in writing, supported by a doctor's certificate. The request was again denied.

[97]The complainant was not granted her request until two months later after her husband approached the superintendent's ultimate supervisor. Eventually the complainant was transferred to a different department and a different job site, and was put in a position where her salary was lower and she was unfamiliar with the work.

TO SUMMARIZE

[98]The central issue in this hearing is whether the dismissal of Eagles as a result of her inability to meet the "time commitment" of the sales position can be justified by Taylor Ford Lincoln Sales on the basis that this time commitment was a BFOR. In other words, the Respondent must show that it could not accommodate Eagles' request for an unpaid maternity leave without suffering undue hardship.

[99]The decision of the Alberta Court of Appeal *UNA Local 115 v. Calgary Health Authority* (2004) 21 Alta. L.R. (4th) 1, the Court concluded that availability for work was not a BFOR. At page 32, the Court said:

"Availability is an implied condition in any offer of employment and contract for service: *Mongrain* at para 35. However, the right of an employer to require availability must be balanced against the employee's right to not have availability requirements result in prohibited discrimination. This is the role of the BFOR test. The Supreme Court of Canada found under the Meiorin test that it is incumbent upon the party asserting undue hardship to show that it has considered and reasonably rejected all viable forms of accommodation."

[100]The Court of Appeal concluded that the employer had discriminated against the employee when they fired her due to her inability to complete the term position for which she was hired as a result of her pregnancy.

[101]Here Eagles was fired because she was pregnant and needed time off for maternity leave.

[102]An employer who seeks to justify an employment practice on the basis that it is a BFOR must present evidence to show that it attempted to accommodate the employee to the point of undue hardship. The evidence was, however, that Taylor Lincoln Ford Sales agreed to re-hire her subject to one question and they made three telephone calls to her home and the respondent's evidence is that none of the calls was returned. That is not of itself evidence of undue hardship. The position was filled within days after the third call being made but not returned.

[103]Indeed, there is a dearth of evidence that would indicate any financial loss was suffered by Taylor Ford Lincoln Sales if the leave she had previously requested was granted. There was evidence that it is a busy time of year for the sale of automobiles but

no numbers or figures were given to quantify the loss. There was, however, evidence to indicate an extended period of training was required.

[104]Terrance Taylor said the following:

“And she was in a training program and taking up a lot of my manager’s time. It is a complex - - you know, it takes a lot of effort on the part of management to train the salespeople. My salespeople would be better devoted to training the people that were going to be with us. And customers that would be coming in would come back in another month, and the person would be gone.”

[105]Let me summarize therefore:

“In the leading case of *British Columbia (Public Service Employee Relations Commission) v. B.C.G.E.U.* (1999), 35 C.H.R.R.D./257 (S.C.C.) (commonly referred to as *Meiorin*) the Supreme Court of Canada establishes a three-part test to determine whether the employer’s operational requirement (claim for exemption) from the duty to accommodate is justified or *bona fides*. The Court set out the three-part test as follows:

Therefore, in order to satisfy *Meiorin*, the Respondents will have to establish (1) what the standard is designed to achieve and show that there is a rational connection between the purpose and the objective requirements of the job; (2) if the rational connection is shown, then they must show the standard was adopted in good faith and was necessary for the fulfillment of the purpose without intention to discriminate against Ms. Saunders; and (3) upon the Respondent clearing the two hurdles, they must show that they attempted to accommodate Ms. Saunders up to the point of undue hardship.

The issue of what triggers undue hardship in the context of pregnant employees has been addressed in several cases. In *Lord v. Haldimand-Norfolk Police Services Board* (1995), 23 C.H.R.R.D./500 (Ontario Bd. Inq.), the complainant was a police officer assigned to regular duties. She found out she was pregnant and requested light duties, with the support of her doctor. Her employer had a policy that did not provide for modified work programs (light duties) for police officers. The tribunal struck down the “no light duties” policy and found that the employer had granted restricted duties to a male officer while under criminal investigation. It stated:

In the case before me, there was no evidence of any effort to accommodate the needs of the complainant. There was, however,

evidence of various positions within the force that required less physical exertion and less exposure to danger, at least to the extent that anyone can guarantee a risk free environment...I am satisfied, based on the evidence before me, that there would have been several options open to the Board in considering alternative duties for the complainant.

[106]I can therefore find no defense in the evidence to my finding of discrimination.

[107]I would now like to turn to the question of remedies.

REMEDIES AND DAMAGES

[108]What are the powers of a Board of Inquiry to provide remedies such as damages following a finding of discrimination under the Act?

The answer is found in section 34, which reads as follows:

“Jurisdiction of the Board

(7) a Board of Inquiry has jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a decision as to whether or not any person has contravened this *Act* or for the making of any order pursuant to such decision.

Power of Board

(8) a Board of Inquiry may order any party who has contravened this *Act* to do any act or thing that constitutes full compliance with the *Act* and to rectify any injury caused to any person or class of persons or to make compensation therefore.”

[109]Under the *Enabling Statute*, a Board of Inquiry therefore has the power to order compensation and to effect remedies designed to rectify an injury. The jurisdiction of a Board has been extended to include the right to order general damages, special damages, damages for loss of income, undue hardship and even costs.

[110]Counsel asks that I not deal with the issue of costs at this time until a matter now before the Court of Appeal namely *Kirk Johnson v. Halifax Regional Police Services* has been determined.

[111]How people are paid in the automobile business is different. In the case at hand, Terrance Taylor said they guaranteed salespeople \$250 a week. But it was considered a draw. So commissions earned would be against the draw.

[112]When Eagles left the employer, what was said was the following:

“What was offered at the exit meeting by Taylor was this: “When you are able to commit to the hours required, come back and see us, we’ll look at our requirement then, and you will be considered.”

[113]In a letter received September 20, 2000, from Tara Leigh Eagles to Taylor Ford Lincoln Sales Limited, we read:

“I am writing to apply for immediate re-employment as a full-time Sales Associate with your company. I am available for interview at your convenience and I am ready to return to full-time work immediately.”

[114]That letter was acknowledged by letter dated the 25th of September by Tyler Robbins, then Sales Manager, who wrote as follows:

“Thank you for your letter and for your interest in this dealership. Please contact me by telephone to agree on a date and time for an interview. Please note however that we will proceed using the same human resources process, as before, and if all things work out and you are hired, you would be starting with a 90-day probation period that is standard with all new staff.”

[115]As indicated previously, three calls were made but she never came back.

In terms of earnings, on the 29th of May, 2000, Eagles earned a commission of \$250 and on June 3, 2000, she was paid \$250 commission.

[116]The evidence shows that on May 29, 2000, she earned a commission of \$250 and then June 3, 2000, she was paid \$250 commission back at which is the minimum weekly commission she was guaranteed by Taylor for the week of May 29, 2000.

[117]She lost her minimum guaranteed weekly commission of \$250 for the three weeks beginning June 5, June 12, June 19, 2000 up to the date of her baby’s birth, in addition to the \$325 commission, which she lost on the transaction when she transferred to Mr. Creaser and closed on the last day of May, 2000.

[118]Counsel for Eagles indicates her total lost commissions to June 22, 2000, were \$1,075. Between June 22, 2000, and September 1, 2000, Miss Eagles was not employed. Eagles was not employed for long with the defendant, indeed, she was not employed for long at any one of a long series of positions. Counsel for the defendant put it this way: if you take into consideration “her very transitory and spotty employment history, both before and after her tenure with Taylor Ford Lincoln, it becomes evident that there exists a high probability that she would not survive long in the automobile industry.”

[119]Later, he added:

“In large measure, we can be comforted in this conclusion insofar as her brief employment with Dartmouth Dodge in November 2000 demonstrates that she was not considered by another dealership suitable for continued employment as a salesperson.”

[120]What the Board of Inquiry must consider is the transitory nature of employment in the automobile sales industry, the Eagles’ employment record and the likelihood of her succeeding as a salesperson in this industry.

[121]It is very difficult to determine precisely what her long-term loss would have been because there are no projections and no evidence of what comparable new salespersons would receive in a year or two-year basis. We are referring to an employee who lasted for about one month on the job. Assessment of any loss of income is not easy.

[122]She was terminated May 24th and the baby was born June 22nd. I hereby award her lost wages of \$2,150. plus interest. I will hear counsel as to the interest.

[123]General damages can be awarded as in the case of *Saunders v. The Town of Kentville Police Service* for emotional stress and anxiety resulting from the loss of wages, the loss of work and the embarrassment from leaving employment against her wishes.

[124]What are hurt feelings, a loss of self-esteem and self-respect and social embarrassment worth in dollars? There, frankly, has been very little testimony by any of the witnesses apart for Eagles’ mother about the emotional, psychological impact of the firing.

I hereby award \$3,000 as general damages to the claimant.

Hon. Donald H. Oliver, Q.C.

March 30, 2005

