

File Name: In The Matter Of: A Complaint Under the Human Rights Act By Danielle Bennett and Hau's Family Restaurant And/Or Michael Tan And/Or Bonnie Tan

Date of Decision: March 2007

Area(s): Employment

Characteristic(s): Sexual harassment and retaliation for making a human rights complaint

Complaint: Danielle Bennett worked as a waitress at Hau's Family Restaurant. Ms. Bennett alleged that on several occasions, Michael Tan, the owner, grabbed her in a sexual manner while she was working. Ms. Bennett also alleged that Mr. Tan and his wife Bonnie Tan retaliated against her for making a human rights complaint.

Decision: The Board found that Ms. Bennett was sexually harassed by her employer, and found that he retaliated against her for complaining about it to the Human Rights Commission.

Sexual Harassment

The Board noted that, in this case, sexual harassment can take place in the form of one instance of vexatious sexual conduct, or can be a series of unwelcome sexual comments or behaviour. The Board found that Mr. Tan engaged in vexatious sexual conduct when he grabbed Ms. Bennett's bottom. The Board also found that over four years, Mr. Tan engaged in unwanted bumping and touching of Ms. Bennett, slapping her bottom, lifting the back of her skirt, touching her shirt and making sexual comments.

Retaliation

The Board found that Mr. Tan and Ms. Tan retaliated against Ms. Bennett by making her repay a debt to them immediately upon learning she had made a human rights complaint.

Remedy: The Board awarded remedies to Ms. Bennett as follows:

Individual Remedies

- General damages (emotional harm): \$2,500.00

Public Interest Remedies

- Mr. Tan, Ms. Tan, and Hau's Family Restaurant will be monitored by the Human Rights Commission for 3 years.
- Mr. Tan, Ms. Tan, present employees and those hired during the next 3 years would be provided with human rights education.
- Mr. Tan and Ms. Tan were required to provide, to the Human Rights Commission, contact information for all employees and advise as to reasons an employee leaves their employment during the same 3 year period.

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1. **INTRODUCTION**

[1]This matter arises out of a formal complain by Ms Danielle Bennett filed with the Nova Scotia Human Rights (Commission) dated December 26, 2004 alleging that Hau's Family Restaurant and/or Michael Tan and/or Bonnie Tan engaged in conduct that would constitute a discriminatory practice under **Section 5 (1)** and **Section 11** of the **Nova Scotia Human Rights Act, R.S.N.S. 1989 C. 214** (as amended 1991 C. 12).

[2]A single person Board of Inquiry (hereinafter referred to as the "**Board**") was appointed pursuant to **Section 32(a)** of the **Act** by Chief Judge of the Provincial Court of Nova Scotia.

[3]The Parties to these proceedings are the Complainant, Ms Danielle Bennett, who is not independently represented. The Respondents, The Hau's Family Restaurant and /or Michael Tan and Bonnie Tan, are represented by Chris Manning. The Commission is represented by Michael J. Wood, Q.C.

[4]Notice of Hearing was properly given and advertising was placed in local papers. The hearing into the complaint was held at Kentville, Nova Scotia, on January 17 and 18, 2006, at the Wandlyn Inn, Coldbrook, Kings County, Province of Nova Scotia.

2. **BACKGROUND**

[5]The Complainant Danielle Bennett was employed by Hau's Family Restaurant, in New Minas from March 2000 until on or about June 2, 2004. On December 26, 2004 Danielle Bennett filled a complaint with the Nova Scotia Human Rights Commission against Hau's Family Restaurant and/or Michael or Bonnie Tan. In her complaint she alleges that she was sexually harassed contrary to **Section 5.2** of the **Human Rights Act, R.S.N.S. 1989 C.214** as amended and dismissed because of her complaints contrary to **Section 11** of the **Human Rights Act**.

[6]The complaint of sexual harassment specified two separate incidents which occurred on or about April 19, 2004, which lead to Danielle Bennett's leaving or discharge from Hau's Family Restaurant on or about June 2, 2004.

[7]The Respondent Michael Tan is the owner of Hau's Family Restaurant and a number of other businesses, including JR's Restaurant and Lounge also located in New Minas. The Respondent Bonnie Tan is the wife of Michael Tan, and was the hands on manager at Hau's Family Restaurant. Now she also works at the Edge Lounge and JR's, these businesses all being owned by her husband, Michael Tan.

[8]The Complainant made her initial complaint to the Commission on or about May 13, 2004.

Human Rights Officer investigated the complaints and started a settlement discussion without success. On or about June 30, 2005, the Nova Scotia Human Rights Commission on the nomination of the Chief Judge of Provincial Court under **Section 32 A(1)** of the *Human Rights Act* appointed myself, Robert C. Stewart, Q.C., to sit as Chair on the Board of Inquiry.

[9]The Commission called two witnesses in addition to the Complainant Danielle Bennett, Linda Wheeldon, a psychotherapist, and Sherri Bennett, a former employee of Hau's Restaurant. Ms Danielle Bennett as well took the stand on her own behalf and at the conclusion of the evidence made submissions on her own accord.

[10]The Respondents called the two Respondents, Michael and Bonnie Tan, as well as Jeff Huntley and Julie Riley, the latter both being employees at Hau's Restaurant.

[11]The Respondent Michael Tan admitted to one incident of inappropriate behavior for which he apologized to Danielle Bennett in the presence of his wife Bonnie Tan. As well Michael Tan had entered a guilty plea to a charge of sexual assault contrary to **Section 271** of the *Criminal Code*, in relation to the Complainant Danielle Bennett. While English is not

their first language, the Tans indicated through their counsel that an interpreter was not necessary for this hearing.

3. ***EXHIBITS***

1. Book of Hearing Exhibits
2. Schedule of Pay deductions
3. Notes- Linda Wheeldon
4. Calendar Pages- Linda Wheeldon
5. Consultation Report Dr LA Horigan

4. ***EVIDENCE***

[12]The Complainant gave evidence that she has worked as a waitress on and off since she was 16 years of age. She started employment at Hau's Family Restaurant March 15, 2000, a couple of months after the birth of her daughter. She also worked for Michael Tan at another of his businesses, JR's Lounge, on Saturdays from 9pm -2:30am. Michael Tan bought the bar the second year she was at Hau's. She worked at the bar for 6-9 months and stopped when Bonnie came and asked her to return to Hau's Family Restaurant.

[13]Danielle Bennett testified that Bonnie Tan would normally do the cash and oversee the restaurant, assigning staff duties, and on busy days she would generally help out and do the cash. Danielle Bennett had little dealing with Michael Tan as he would do the paperwork for the other businesses. She usually worked thirty (30) hours a week.

[14]Danielle Bennett spoke of about 80% of the employees borrowing money from the Tans. These amounts would range from \$10,000.00 - \$20,000.00, while some would be just a couple hundred dollars. She testified she borrowed \$1,100.00 for insurance and \$5,000.00 for income tax. She could not remember the interest rate, but later it was shown to be

30%. In addition she borrowed smaller amounts. When she needed money she would deal with Bonnie Tan ninety-five percent of the time. Bonnie Tan kept all the records, **“to a tee”**.

[15]In Exhibit 1, the Book of Hearing Exhibits, Danielle Bennett identified documents 1 and 5 being her complaint, the only difference between the two is that one had Tan spelled with two N's. Tab 6 was her handwritten complaint to the Commission dated May 13, 2004. Tab 7 is a letter that Bonnie Tan wrote at her (Danielle Bennett) request because Danielle Bennett was thinking about applying for a mortgage and asked Bonnie Tan to write her a letter of reference. Tab 13 is the Intake Questionnaire with the Human Rights Commission dated May 10, 2004, to which her resume which appears at Tab 16 was attached. Tab 14 she identified as an Order from Labour Standards as a result of her complaint to the Department of Labour. Danielle Bennett testified that this decision was under appeal, and is proceeding to a hearing in front of the Labour Board in Halifax on or about February 2, 2006.

[16]Danielle Bennett then testified that Michael Tan on the odd time would slap her bum or lift the back of her shirt and look at her bum and say **“just checking you out”**. What bothered her the most was Michael Tan walking into her and touching her breast. It might have been a mistake on one occasion but this happened 30-40 times in the four year period. He would say there was something on her shirt and flick her breast. This was not normal or acceptable to her. This occurred more frequently at Hau's than at JR's.

[17]Two years previously Bonnie Tan came to Danielle Bennett and asked if Michael had touched her and she told Bonnie Tan about an incident in the freezer which happened in the second year she worked there. He had come up from behind her and gave her a hug. After she told Bonnie Tan things stopped for about a year.

[18]She also told Michael Tan that his behavior and comments were not acceptable.

On one occasion Michael Tan said that he could hook her up with a young Chinese man as he knew Danielle Bennett had an attraction to Chinese men and Danielle Bennett said no, that she was married and she was not that kind of person.

[19]After a while she accepted that this was part of the job of working there and just said **“stop”** or **“don’t do that”**. Danielle Bennett related to this as she had been sexually assaulted by four other men during her lifetime and had grown to accept what comes and keeping her mouth shut. Her job was important to her and she did not want to lose it.

[20]Michael Tan was continually making comments about other women’s looks and shapes and in front of Bonnie Tan he had stated **“you and Brenda are the hottest looking waitresses I have”**.

[21]On April 19, 2004, she was closing the restaurant after all the other waitresses had gone and she was tearing down the buffet and was carrying large trays into the walk-in fridge. Michael Tan was in the other room. He called her name and when she turned his left hand grabbed her breast. She almost dropped the tray she was carrying and was so shocked she could not speak. He then went downstairs. About half an hour later a take-out order came in and she went down to tell him and he told her to go up the stairs in front of him and as she went up the stairs he grabbed or cupped her rear end with his hands. After this incident she did nothing because she did not want to lose her job. She ultimately did call Human Rights but never heard back from them. She called again angry because, **“No one cares”**. She told Bonnie Tan about the incidents and was told to confront Michael Tan. She did so and he admitted in front of Bonnie Tan touching her behind but not touching her breast.

[22]She then decided to put out her resume to look for other work. After he apologized, Danielle Bennett said, **“That was not enough, you have to come clean with Bonnie or I**

quit", or words to that effect. He came after her and said, "**don't go we have to talk**".

She and Michael Tan talked and she told him he had to come clean with Bonnie and talk to Jeff Huntley because he had been harassing her since she had started working there. She indicated that Jeff would call her every name in the book. Danielle Bennett said she told him she could not afford to stay there if her loan payments did not come down, and he (Michael Tan) told her to see Bonnie Tan about that. Bonnie Tan said they could go down to \$50.00 every two weeks. She also told Bonnie that she was going to complain to Human Rights. Bonnie Tan was unhappy but kept her on the job. She also complained to Bonnie Tan about Jeff calling her a lot of names. Michael Tan did talk to Jeff and he came back calling her a "**snitch bitch**". That problem never got solved.

[23]Danielle Bennett was having \$200.00 deducted from each pay, leaving her living off her tips. In April the balance on her outstanding loan was \$1200.00- \$1300.00. At the time when she left it was around \$900.00.

[24]About a month before Michael Tan was charged by police Jeff was harassing her and so was another waiter, Scott. She again complained to Bonnie telling her that the problem with Jeff was supposed to be handled and Bonnie went in to the kitchen supposedly to speak to Jeff and came out of the Kitchen laughing. Around this time she gave Bonnie five weeks notice and told Bonnie that in July she would be working elsewhere. At this point she had not yet spoken with Human Rights even though she had several calls in to them. When she did speak to them she told them about the harassment and the assaults. After this there was an incident at JR's. She indicated that Scott was intoxicated and he started harassing her and called her "**a bitch**" and started yelling at her in public. Melanie, another waitress, went up to Mike and told him to do something and he said no. Mike was fifteen or sixteen feet away and was standing there watching and doing nothing. The next day Scott apologized and then started again. She indicated that from Jeff it was always the words, "**bitch**" or "**slut**". Again she complained to Bonnie and they just laughed. She indicated that Bonnie Tan and Mike were both present when Scott came on to her and when rumours got around about the Human Rights complaint and that she had gone to the police the harassment increased.

She believes that Scott would not have harassed her if it were not for the complaint.

[25]On June 2, she finished her bus run and was getting ready for her shift at 5 pm at Hau's when she received the call around 4:30 pm from Bonnie yelling and screaming at her about the police because Michael had been charged. When she called back she spoke to Allison (last name unknown) who confirmed that she was on the schedule. When she got to work before 5:00 she was met at the door by Allison who told her not to come in as Mike and Bonnie wanted to talk to her downstairs. She went downstairs and Michael said that he thought that the charges were being dropped. He wanted her to go to the police and have the charges dropped. When she refused he told her that she had twenty-four hours to come up with the money she owed them or else. She told them she considered that a threat and was going to the police right away.

[26]At that point she left and was not sure if she was fired or not. She then called back to the restaurant and Amy (last name unknown) said that she was working her shift. Bonnie had taken the schedule down when she left earlier and then she called back later to see if she was on the new schedule and after a third call she could hear Bonnie saying "***I cannot fire her, she quit***". Amy also told her that Bonnie had said that she had walked out and had quit and that was why she was not on the schedule.

[27]That following Friday Danielle Bennett called JR's to see if she was on the schedule and was told no. She thought this was weird and wanted to ask Michael. She called Michael at the Edge but never received a call back.

[28]After the June 2 incident she went in for her separation papers and her vacation pay. She told Scott that they could take fifty dollars off of her vacation pay for her next loan payment. She got another job and sent a letter to Michael stating that she had another job and she would be making payments on the loan. Subsequently she later learned that Michael had gone to the Registry of Motor Vehicle and had her name removed from the motor vehicle. She then had to initiate a Small Claims Court proceeding where the Judge told her that she could continue paying the loan at \$100.00. She ended up paying the loan

off early. However the Tan's did not want to give the papers for the vehicle to her and she had to get police escorts to get the papers. As soon as she did, she sold the vehicles.

[29]She also told the hearing of other problems with Michael Tan, in particular her son was in a Karate club which held its meetings in a building owned by Michael Tan. She was initially unaware of this until the instructor said that Michael Tan wanted her son removed from the program. The instructor refused. Michael then contacted the police to have her son removed from the building.

[30]The first complaint to the police came one week after he entered a guilty plea to the sexual assault charge. The second time he called the police to have her son removed was just after Danielle Bennett attended court with the liquor inspector. This time he told the police he did not want her or any of her relations at any of his businesses.

[31]For the rest of that year she would drop her son off at the corner and he would walk to the club alone.

[32]Other problems related around her T4 slip which she had not received by the end of February. She had called three times and was always told that they were in the mail. When she still did not receive it she called Revenue Canada. She finally received it in the last week of April.

[33]There was also a problem with her separation papers. She again requested these a number of times and she was told that they were in the mail. When she became pregnant her doctor wanted her to go on sick leave, so she needed her separation papers. When she did not receive them she made a complaint to EI. They subsequently received a nasty letter from Michael Tan and in order to get EI sick benefits she had to prove that she had filed a complaint to Human Rights, the Small Claims Court proceedings and show proof that she had paid back the loan in full before they would process her claim.

[34]Danielle Bennett told the Hearing that until Michael Tan plead guilty it had affected her having sex with her husband. She cried in front of her children, she could not sleep and all she could think of was Michael grabbing her. She could not eat and started drinking a lot. This stopped when she realized she had to cut down.

[35]She also was having panic attacks. She was referred to Linda Wheeldon by Victim Services.

[36]In addition, she has a complaint before the Labour Board that is scheduled to go before the board on February 2, 2006. That has been investigated and it was found that she had been fired but the Tans were appealing that finding.

[37]Danielle Bennett advised that she felt that Bonnie Tan was a good person and was at the restaurant 24/7. She got along fine with her although some staff did not. Danielle Bennett did state that the Tans did help her out a lot and she did appreciate that.

[38]On cross examination Danielle Bennett did admit that she did not tell Bonnie about the first thirty times Michael touched her breast. On the thirty-first she froze and went into shock as she could not discount that incident as ***“he outright grabbed her with his hands”***.

[39]Danielle Bennett conceded that she was a poor manager of money and had a lot of loans and poor credit. She was not able to get a mortgage after she went bankrupt. She also agreed that the Tans were kind and generous to her and did loan her money. She owed them around \$1200.00 when she left. She stated that she did not tell Bonnie about any touching when she initially asked her if something happened between her and Michael as she did not want to lose her job.

[40]Linda Wheeldon is a registered clinical psychotherapist. Ms Wheeldon met with Danielle Bennett July 19, 2004. Danielle Bennett had been referred by Victim Services. Exhibit

3 are notes from the two sessions that she had with Danielle Bennett and a third session was cancelled by Danielle Bennett. July 19 was primarily an intake session. At the second session Danielle Bennett was still very upset and Ms Wheeldon got her to tell her story again. It was difficult for her to get the words out. Ms Wheeldon identified a letter dated March 22, 2005, which appears at Tab 11 Exhibit 1, as one she wrote at Danielle Bennett's request. The amount of distress she exhibited was in Ms Wheeldon's view profound; Victims Services paid for the counseling. They have a cap of \$2000.00, and fifteen weekly sessions normally cost \$1000.00.

[41] Sherri Bennett was called by the Commission. She is married to Danielle Bennett's father-in-law and considers her self a friend of Danielle Bennett's and has also been a school bus driver for four years. She was employed as a cook at Hau's restaurant for two (2) years from 1999 until June 2001.

[42] Sherri Bennett recalled one incident where Danielle Bennett had come in the kitchen upset over the treatment from Michael. She believed that Mike had made some comments of some sort. Sherri Bennett noted one time she had seen Michael grab another waitress, Anita, whose last name she could not remember. They had been standing looking over an order when she had seen him lean over and grab Anita in the groin area. Anita did not react in any way. Sherri did not recall seeing any other incidents.

[43] Michael Tan testified that he was born in China in 1966. His first language is Chinese, when he came to Canada in 1984 he did not speak English. He is married with three children. He is the owner of Hau's restaurant and quite a few other businesses. Danielle

Bennett worked as a waitress at Hau's and JR's. JR's is a bar that he bought in 2001-2002 that is not operating at the present time.

[44] Michael Tan said that Danielle Bennett was a really good employee and they did not need to train her. His wife ran the restaurant 24/7, the restaurant hours were normally 11 am to 11 pm seven days a week.

Michael Tan stated that it was a happy place to work. He denied touching Danielle Bennett's breast however he did say that he touched her behind and entered a guilty plea to sexual assault for that touching.

[45]Michael Tan testified that Danielle Bennett was not working April 19, 2004. Then further stated she had the day time shift and not the night. He did remember her coming down to have him cook some orders. His testimony in this regard was confusing. He was watching TV. She waited for him at the bottom of the stairs and when she walked up the stairs he grabbed her bum with both hands on both sides. She did not say anything to him and he had not done anything like this before. "**Her butt was in my face for some thirty feet**". They had gotten along for years but he was not interested in her sexually.

[46]Michael Tan stated that he had never done anything like touching her breasts.

[47]When asked about him brushing or bumping in to her, he said when it was busy in the kitchen they bump into each other, but not intentionally and he had no need to brush her clothing.

[48]Michael Tan stated that Danielle Bennett always talked about boyfriends all the time and he knew that she liked Chinese men because she had told him so. Michael Tan spoke of being at JR's with Melanie and Sherri Bennett and Danielle Bennett and another girl. Three girls including her pulled up their shirts and showed their stomachs. They had all had babies. He almost could see their bras. Michael Tan described it as just carrying on and it was no big deal. He told of one occasion Danielle Bennett was in the Kitchen holding a carrot saying "**Chinese men small Canadian men big**". On another occasion she slapped his butt while he was cooking. He stated that he did not think that he had ever slapped her butt or lifted her shirt. He denied slapping her bum in the restaurant.

[49]When speaking of the other waitress, Anita, he said that they got along great and they talked about everything. He did think that he had slapped her butt, but did not think that

he grabbed her groin. Danielle Bennett was the only female employee that had ever complained and he had been in the business since 1989. Over one hundred girls had worked for him.

[50]Michael Tan spoke of Danielle Bennett borrowing money, the most being \$5000.00 in cash.

[51]In April of 2004 she needed \$2000.00 to pay her power bill and when Bonnie refused

Danielle Bennett was upset because it was the first time she was refused a loan. Michael Tan said they got along really well on a social basis. On her birthday he invited her to meet his family in Halifax and she was the only girl he invited. Michael Tan described the restaurant as a happy place to work and to his knowledge she appeared happy.

[52]Michael Tan spoke of the day when he, Bonnie Tan and Danielle Bennett were talking outside. He stated that he had never touched her breast but did touch her bottom and apologized for that. She ***“just say I did it but I didn’t”***. At the end of the meeting she kept working although she said ***“ I don’t want to charge you, so drop my payments”***.

[53]He told her to go see his wife. She wanted to drop her payments from \$200.00 to \$50.00 a month. She also wanted something said to Jeff because they did not get along that well. When the police came he told her, ***“You charged me, I want my money back”***. He was surprised that the police came and he said, ***“I did not threaten her. I just wanted my money back”***. He told Danielle Bennett if she did not pay him than he was keeping the cars. On the way out she told the cook she was quitting and he did not talk to her after that.

[54]The Small Claims Court ordered her to pay him.

[55]Michael Tan stated that he didn’t think she was a good worker and that she only made the allegations after he refused to give her money. he said that she told Amy that her plan was to get money from him. He first heard that Human Rights were involved from his lawyer

Curt Palmer in Berwick. With regard to her attending the building that the Edge was in, he didn't want any trouble as he was not allowed anywhere near her. She knew that he had owned the building for at least three years. He didn't want her in his building and did not want to get in any more trouble.

[56]Mr. Tan has had no complaints from any other females for touching them or for how he has spoken to them.

[57]With regard to Jeff Huntley he and Danielle Bennett did not get along very good and she complained that he was calling her offensive names and he could not recall how many times she had asked him to speak to Jeff. Jeff had worked for him for eight years and he passed on the message to leave her alone but could not remember exactly what was said.

[58]When Danielle Bennett told him she could not afford to pay \$200.00 a pay and she wanted to bring it down to \$50.00, he told her to speak to Bonnie because she looked after all the finances and staff. She promised his wife that she would drop the charges and when she didn't he wanted his money. Michael Tan stated that he could speak more English than read it. He identified a letter at Tab 2 Exhibit 1 as a letter that his wife sent and recalled reading it and discussing it with his wife. He agreed to everything in it.

[60]Jeff Huntley was called by the Respondent. He has been working at Hau's for eight years. He started out as a dishwasher and has been a cook for the last five years. He has had no courses but just watched Mike and the others. He knew Danielle Bennett as a waitress and they got along alright . He felt that the Tans were very good to other staff and there were no real problems with any one. He never saw any inappropriate behavior, everyone just joked around including himself, Danielle Bennett, and Michael Tan. He never saw any inappropriate touching but did see her slapping him on the back side, everyone laughed and her mood was always pretty good natured. He first became aware of Danielle Bennett's allegations when she quit. He first heard that she had been grabbed by the

breast and then by the backside, he was not sure who had told him. On the day she left she threw her hands in the air and said, ***“I quit”***.

[61]He had no discussions with either Michael Tan or Bonnie Tan about his work or about bothering her. He never talked to Danielle Bennett because he didn't want to get involved.

[62]On cross examination he admitted that he was aware of the complaints about how he had treated Danielle Bennett. He was upset that she had told a lie. He gave a written statement to the Tans to help them out. Danielle Bennett had said, ***“I have him by the balls and did not have to pay him”*** . In his opinion she was full of lies and was a troublemaker. She lied about him smoking marijuana and was trying to cause problems which caused a lot of stress with all of the co-workers.

[63]Julie Riley was called by the Respondents. She is married and has been employed by Hau's restaurant as a waitress for almost six years. She recently started working at the Edge as a bartender. She has known Danielle Bennett when she worked at Hau's and at JR's. She was there when Danielle Bennett started in 2000.

[64]Ms Riley said that they got along really well and outside work they would go out together. When questioned about other staff, some were okay and others were iffy. Some employees were like oil and water but all got along well with Michael. When she started they all got along well there was no back stabbing.

[65]Danielle Bennett complained to her that Michael Tan had grabbed her by the boob at JR's. This was a Saturday evening before she started work. She was not present when this occurred but after work she heard Danielle Bennett say to Michael Tan that she had worked really hard and he should buy her a drink.

[66]She was aware of the complaints to Human Rights and to the police and was aware that

Danielle Bennett's financial situation was not good. Danielle Bennett told us that if she had to keep paying the \$200.00 she would have to leave. Ms Riley in fact put in her notice at the same time as Danielle Bennett and in June she left. She came back in September of the same year.

[67]She never saw Michael Tan act inappropriate to Danielle Bennett or Danielle Bennett to Michael Tan nor did she ever hear Michael Tan say anything inappropriate to Danielle Bennett or vice versa, or Bonnie Tan. Ms Riley on reflection said that the whole complaint was because of money.

[68]Bonnie Tan, the second Respondent, testified that she is married to the first Respondent, Michael Tan, since 1993 and they have three children, ages 3, 10, and 11. She was born in Hong Kong and came to Canada in 1992. Her first language is Chinese.

[69]She does everything in the restaurant, does the management and also works at JR's and the Edge. She only serves when there is no staff. She lives in the basement of Hau's.

[70]She stated that Danielle Bennett is a good worker but has some problem areas like telling other girls not to pay for uniforms. Some of the other girls didn't like her because she was always running to me (Bonnie Tan) saying who was doing their job and who didn't. Danielle Bennett always went to her to ask for money.

[71]Bonnie Tan identified Exhibit 2 as Danielle Bennett's gross pay before deductions for her debt to the Tans and her net pay after her loan payments. She would advance money to her for everything from groceries, to eye glasses, for shopping, TV and vehicles. On some pay days she owed more money than she was paid. With regard to the allegations to April 19th, Bonnie Tan first learned of that on the evening of April 23rd when Danielle Bennett told her that Michael had grabbed her by the breast and the bum. She did not know what to do. So she got Mike and the three have a meeting in the parking lot. Danielle Bennett repeated what she told Bonnie in front of Mike and he apologized for grabbing her bum but

did not remember touching her breast. Danielle Bennett said he did and called Human Rights.

[72]Bonnie Tan did not want to fire her at that point because it was not her fault. Later on Danielle Bennett went to her and told her that she wanted her to take \$50.00 off of her pay instead of \$200.00 and that, **"if you ok Mike ok"**. Bonnie Tan said that they didn't want her to charge Mike.

[73]She testified that there was always a dishwasher working in the building and she never saw Mike touch her or say anything inappropriately to her. With regard to a staff party in January 2004 at the Edge. She and Jeff sat together and she saw Danielle Bennett kiss Jeff. As a worker Danielle Bennett's work was very good. Based on the money she owed in April 2004 if she continued to pay at \$200.00 per pay it would have been paid off by June. After the police came to the restaurant and arrested Mike she called Danielle Bennett and asked her why she had charged Mike when she had put the loan payment down to \$50.00, the phone then went dead. Then Allison came in and asked if Danielle Bennett had been fired. She responded **"no she hadn't"**. When Danielle Bennett arrived Mike asked to see her downstairs and asked what was going on and why she was still charging him. She was shaking her head no, Mike said you will have to pay all the money and she said she was going to the police and that Mike threatened her.

[74]Bonnie Tan stated that Danielle Bennett was ripping them off. When she went upstairs Danielle Bennett had left. When she called an hour later to find out about her job, Bonnie Tan said, **"you walk out you quit"**. Bonnie Tan said that this was always her policy, if the girls walk out you don't let them back. With regard to her separation slip, Danielle Bennett came back looking for her vacation pay, she still owed more than a thousand dollars and her vacation pay was only \$159.00. She sent the record of earnings right away by mail. Bonnie Tan thinks that she did everything just for money. Bonnie Tan denied making Danielle Bennett's life miserable at work. With regard to the complaint about Jeff she did speak to him but it was no big deal and told him not to fight with Danielle Bennett. After

Danielle Bennett left she talked to Amy on the phone and Amy said, “**she is going to cause a lot of shit to you guys**”. And she did.

[75]On cross examination she stated she had complaints from other staff both verbal and formal about Danielle Bennett. Scott and Amy both asked her not to schedule them to work with Danielle Bennett, that she had been rude or negligent to customers but she got her job done and that is what Bonnie Tan liked. Bonnie Tan stated that everything had been settled when she reduced her payment from \$200.00 to \$50.00 per pay and she did not fire Danielle Bennett and Jeff had apologized. Bonnie Tan didn’t want charges and thought that the matter could be settled out of court because money was the issue.

5. **THE LAW**

[76]The provisions in the Nova Scotia legislation dealing with sexual harassment are found at sections 3(o) and 5(2) of the **Human Rights Act**, R.S.N.S., 1989, c.214, as amended:-

“Interpretation

3. *In this Act,*

(o) *“sexual harassment” means*

- (i) *vexatious sexual conduct or a course of comments that is known or ought reasonably to be known as unwelcome,***
- (ii) *a sexual solicitation or advance made to an individual by another individual where the other individual is in a position to confer a benefit on, or deny a benefit to, the individual to whom the solicitation or advance is made, where the individual who makes the solicitation or advance knows or ought reasonably to know that it is unwelcome, or***

- (iii) ***a reprisal or threat of reprisal against an individual for rejecting a sexual solicitation or advance.***

Prohibition of Discrimination

5(1) No person shall in respect of

- (d) ***employment***

discriminate against an individual or class of individuals on account of

- (m) ***sex.***

Sexual Harassment

5(2) No person shall sexually harass an individual.”

[77]In ***Janzen v Platy Enterprises Ltd*** [1989] 1 S.C.R. 1252 [10 C.H.R.R. D/6205], the Supreme Court of Canada determined that sexual harassment is a form of sexual discrimination in that someone subject to discriminatory treatment in the workplace due to their gender is denied equal opportunity employment.

[78]The Court in ***Janzen*** defined sexual harassment in the workplace at p.1284 as:-

“... unwelcome conduct of sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment”.

[79]The Supreme Court went on to quote (D/6224) with approval the definition of sexual harassment from **Sexual Harassment in the Workplace** (Toronto, Butterworths 1987) by Asjun P. Aggarwal (p.1)

“Sexual harassment [is] a complex issue involving men and women, their perceptions and behaviour, and the social norms of the society ...

Sexual harassment is any sexually-oriented practice that endangers an individual's continued employment, negatively affects his/her work performance, or undermines his/her sense of personal dignity. Harassment behaviour may manifest itself blatantly in forms such as leering, grabbing, and even sexual assault. More subtle forms of sexual harassment may include innuendoes, and propositions for dates or sexual favours".

[78]In his revised text **Sexual harassment in the Workplace** (Butterworths) 2nd Edition (1992) Aggarwal states at p.1:-

"Women are especially vulnerable to sexual harassment because, for the most part they are employed in low status, low paying jobs. Most work in the clerical and service areas of the employment sector, and are usually supervised by male bosses. Because of the fear of losing their jobs, many women have silently endured sexual harassment in the workplace, considering it to be 'normal' occupational hazard. Until recent years the practice of sexual harassment was virtually unchallenged".

[79]Aggarwal goes on to state at p.10:-

"Sexual harassment appears to indicate that such behaviour can be divided into two categories: sexual coercion and sexual annoyance. Sexual coercion is sexual harassment that results from some direct consequence to the worker's employment status or some gain or loss of tangible job benefits. Sexual harassment of this coercive kind can involve an 'employment nexus'. The classic case of sexual harassment falls into the nexus category: A supervisor using his power over salary promotions and employment itself, attempts to coerce a subordinate to grant sexual favours. If the worker succeeds to the supervisor's request, tangible job benefits follow. If the worker refuses job benefits are denied.

Sexual annoyance, the second type of sexual harassment, is sexually related conduct that is hostile, intimidating, or offensive to the employee, but nonetheless has no direct link to any tangible job benefit or harm. Rather, this annoying conduct creates a bothersome work environment and effectively makes the worker's willingness to endure that environment a term or condition of employment.

The second category contains two subject groups. Sometimes employees subject to persistent requests for sexual favours persistently refuses. Although that refusal does not cause any loss of job benefits, the very persistence of the demand creates an offensive work environment, which the employee should not be compelled to endure. The second subgroup embraces all other conduct of a sexual nature that demeans or humiliates that person addressed and in that way also creates an offensive work environment. This includes sexual taunts, lewd or provocative comments and gestures and sexual offensive physical contact.

...

In its milder form it [sexual harassment] may be confined to verbal innuendoes and inappropriate. In a smaller form it may be confined to verbal innuendoes, and inappropriate affectionate gestures.

The author identifies at p.11-12 of his text that as a general rule the following behaviour constitutes sexual harassment and includes inquires or comments about an individual's sex life and/or other relationships with sex partner. And, similarly sexual looks such as leering or ogling and unwanted propositions for sex".

[80]The definition of harassment under para.3(o)(i) of the Nova Scotia legislation establishes that a respondent must have engaged **"in vexatious sexual conduct or a course of comment"**. Sexual harassment is a broad concept encompassing a wide range of comments and conduct that do not necessarily have to be specifically directed at the complainant.

[81]In **Miller v Sam's Pizza House** (1995) 23 C.H.R.R. D/433 (N.S. Bd Inq) sexual harassment was described,

"...as including verbal abuse or threats; sexually oriented jokes, remarks, innuendoes, or taunting, leering, ogling or other gestures with suggestive overtones; unnecessary and inappropriate physical contact such as patting, pinching, stroking or suggestively brushing up against someone else's body; as well as sexual touching or physical assault".

[82]In determining whether or not there has been a breach of **Section 3(o)(i)** Boards of Inquiry have used an objective test to determine whether or not the alleged sexual contact or course of comment constitutes sexual harassment. That is to say would a **“reasonable person”** have known or ought to have known that the behaviour or comments was/were offensive or unwelcome by the complainant.

[83]What is meant by **“unwelcome”** in **Section 3(o)** was examined in **Wigg v Harrison** (1999) C.H.R.R. Doc. 99-188e (N.S. Bd Inq) at p.21 where Aggaswal (infra) was quoted at p.63,

“The primary identifying factor in sexual harassment incidents is that sexual encounters are unsolicited by the complainant and unwelcome to the complainant. As sexual attraction often plays a role in the day-to-day social exchange between employees, the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected sexual advances may well be difficult to discern. But this distinction is essential because sexual conduct becomes unlawful only when it is unwelcome”.

[84]The Board in **Wigg** went on to say,

“At p.D/447 in Miller (Infra.), signals of unwelcome conduct vary from individual to individual and may vary in strength depending on the incident, the comment or the behaviour. A sexual advance may incite a strong refusal and outrage or may be with stony silence and evasion. Both response signal unwanted or unwelcome behaviour. At p.69 Aggarwal, Infra., explains,

To establish that the sexual conduct or advances in question were unwanted or unwelcome, the complainant is not required to prove that she had ‘verbally protested’ or expressly said ‘no’ to the perpetrator or conveyed to him in another way that his behaviour was unwelcome. It is sufficient for the complainant to establish that she by her conduct or body movement or body language conveyed to the perpetrator her disapproval of his advances. Where the complainant attempted to evade the harasser as much as she could, it was found that the conduct was unwelcome although no verbal protest was made.

At p.D/447 in Miller (Infra.):

Though a protest is strong evidence, it is not necessary element in a claim for sexual harassment. Fear of repercussions may prevent a person in a position of weakness from protesting. A victim of harassment need not confront the harasser directly so long as her conduct demonstrates explicitly or implicitly that the sexual conduct is unwelcome. For example, in Anderson v Guyed (1990) 11 C.H.R.R. D/415 (B.C.H.R.C.), the complainant was subjected to suggestive remarks from her employer. She ignored the remarks and did not complain about them because she was afraid of losing her job. The Chairperson did not find her failure to rebuff the advances to be unusual in the circumstances”.

Section 39(3) states

“in any prosecution under this act is sufficient for conviction if a reasonable preponderance of evidence supports a charge that the accused has done anything prohibited by the act or refused or neglected to comply with an order made under this act”.

[85]The Board of Inquiry in *McLellan v Mentor Investments Ltd.* (1991) 15 CHRR D/134 (NS

Bd. Inq). At paragraph 17 stated,

“Previous adjudicators have found that to prove sexual harassment, the following is required:

The complainant must prove, on a balance of probabilities, that there was a contravention... of the Human Rights Code. This involves two parts: 1) proof that the alleged conduct by the respondent occurred; 2) proof that it constituted sexual harassment in the circumstances (for example, that it took place without the complainant's willing consent). If the complainant leads evidence which could satisfy these requirements then the respondent has an evidentiary burden to respond with some evidence that the acts did not occur or that they did not constitute sexual harassment.

Zarankin v Johnstone (1984), 5 C.H.R.R. D/2274 [D/2280, para. 19221]; aff'd (1985, 6 C.H.R.R. D/2651 (B.C.S.C.)".

6. **DECISION**

[86]In the present case the Respondent Michael Tan plead guilty to a charge of sexual assault contrary to **Section 271(1)(a)** of the Criminal Code on November 23, 2004. This charge was based on the allegations of Michael Tan touching Danielle Bennett's breasts and bum on April 19, 2004.

[87]It is clear that where a respondent has admitted his conviction of sexual assault in a Criminal Court on the same facts as those contained in a complaint heard before a Board of Inquiry that this admission is proof that this conduct was sexual in nature and lacked the complainant's consent [see ***Fernandes v MultiSun Movies Ltd.*** (1998) 35 C.H.R.R. D/43 (BCHRT) and ***Eldridge v 2887126 Canada Inc.*** (1999) CHRR doc 99-233 Ont. Bd. Inq.]. In his evidence before this Board Michael Tan admitted to grabbing or cupping Danielle Bennett's bum as she went up the stairs in front of him but he denied touching her breasts. At his sentencing for the sexual assault the transcript of which appears at Tab 15 of Exhibit 1, his Solicitor at page 139 stated he plead guilty to the two incidents of touching that occurred on April 19. And further on his Solicitor stated,

"As I indicated your Honour there was a meeting at the restaurant between the complainant and Mr and Ms Tan on April 30 where Mr Tan accepted the conduct and he did apologize to Ms Bennett at that time for his conduct".

[88]Both Michael Tan and Bonnie Tan before me testified that there was an admission of the touching of the bum only and a denial of touching of her breasts.

Danielle Bennett in her direct testimony as to that meeting also stated that Michael Tan admitted to touching her bum but denied touching her breasts. She went on to testify that she wanted him to come clean with Bonnie Tan.

[89]In **Miller v Sam's Pizza House** it was held that only one instance of vexatious sexual conduct was sufficient for finding of sexual harassment but a complaint based on a course of behavior requires some degree of repetition of unwelcome sexually based comments and/or behavior.

[90]Danielle Bennett in her testimony certainly described a course of behavior that included unwanted bumping and touching and slapping of her bum or lifting the back of her shirt and making the comments **"just checking you out"** as well as touching her shirt and flicking her breast ostensibly to clean something off her uniform.

[91]Michael Tan has denied all of this type of behavior and no one else who testified stated that they observed any of this between Michael Tan and Danielle Bennett, although Sherri Bennett saw an incident where Michael Tan had grabbed another waitress. Jeff Healey saw Danielle Bennett slapping Michael Tan on the backside.

[92]In assessing the credibility of the witnesses this Board is guided by the comments of the British Columbia Court of Appeal in **Faryna v Chorny** (1952) 2 D.L.R. 354 part of the B.C.C.A. at paragraph 10 where it is stated,

"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 those shrewd persons adept in the half-lie and of long and successful experience in combining skillful 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".

[93]While the Board acknowledges that English is not the first language of Michael Tan and Bonnie Tan and there may have been very well been some misunderstandings as to what might have been said; the description of the events of April 19, 2004, given in Provincial Court at Michael Tan's sentencing and apparently accepted by his lawyers submissions are certainly more consistent with Danielle Bennett's version and make his denial of touching the breast very difficult to accept. It is very clear the touching of Danielle Bennett's bum alone would constitute a sexual assault which is contrary to **Section 271 (1)(a)** and as well a violation of **Section 3(o)** of the *Human Rights Act*.

[94]I am also persuaded on the balance of probabilities that Michael Tan engaged in a course of conduct over the course of four (4) years in relation to Danielle Bennett outside the events of April 19, 2004, which would constitute sexual harassment within the meaning of the *Act*.

[95]Michael Tan certainly had what appears to have a very cavalier attitude towards his guilty plea for the sexual assault charge. Especially when he stated, "**No difference breast/ bum**". As well, the Board has Sherri Bennett's testimony about what the Complainant Danielle Bennett told Sherri Bennett before she stopped work in June 2001 about how Michael Tan treated Danielle and she was aware of Danielle Bennett being upset after Sherri had stopped work.

[96]It has been strongly suggested that Danielle Bennett's financial difficulties were at the

root of her complaint in that the present complaint only arose after the Tans refused to loan her more money. As well there was the suggestion that if Danielle Bennett's loan payments were reduced to \$50.00 per pay from \$200.00 that her complaints could disappear.

[97]At no time has Danielle Bennett denied her debt to the Tans or Bonnie Tan's accounting. After she left Hau's she called and offered payment from her vacation pay. She only started the Small Claims Court proceedings to obtain the vehicles. In fact it is her indebtedness to the Tans that made her even more vulnerable to the unwanted comments and touching by Michael Tan. Certainly the allegation of the sexual assault relates exclusively to Michael Tan and there is no evidence that Bonnie Tan was a party to any of the acts of her husband or that she condoned them in any way. Indeed Danielle Bennett's evidence was that after her first complaint the acts of sexual harassment stopped for approximately one year. When she raised the later complaint in April 2004 Bonnie Tan attempted to deal with it immediately . While Bonnie Tan has sided with and defended her husband it is also clear that she did not condone any of the behavior that he admitted to.

[98]With regard to Hau's Family Restaurant there was no evidence before the Board as to whether or not it was an incorporated company or a proprietorship. While Bonnie Tan appeared to be the hands on manager it was very obvious that Michael Tan was the owner and directing mind of the restaurant. In *Robichaud v Queen* (1987) 40 D.L.R. (4th) 577 (S.C.C.) Justice La Forest stated page 584,

“A supervisor’s responsibilities do not begin and end with the power to hire, fire, and discipline employees, or with the power to recommend such actions. Rather, a supervisor is charged with the day-to-day supervision of the work environment and with ensuring a safe, productive workplace. There is no reason why abuse of the latter authority should have different consequences than abuse of the former. In both cases it is the authority vested in the supervisor by the employer that enables him to commit the wrong: it is precisely because the supervisor is understood to be clothed with the employer’s authority that he is able to impose unwelcome sexual conduct on subordinates”.

[99]While Bonnie Tan may have been the direct supervisor obviously she did not condone the actions of her husband Michael Tan. Michael Tan certainly had in the course of conducting business made decisions involving Hau's Family Restaurant and he had the opportunity to sexually harass and discriminate against Danielle Bennett. His actions in this regard are directly related to his role as the "**directing mind**" of the corporation. Even though Bonnie Tan seemed to have the day to day management responsibilities. When informed of improper activity on the part of her husband she did attempt to do something about it.

[100]In *Karlenzig v Chris Holdings Ltd.* (1991)15 C.H.R.R. D/5 (Sask. Bd. Inq.) the Board at paragraph 27 laid out the appropriate actions to be taken by an employer,

"This Board of Inquiry finds that the employer could have dealt with this matter by taking appropriate remedial action such as:

- 1. Taking (the complainant) seriously;***
- 2. Arranging a private meeting to obtain details;***
- 3. Speaking with (the harasser) to obtain a complete version of the facts;***
- 4. Refraining from defending (the harasser's) actions prior to investigating the matter fully;***
- 5. Interviewing others who were present in the area at the time including the two men in the kitchen;***
- 6. Stating clearly to both parties that this would not be tolerated in the workplace;***
- 7. Reporting back to the complainant to assure her as to the steps which had been taken".***

[101]It is very clear that Bonnie Tan dealt with the complaints by Danielle Bennett by taking the first four (4) steps listed above. There were no other persons to interview and that this type of activity would not be tolerated was implicit in her evidence. The fact before the Board was that she was not tolerating such behavior from her husband. The fact that she defended her husband does not necessarily constitute condonation.

Danielle Bennett also complained of retaliation contrary to **Section 11** of the **Act**. This

Section states,

“No person shall be evicted, discharged, suspend, expel or otherwise retaliate because of a complaint or express intention to complain or on a count of evidence or assistance given in any way in respect initiation inquiry or prosecution of a complaint or other proceeding under this act”.

[102]The acts of retaliation complained of are numerous, and include:

- 1) She was fired.
- 2) Encouraging follow employees to harass the complainant.
- 3) The demand that the loan be repaid within 24 hours.
- 4) That the Complainant Danielle Bennett or her son were not to be permitted on the property of Michael Tan.
- 5) Failure to deliver a T4 slip in a timely manner as required by law.
- 6) Failure to deliver separation papers in a timely manner as required by law.

[103]Each of these incidents have to be looked at separately. The main complaint of Danielle Bennett is that she was fired. Danielle Bennett testified that she went to the police to repeat Michael Tan’s ***“threat”*** that he demanded the loan be repaid in 24 hours. I do not accept Jeff Huntley’s testimony that when she was leaving she said ***“I quit”***. If she had why would she call back to see if she was still on the work schedule, not only once, but several times and later call JR’s to see if she was on the schedule there.

[104]Bonnie Tan’s evidence was that when Danielle Bennett walked out she quit. She also testified this was her long term policy that if ***“a girl leaves she quit”***. Based on all the evidence I am unable to conclude that Danielle Bennett was dismissed contrary to **Section 11** of the **Act**.

[105]With regard to harassment by other employees, the Board finds that Mr Huntley’s actions do not constitute retaliation by the Tans or Hau’s Family Restaurant. Certainly Danielle

Bennett had complained about Mr Huntley well prior to the incident in April 2004. Even by her evidence he was not very nice to his fellow workers, including Danielle Bennett. There is no evidence his behavior changed or got worse after she made her complaint. Rather he continued on as he had beforehand. Nor in the context of the main complaint under **Section 3(o)** is there sufficient evidence before the Board to conclude that he committed any acts of sexual harassment towards Danielle Bennett either before or after her complaint. Danielle Bennett also complained about the actions of another employee by the name of Scott. Even by Danielle Bennett's direct evidence he was intoxicated at the time and the next day he apologized. The more troubling aspect of this incident with Scott was that both Michael Tan and Bonnie Tan were present and did nothing, but there is no indication that they encouraged or incited Scott to say what he did.

[106]The third incident is the demand that the loan be repaid. In this regard the demand does seem to come immediately on the heels of Michael Tan being charged with sexual assault. This complaint is more on point. The leading case which sites the test for retaliation is ***Entrop v Imperial Oil Ltd.*** (No.7) (1995) 23 C.H.R.R. D/213 (Ont. Bd. Inq.). In this case it was stated in paragraph 38,

“ Where there is evidence that the respondent intended the act or intend to serve as retaliation for human rights complaint, this will provide requisite linkage. However, as it is well established in human rights jurisprudence, the inability to prove intention is not fatal to the claim. There are many situations where the respondent is not consciously aware of the discriminatory impact of certain behavior. The detrimental effect of such actions can create substantial damage”.

[107]As the Supreme Court of Canada noted in ***Action travail des femmes v Canadian National Railway Company*** (1987) 8 C.H.R.R. D/4210 (at D/4225, para. 33241), the imputation of the requirement of ***“intent”*** even if it unrelated to moral fault, failed to respond adequately to the many instances where the effect of policies and practices is discriminatory even if that effect is unintended and unforeseen.

[108]It was quiet obvious from Danielle Bennett's evidence that she perceived the statement that he wanted his money as an act of retaliation. She stated she considered it a threat and told the Tans she was going to the police and did so. Certainly the complaint to the Human Rights Commission and the police are coming out of the same incidents involving Michael Tan and are linked and in fact were linked in the minds of the Parties. The Tans by their evidence considered the fact that they were reducing the loan payments from \$200.00 per pay to \$50.00 per pay would lead Danielle Bennett to withdraw her complaints to Human Rights and to the police. When this did not happen the demand for payment for the debt was immediately made and it was clear from the evidence of the Tans that they linked the two complaints as one. This does constitute an act of retaliation contrary to **Section 11**.

[109]The forth complaint from Danielle Bennett related to the Michael Tan attempting to bar her from the property where her son was taking Karate lessons. This incident is certainly not quite so clear until put in the context of the sentencing of the criminal charge of the sexual assault. By Danielle Bennett's evidence the demand or request that she not attend came shortly after the guilty plea and sentencing. Michael Tan in his evidence also stated that after discussing this with his Probation Officer he made the request to his manager to not allow her on the property about a week after sentencing.

[110]While there was no evidence to this effect, certainly it is a common requirement that the perpetrator not have any contact with the complainant or victim. Even if there was no such condition in the Probation Order it would be a wise course of conduct to take. I accept in this regard Michael Tan's evidence that he put forward that request after being told by his Probation Officer not to have any contact with Danielle Bennett and not as a further act of retaliation. His evidence was he did not want any more trouble.

[111]Regarding the failure to deliver the T4 slip and separation papers in a timely manner. Both of these are almost a year after the incidents. Danielle Bennett testified that she had to make complaints to Revenue Canada and Employment Insurance in order to obtain the

documents that should have been provided to her. Bonnie Tan on the other hand stated that when requested she mailed them to Danielle Bennett. There is no other evidence in this regard. I am unable to conclude on the balance of probability that these acts, if they occurred, would constitute retaliation.

7. **REMEDY**

[112]Section 34(8) of the *Human Rights Act* sets out the powers available to a Board of Inquiry. This section states:-

“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 therefor”.

[113]In *Torres v Royalty Kitchenware Ltd.* (1982), 3 C.H.R.R. D/858 at D/873, set out the factors to be considered in assessing the remedy for sexual harassment. These factors include:-

- 1) the nature of the sexual harassment (verbal or physical)
- 2) the degree of aggressiveness and physical contact
- 3) the ongoing nature (duration) of the harassment
- 4) the frequency of the harassment
- 5) the age of the victim
- 6) vulnerability of the victim
- 7) the psychological impact of the harassment on the victim

[114]Compensation is often awarded as part of a remedy for sexual harassment. As well, common remedies also include an apology, compensation for lost wages, general damages or damages for mental distress, implementation of sexual harassment policies, sensitivity training, and education sessions.

[115]Prior to the commencement of the Hearing Danielle Bennett advised the Board that her only claim is for general damages and she is not seeking any amount for special damages or lost wages.

[116]Taking into account the factors as identified in the **Torres** case the sexual harassment that was committed by Michael Tan was both verbal and physical. While it was certainly not overly aggressive there was in fact physical contact which was spread over Danielle Bennett's almost entire term of employment. Danielle Bennett advised there were probably thirty (30) or forty (40) incidents. Although this certainly appears to be a guess on Danielle Bennett's part.

[117]Danielle Bennett is a married woman in her thirties and certainly would not normally be considered more vulnerable than other women except for her poor financial situation, of which Michael Tan was certainly aware. Danielle Bennett was holding down two (2) jobs, not only her job as a waitress at Hau's Family Restaurant and employment in one of Michael Tan's other businesses, J.R.'s Lounge, but she also was working at the same time as a school bus driver. Both Michael Tan and Bonnie Tan noted that Danielle Bennett was a poor financial manager and was always borrowing money to the extent that very frequently, according to Bonnie Tan, Danielle Bennett's loan payment would often exceed her paycheck. Michael Tan was not only an employer but he was also a creditor of Danielle Bennett and this made her even more vulnerable.

[118]As well, Danielle Bennett testified as to the psychological impact the incidents had on her. This is certainly corroborated to some extent by the evidence of Linda Wheeldon; however I do have some concerns in this regard in that Danielle Bennett did not take advantage of the psychological counseling that was available to her through Victim Services and Linda Wheeldon. Linda Wheeldon noted that Victim Services had a cap of \$2,000.00 for such services, \$1,000.00 would cover fifteen (15) sessions. Danielle Bennett only attended two

(2) sessions with Linda Wheeldon and cancelled the third. Danielle Bennett's only subsequent contact with Linda Wheeldon was to request a letter outlining her prior contact.

[119]As a result of this I am unable to conclude that there was any great psychological impact on Danielle Bennett.

[120]In spite of the foregoing paragraph Danielle Bennett is still certainly entitled to general damages which should be awarded for harm and injury to her dignity and self respect and as well to recognize the humiliation suffered as a result of the harassment that she was subjected to by Michael Tan.

[121]A review of the cases involving awards of general damages indicate they range from a low of \$250.00, in ***Morrison v O'Leary Associates*** (1990) 15 C.H.R.R. D/257 (NS Bd Inq), to a high of \$10,000.00, in ***Wallis v Hillcrest Manor Limited***, May 18, 1994, (NS Bd Inq) North (unreported) and ***Miller v Sam's Pizza House*** (1994) 23 C.H.R.R. D/433 (NS Bd Inq).

[122]Most of the awards appear to be between the \$1,000.00 to \$5,000.00 range.

[123]In this case taking into consideration the factors as outlined in the ***Torres*** Decision an appropriate award would be that the Respondents, Michael Tan and Hau's Family Restaurant, jointly and severally pay to the Complainant, Danielle Bennett, the sum of \$2,500.00 in general damages.

[124]Michael Tan in his testimony noted that he has in the past employed over one hundred (100) females. I accept the evidence of Sherri Bennett that Michael Tan has behaved inappropriately to other female employees in addition to Danielle Bennett. Therefore, in addition, an Order should issue that the Respondents, including Michael Tan, Bonnie Tan and Hau's Family Restaurant, be subject to monitoring by the Nova Scotia Human Rights Commission for a period of three (3) years to ensure compliance with the ***Nova Scotia Human Rights Act***.

[125]Bonnie Tan is included in this Order as she appears to be directly responsible for the supervision of the employees at Hau's Family Restaurant. Therefore both Michael Tan and Bonnie Tan, their present employees and any new employees throughout the period of monitoring by the Nova Scotia Human Rights Commission shall be required to take Sensitivity Training during working hours with no loss of pay for as many hours as the

[126]Commission considers necessary in order that the Commission may properly supervise this aspect. The Respondents, Michael Tan and Bonnie Tan, shall report to the Commission the name, address, and phone number of all employees during the period of monitoring.

The Commission should also be advised as to a reason why an employee leaves their employment during this time.

[127]In addition, the Respondents, Michael Tan, Bonnie Tan and Hau's Family Restaurant, shall file a Sexual Harassment Policy in conformance with the **Act** with the Nova Scotia Human Rights Commission within four (4) months of the date of this Decision, which Policy shall be posted at Hau's Family Restaurant. This Policy shall be provided to all present staff members and new staff on hiring and posted where it is clearly visible to all staff, as well as posting a copy of the **Act** in a conspicuous place.

[128]On conclusion I wish to apology to not only the Complainant but to the Respondents and the Commission for my delay in rendering this Decision.

DATED at Berwick, Kings County, Nova Scotia, this _____ day of March, A.D., 2007.

ROBERT C. STEWART, Q.C., Chair
Human Rights Board of Inquiry