IN THE MATTER OF: **THE NOVA SCOTIA *HUMAN RIGHTS ACT* (the "*Act*")**

and

IN THE MATTER OF: **Board File No. 51000-30-H19-0172**

BETWEEN:

Timothy Parsons

Complainant

- and –

Bedford Investments Ltd. o/a Sunnyside Restaurant and True North Diner

Respondent

- and –

Nova Scotia Human Rights Commission

DECISION

Chair:	**Dennis James, K.C.**
Hearing Date:	**July 17th and 18th, 2023**
Location:	**Human Rights Commission Office located at 5657 Spring Garden Road, Suite 305, Halifax Nova Scotia**
Counsel:	**Timothy Parsons, Complainant**
	Steve McMullin, on behalf of the Respondent
	Kendrick Douglas, Counsel for the Nova Scotia Human Rights Commission

Timothy Parsons is 53 years old and has been working in restaurants for most of his working career. He identifies as black and as a gay man. He filed a complaint on March 22, 2019, alleging that he was the subject of discrimination by the respondent Bedford Investments Limited (Respondent) which operates True North and Sunnyside, both restaurants located in Bedford, Nova Scotia. Specifically he alleges that the Respondent violated s. 5 (1)(d)(i)(j) and s. 5 (2) of the "*Act*"

Mr. Parsons worked for the Respondent from November 23, 2018, until December 18, 2018 primarily with True North, but he also worked shifts at the Sunnyside. On December 18 he received a phone call from the manager responsible for both restaurants and was advised that his employment with the Respondent was no longer required. The Respondent relied on Mr. Parson's probationary status and did not provide an explanation other than to advise him that his services were no longer needed. He was provided his earned pay and a Record of Employment was issued.

Mr. Parson's alleges that the Respondent discriminated against him in two respects. He says that he was sexually harassed by a co-worker at the True North, who will be identified as B.S., including acts of reprisals directly and in front of co-workers. Mr. Parsons also alleges that he was isolated in the Sunnyside workplace due to his being black, and that his race and/or colour was a factor in the termination of his employment.

Counsel for the Nova Scotia Human Rights Commission ("Commission") requested, and the parties agreed to sever the issue of remedy and requested that the Board conclude on whether Mr. Parson's protected rights were violated. If the Board concludes that there has been a violation or violations, the parties will be given an opportunity to address the question of what the appropriate remedy is.

Issues

The following issues arise from Mr. Parsons' complaint:

i. Did the Respondent discriminate against Mr. Parsons because of his race and/or colour?, and,

ii. Was Mr. Parsons sexually harassed in the workplace as alleged?

Did the Respondent discriminate against Mr. Parsons because of his race and/or colour?

Mr. Parsons testified on his own behalf and did not call any other witness. He did not file any exhibits although the Commission tendered some exhibits which included two email that Mr. Parsons sent to the investigator and some investigator's case notes of a conversation with Mr. Parsons.

The Respondent called as its only witness, Steven McMullin, who had little direct evidence to provide. Mr. McMullin was able to confirm he was one of the recipients of an email dated December 18, 2018, from the manager for the Respondent who was responsible for both the True North and Sunnyside. That email refers to a description of circumstances that allegedly occurred at the Sunnyside on December 15 during which Mr. Parson was said to have been exhibiting "attitude", that he was asked to leave his shift early, and that as he was leaving, he stopped by two of his co-workers and told them "that he would be back to meet them at 10 p.m. to settle this matter." The email report said that the co-workers were fearful of Mr. Parsons.

Aside from Mr. McMullin's limited direct involvement, the Respondent relies entirely on the email of December 18 to justify its decision to terminate Mr. Parsons' employment. Mr. McMullin testified that the source of the information set out in the email was from Laura Triff, the Chef Manager of the Sunnyside. Upon questioning by Mr. Parsons, Mr. McMullin could not say whether Ms. Triff was a direct witness to any of the allegations set out in the email.

Mr. McMullin urged the Board to accept the email for the truth of its contents. He suggested that there was no reason why "anyone would simply make up this narrative". Mr. McMullin was able to confirm through direct evidence that the Respondent relied on Mr. Parsons' status as a probationary employee to end the employment, and that he was never provided an opportunity to respond to the contents of the email. Mr. McMullin confirmed that the email was the only record of the alleged circumstances as there were no statements obtained from the employees involved.

Given the limited evidence provided to the Board, it is important to spend time assessing the credibility of Mr. Parsons' testimony. While credibility is always important the emphasis is particularly apt in this case where the only evidence is that offered by the Complainant. In its pre-hearing brief, the Commission writes:

> One of the most frequently cited passages concerning the assessment of witness credibility comes from the British Columbia Court of Appeal:
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> 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 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. *Farnya v. Chory* [1951} B.C.J. No. 152 (BCCA).

See also: *R. v. Stanton* 2021 NSCA 57 at para. 25.

The Board finds Mr. Parsons to be a credible witness. He presented his evidence in a forthright manner and was even-handed in his recollection of the circumstances. He recounted his previous experience working at the True North when he seemed to enjoy his employment. During his testimony he distinguished the experience that he had working at the True North from that working at Sunnyside. He was appreciative of the initial support of Chef Manager Carmelo Olver at True North when he reported sexual harassment by a co-worker, and he contrasted that with the reception that he received at Sunnyside. When he was challenged on some issues, he could clarify in manner consistent with his direct evidence, and he was prepared to acknowledge what he could not recollect, or instances where his recollection was inaccurate on some details.

Mr. Parsons advised the hearing, as set out in his complaint, that he was disciplined for having showed attitude while working at the Sunnyside on December 15. He denied the allegation and testified that the only exchange that he had with his co-workers was with a younger colleague and it was to comment on the evenness of the cheese distribution on a plate of nachos. Mr. Parsons testified that after he spoke with his cook colleague about the application of cheese on the nachos, he observed the sous chef and the two other cooks gathered as the sous chef wanted to know what Mr. Parsons had said. The sous chef then directed him to the back room and confronted him about attitude. Mr. Parsons testified that he did challenge why he was being disciplined and denied that there were exchanges with the other cooks other than the presentation of the nachos. He testified that he was not provided details of what may have constituted his attitude, but was told to leave the shift early, which he did. He acknowledged that he was upset about being picked on but only spoke to the wait staff as he left, save one exchange when he challenged why the other cooks were laughing at him.

It was also alleged in the December 18 email that as he was leaving Mr. Parsons said to one of his colleagues that he would be back at 10 p.m. to settle matters. Again Mr. Parsons

denied that the said anything that may have constituted a threat. He said that this made no sense as he was reliant on bus transportation to get home to Halifax and to return. Mr. Parsons testified that he went home and did not return to Sunnyside later, nor did he ever threaten to.

The email of December 18 that is relied on by the Respondent was not disclosed during the investigation, nor in advance of the hearing. Nor was it presented to Mr. Parsons during Mr. McMullin's cross examination of him. The email was introduced during the hearing following questioning of Mr. McMullin by Commission counsel. The Respondent did refer to some of the contents of the email in its prehearing submission but that was filed the last business day before the hearing started, and it seemed that Mr. Parsons did not see the submission before the hearing started. Accordingly, Mr. Parsons did not know the contents before he testified. Still, Mr. Parsons' testimony did not shy away from the suggestion that he was told that he had exhibited attitude. Not only did the complaint form record that allegation, but before knowing of the contents of the email he had told the Board that he was accused of having an attitude but offered his response. Taken as a whole, the late production of the email lends credence to Mr. Parsons' evidence.

The Respondent asked the Board to rely on the email even though no witnesses referred to in the email were available to testify. It is certainly in the Board's discretion to receive the email for the truth of its contents. Section 7 of the Boards of Inquiry Regulations provides:

> 7. In relation to a hearing before a Board of Inquiry, a Board of Inquiry may receive and accept such evidence and other information, whether on oath or affidavit or otherwise, as the Board of Inquiry sees fits, whether or not such evidence or information is or would be admissible in a court of law; notwithstanding, however, a Board of Inquiry may not receive or accept anything that would be admissible in a court by reason of any privilege under the law of evidence.

Having considered the authority provided through the regulation, the Board exercises its discretion to not accept the email for the truth of its contents. There are a few reasons for this. First, there was no good explanation why a witness was not called that could speak to the circumstances, as Mr. Parsons did. Second, the email was from the manager reporting information from the Chef Manager. It is not possible to know who made the observations that are set out in the email. It would be pure guess work, which is not acceptable. Third, there was no evidence as to the training that any of the supervisory or managing staff had to deal with employment and human rights issues, nor of the policies that governed the workplace.

The Board also considered that the suggestion of attitude does not accord with the positive feedback that he received from Mr. Olver at True North, and no effort was made by the Respondent to reconcile those two different experiences. It is significant that there was no

effort to find out from Mr. Parsons what had happened. Finally, the evidence is that Mr. Parsons did not return to the Sunnyside on December 15.

Without the December 18 email being accepted for the truth of its contents, the Respondent is left with very little evidence. However, this does not end the analysis as the law directs "that 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." See: *R v. Stanton*, *supra* at para 25.

The Board accepts Mr. Parsons assertion that he did not threaten anyone at Sunnyside. It is noteworthy that even Mr. McMullin commented during the hearing that having observed Mr. Parsons that he did not strike him as a violent person. Mr. McMullin testified that they relied on the report from Ms. Triff and relied on the probationary status to avoid the "possibility" that Mr. Parsons' was a violent or threatening individual. Mr. McMullin testified that they trusted the experienced judgement of the manager as informed by the Chef Manager, and approved the ending of Mr. Parsons' employment.

As the Respondent was focused on Mr. Parsons' probationary status it did not make any effort to document the circumstances. From an employment perspective the use of the probationary status might have been technically correct, but it does not shield the employer if Mr. Parsons' race and/or colour was a factor in the complaints by the other employees which ultimately led to his dismissal.

The Board listened carefully to Mr. Parsons' testimony. Mr. Parsons did not offer evidence of anyone at Sunnyside making racist comments but "felt" that his race and colour were factors in the circumstances at Sunnyside. He testified that while there may have been other black employees working for Sunnyside, that the employees he worked with in the kitchen on his shifts were white. He described that during his shifts at Sunnyside he was excluded, or at least not included, by the rest of the kitchen staff, and distinguished that from the wait staff. By contrast he said that at the True North he was given an orientation and was generally supported by the Chef Manager. He said that there was no training or orientation at Sunnyside.

The Board observes that Mr. Parsons was not certain as to the number of shifts that he worked at the Sunnyside location. He did say that True North was his primary workforce but that he had been asked to work some shifts at Sunnyside as they were short-staffed.

It was clear that until he saw the email of December 18 during the hearing, that Mr. Parsons believed his firing also related to his standing up to the sexual harassment that he says he endured. While that was his belief, there is no evidence that those who approved the decision to terminate his employment were aware of the sexual harassment or his complaint to Mr. Olver. Based on the evidence presented during the hearing his firing was entirely related to the circumstances at Sunnyside on December 15.

Following his December 15 shift, Mr. Parsons was scheduled to be off until December 18 when he was to return to the True North for his next shift. It was the morning of December 18 when he was called by the Respondent's manger and told that his services were no longer required. A cheque for his final pay was couriered to him so that he received that later the same day. Although Mr. Parsons was disturbed by the speed with which the cheque was issued, it is clear the Respondent took this step to ensure that he had funds leading into the holidays.

The Respondent asked the Board to draw a negative inference for Plaintiff's failure to call additional witnesses. Of course, there is no ownership in witnesses, and it was open to the Respondent to call any witness it felt was needed to respond to the complaint. It is not lost on the Board that all other witnesses who may have had direct evidence were or had been employees of the Respondent.

To succeed in his complaint, Mr. Parsons has to prove on a balance of probabilities the following:

i. That he has a characteristic (or perceived) protected from discrimination under the Code;
ii. That he experienced an adverse impact with respect to his employment; and,
iii. That the protected characteristic was a factor in the adverse impact.

The Commission supports Mr. Parsons' version that his race and/or colour was a factor in the termination of his employment. Mr. Douglas endorsed the judgement of Mr. Parsons that he was excluded in the Sunnyside kitchen, and he encouraged the Board to draw the inference that race was a factor in the circumstances leading to Mr. Parsons losing his job.

Mr. Douglas referred to the decision in *Darlene Lawrence v. Searidge* 2020 CanLii 49269 at page 16 as follows:

> The Commission sets out in its argument authority for the proposition that Boards of Inquiry are often faced with circumstances of discreet behaviour that is, at least in part, motivated by racism:
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> > 71. In *Davison v. Nova Scotia Construction Safety Association21*, Chair Bankier wrote:
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> > > There is often little direct evidence with respect to events at issue in human rights cases, and the parties may have to rely on circumstantial evidence. Even in situations where there is no direct evidence, a Board of Inquiry can still make findings of fact based on circumstantial evidence. A convenient summary of the law with respect

to circumstantial evidence in human rights cases can be found in *Fortune v. Annapolis District School Bard* (1992), 20 C.H.R.R. D/100 (N.S. Bd. Inq.) at paras 25 and 32-33:

> ... Mrs. Fortune was not given consideration by the School Board for the position awarded to Mr. Robinson. There is no direct reference to the reason for this being the gender of Mrs. Fortune. However, if circumstantial evidence reasonably leads to the conclusion that gender was the most probable reason, the case has been made out. As is stated in *Beatrice Vizkelety, Proving Discrimination in Canada* (Toronto: Carswell, 1987), at p. 142:
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> The appropriate test in matters involving circumstantial evidence ... may therefore be formulated in this manner: an inference of discrimination may be drawn where the evidence offered in support of it renders such an inference more probable than the other possible inferences or hypotheses. ...
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> ... While the Act does not make disrespectful conduct illegal per se, such a course of conduct is relevant in assessing whether an inference of discrimination on the basis of sex is appropriate. In other words, if an applicant who obviously possesses a characteristic that is a prohibited ground under the Act is not treated with the respect and dignity one expects all applicants to be accorded, an inference may be drawn that the characteristic in question is the reason for the poor treatment. If other circumstances support the inference then the case becomes clearer.

…

74. Chair Raymond, in *Cromwell*[22], provided comments that are applicable to the present matter. At paragraph 293 of the decision, she observed that:

> **The perception that a person is not on an equal footing with another can be expressed in very subtle ways** and

> perhaps most effectively by the use of sarcasm and negative teasing. When this occurs in the presence of co-workers, other supervisors or clients, this can have the effect of diminishing the person in the eyes of others in a nuanced but effective manner. As was noted the Nova Scotia Board of Inquiry in *Moore v. Play It Again Sports Ltd.*, 2004 NSHRC 2 (CanLII) at para 5 with reference to *Basi v. Canadian National Railway Co.* (No. 1) (1998) 9 C.H.R.A. D15029 (Can. Trib.), **attitudes and perceptions respecting race are rarely trumpeted in the workplace. I have considered the evidence to determine whether it is more probable than not that race is to be inferred as the reason or part of the reason for the differential treatment of the Complainant**.
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> 294. …The Complainant is entitled to work in an environment where her race is not a factor. Disrespectful conduct, while not contrary to the *Act* per se, can lead to an inference of discrimination on the basis of race when the Complainant is treated differently than other employees and possesses a characteristic that is a prohibited ground under the *Act.*
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> 295. **I have found that the Complainant was subjected to differential treatment in the context of disciplinary actions by the Respondent.** My overall conclusion from the evidence is that disciplinary action was an infrequent occurrence in the workplace. In the Complainant's case, a series of putative actions were taken by the Respondent. There was a rigor to the imposition of discipline that was excessive in the circumstances. This is particularly so given the reported work environment in which these events occurred. The fact the Respondent has policies and is entitled to enforce them does not provide an explanation for the choice of disciplinary reaction. Without such an explanation, I infer that race was a factor, whether intentional or not, in the differential treatment of the Complainant. (emphasis in original)

In *Pieters v. Peel Law Assn.* 2013 ONCA 396, Justice Juriansz provided the following analysis:

> 72 And so it is in discrimination cases. The question whether a prohibited ground is a factor in the adverse treatment is a difficult one for the applicant. Respondents are uniquely positioned to know why they refused an application for a job or asked a person for identification. In race cases especially, the outcome depends on the respondents' state of mind, which cannot be directly observed and must almost always be inferred from circumstantial evidence. The respondents' evidence is often essential to accurately determining what happened and what the reasons for a decision or action were.
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> 73 In discrimination cases as in medical malpractice cases, the law, while maintaining the burden of proof on the applicant, provides respondents with good reason to call evidence. Relatively "little affirmative evidence" is required before the inference of discrimination is permitted. And the standard of proof requires only that the inference be more probable than not. Once there is evidence to support a prima facie case, the respondent faces the tactical choice: explain or risk losing.
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> 74 If the respondent does call evidence providing an explanation, the burden of proof remains on the applicant to establish that the respondent's evidence is false or a pretext. (Emphasis added)

As to the elements that must be proven by Mr. Parsons, the Board finds that he has a characteristic that is protected from discrimination, and that he has experienced an adverse impact with respect to his employment.

The final element is whether his race and/or colour was a factor in the discipline and his termination. There are very few written records. The evidence is that Mr. Parsons did not witness overt incidents of discrimination at Sunnyside. Rather the evidence is that his employment was ended for what is alleged to have occurred on December 15. When one reads the email of December 18 the original source of the complaint appears to be the two cooks, and then the Sous Chef. The Respondent had the opportunity to better test and document the allegations before it decided to terminate Mr. Parsons' employment. It certainly had opportunity to review the circumstances once the complaint was made by the Human Rights Commission, but it did not do so. Finally, it had the opportunity to provide the Board with reliable evidence to address the allegation, but it did not do so.

The Board is prepared to draw the inference that Mr. Parsons' race and/or colour was a factor in the complaints made against him by his co-workers, which, in turn, were relied upon by the Respondent in terminating his employment. Specifically:

i. The Board accepts that Mr. Parsons was the only black worker in the kitchen during his shift on December 15.

ii. The Board accepts that Mr. Parsons only spoke to one of his colleagues about the presentation of nachos.

iii. The Board accepts that Mr. Parsons did not receive a clear explanation of what constituted the "attitude" for which he was being disciplined by sending him home.

iv. The Board accepts that the two other cooks who seemed to be the source of the complaints were laughing at him as he left the restaurant.

v. The Board accepts that Mr. Parsons did not threaten his co-workers.

For reasons explained, the Respondent did not introduce any evidence that rebutted the finding and, accordingly, the Board finds on a balance of probability that Mr. Parsons' race and/or colour was a factor in his termination, contrary to the *Act*.

In *Robichaud v. Brennan* [1987] 2 SCR No. 27 the Court address the issue of the employer's liability for the actions of its employees. At paragraph 17, Justice LaForest stated:

> 17 Hence, I would conclude that the statute contemplates the imposition of liability on employers for all acts of their employees "in the course of employment", interpreted in the purposive fashion outlined earlier as being in some way related or associated with the employment. It is unnecessary to attach any label to this type of liability; it is purely statutory. However, it serves a purpose somewhat similar to that of vicarious liability in tort, by placing responsibility for an organization on those who control it and are in a position to take effective remedial action to remove undesirable conditions. I agree with the following remarks of Marshall J., who was joined by Brennan, Blackmun and Stevens JJ., in his concurring opinion in the United States Supreme Court decision in *Meritor Savings Bank, FSB v. Vinson*, 106 S.Ct. 2399 (1986), at pp. 2410-11 concerning sexual discrimination by supervisory personnel:
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> An employer can act only through individual supervisors and employees; discrimination is rarely carried out pursuant to a formal vote of a corporation's board of directors. Although an employer may sometimes adopt company-wide discriminatory policies violative of Title VII, acts that may constitute Title VII violations are generally effected through the actions of

> individuals, and often an individual may take such a step even in defiance of company policy. Nonetheless, Title VII remedies, such as reinstatement and backpay, generally run against the employer as an entity.
>
> . . . . .
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> 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.

The Respondent is liable to Mr. Parsons.

Was Mr. Parsons sexually harassed in the workplace as alleged?

The *Act* defines "sexual harassment" as follows:

> (o) "sexual harassment" means
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> (i) vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome,
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> (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.

In *Davidson v. Nova Scotia Construction Safety Association* 2006 NSCA 63 addressed the interpretation of this definition. That decision focused on s. 3 (o) (i) as is the case in this decision. This case also involves allegations that causes consideration of s. 3 (o) (iii).

The court in *Davidson*, supra, gave the following explanation of s. 3 (o) (i) at paragraphs 101 to 104:

> 101 The relevant definition of sexual harassment is found in s. 3(o)(i) of the *Act*:
>
> (o) "sexual harassment" means
>
> (i) vexatious sexual conduct or a course of comment that is known or ought reasonably to be known as unwelcome,
>
> 102 In order to constitute sexual harassment under the *Act* the tribunal must be satisfied that the incidents complained of, when proven, amount to vexatious sexual conduct, or a course of comment, which the person(s) whose behaviour is impugned knew or ought reasonably to have known was unwelcome.
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> 103 The definition of what constitutes sexual harassment in Nova Scotia has not been considered by this court since the Act was amended in 1991 to introduce an express definition of sexual harassment. Commentary by other Boards of Inquiry in Nova Scotia has provided useful insight in characterizing the type of conduct that would meet the statutory definition. Obviously many contextual factors will form part of the analysis. Sexual harassment is now well recognized as an expressly prohibited form of discrimination; not simply a problem between two people, but rather something seen to affect the dignity and rights of all persons thereby constituting a public wrong. See for example *McLellan v. Mentor Investments Ltd.* (1991), 15 C.H.R.R. D/134 (N.S. Bd. of Inquiry); *Robichaud v. Brennan*, [1987] 2 S.C.R. 84 (S.C.C.); and Agarwal and Gupta, *Sexual Harassment in the Workplace* (Toronto; Butterworths, 1992, 3rd ed.).
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> 104 In *Wigg v. Harrison*, [1999] N.S.H.R.B.I.D. No. 2 (N.S. Bd. of Inquiry) the Board referred in detail to the reasons of Chief Justice Dickson in *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252 (S.C.C.) at p. 1284 where the Court defined sexual harassment in the workplace as:
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> "... unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment."

While the Court spoke in terms of an allegation of retaliation under s. 11 of the *Act*, the comments of the court are apt for consideration of the reprisal provisions under s. 3 (o) iii.:

> 125 There is no dispute in this case that in order for an act to be found to be retaliatory, there must be a demonstrated nexus between an actual or threatened prejudicial act and the enforcement of a person's rights under the human rights legislation. Where there is evidence that the wrongdoer intended to exact reprisals,

> even if that was only one of the wrongdoer's motivations, the required nexus is obvious. Absence of proof of intention is not necessarily fatal to the claim under s. 11, but in those cases, the law appears to be somewhat less certain, particularly as to whether the nature of the acts is to be judged from the perspective of a reasonable person or more specifically from the perspective of a reasonable human rights complainant.

The only evidence that the Board has on the allegations of sexual harassment is from Mr. Parsons. The Respondent introduced no evidence and did not challenge Mr. Parsons' evidence.

Upon questioning by counsel for the Commission it was clear that the Respondent did nothing to investigate the complaint of the sexual harassment. Mr. McMullin confirmed that he only learned of the allegation when contacted by Commission staff. As the alleged perpetrator no longer worked for the Respondent by that time nothing more was done. There was no evidence that Mr. McMullin even spoke with Mr. Olver to learn from him what had occurred and what he as the site manager did to address the circumstances.

Mr. Parsons describes circumstances on November 23 when he worked with a co-worker who shall be referred to by her initials B.S. This was the first occasion that they worked together. She approached him to tell him that she had "creeped him on Facebook" and that "he was her type". She started to flirt with him and was making his shift uncomfortable. At one point he says that she looked at him while she was holding a hot dog, simulating masturbation while licking it. On another occasion he was walking behind her and signaled that he was behind her, to which she responded "really, I do not feel you inside me". He found both of these actions upsetting and degrading.

He testified that during the shift it become apparent to B.S. that he was not "into her". He said at that point she became vengeful and made work difficult. She grabbed kitchen instruments from him and generally engaged in vindicative behaviour.

The day following the November 23 shift Mr. Parsons was approached by Mr. Olver indicating that he, Mr. Parsons, seemed upset. Mr. Parsons explained to him the circumstances of B.S.' conduct. Mr. Olver assured him that the matter would be addressed and that they valued his contribution and did not want to lose him. The evidence was that Mr. Parsons and B.S. were separated for future shifts so that they would work at different parts of the kitchen. While this assisted it did not resolve the situation as B.S.' reprisal behaviour continued.

On a subsequent shift Mr. Parsons witnessed B.S. talking openly about his orientation and heard her telling a co-worker that "he likes guys" and that he was "a faggot". Mr. Parsons testified that she referred to him as "boy" which is a vile term when directed at black males; it is a term rooted in the oppression of slavery and denigration. Mr. Parsons was asked whether he disclosed his orientation to B.S. He testified that he had not but that on the first

shift that they worked together she advised him that she creeped him on Facebook. He describes that he was the target of B.S.' aggressions during his subsequent shifts with her at True North, including his last one.

On his last shift working at the True North restaurant before the termination of his employment he was working during the brunch and was due to end his shift. Instead, he offered to the sous chef that he would stay an additional thirty minutes to help clean up from the brunch. While he was helping, B.S. came out and grabbed utensils from him in an aggressive fashion. The sours chef acknowledged what had happened and according to Mr. Parsons indicated that she now understood what he was dealing with. She sent him home without requiring that he stay to clean up.

The evidence was that the incidents, including the ongoing reprisals by B.S., were not reported by Mr. Olver or anyone else at True North within the Respondent's management. Mr. McMullin was not aware of the allegations until the Human Rights complaint was made and was not familiar with the details during the hearing even though the complaint was four years old. Upon questioning by Commission counsel, he acknowledged that the Respondent did nothing to investigate the issue following receipt of the Human Rights complaint as B.S. was no longer an employee. Still, Mr. McMullin felt that separation of the two employees indicated that the Respondent addressed the issue. There was no evidence whether B.S. was even disciplined for her conduct. Nor did Mr. McMullin address the fact that there was continual reprisal behaviour by B.S. against Mr. Parsons.

Mr. McMullin did not try to explain B.S.' conduct and said that she was a "bad employee who was fired for other reasons" not long after Mr. Parsons stopped working for the company.

The Board has previously commented on Mr. Parsons' credibility. His evidence on the sexual misconduct was straight-forward and believable. Based on his uncontradicted evidence the Board finds:

i. That the initial acts of the demonstration of masturbation using a hot and the comment about "not feeling him inside her" constituted vexatious sexual misconduct and were upsetting and threatening to Mr. Parsons' well-being, and not acceptable in a workplace.

ii. That B.S. engaged in numerous acts of reprisal including after Mr. Olver addressed the initial misconduct with her, including the verbal hostility in the workplace, the grabbing of kitchen tools and equipment, and using language like "faggot" and "boy".

iii. The Board finds that the misconduct by B.S., including the reprisal conduct, as described by Mr. Parsons would be known to have been offensive.

iv. That the evidence proved only a limited response by the Respondent and left Mr. Parsons dealing with B.S.' reprisals throughout the rest of his employment with the Respondent while he worked shifts at the True North.

v. That B.S.' conduct and Mr. Parsons complaint thereof were not factors in the Respondent's decision to terminate his employment.

Having established a prima facie case, the evidentiary burden shifted to the Respondent. The Respondent did not introduce any evidence on the allegation of sexual harassment. Based on the evidence, the Board finds that the conduct of the employee identified as B.S., including the various acts of reprisal, constituted sexual harassment of Mr. Parsons as defined by the *Act*.

As discussed above according to the principles set out in *Robichaud*, *supra*, the Respondent is liable for the conduct of B.S.

Conclusion

For the reasons set out above the Board finds:

i. that the Respondent discriminated against Mr. Parsons in respect of his employment contrary to S. 5(1)(d)(i) and/or (j) of the *Act*; and,
ii. that the Respondent is liable for the sexual harassment conducted by B.S. against Mr. Parsons contrary to S.5 (2) of the *Act*

The parties agreed that the issue of liability should be addressed initially and that they be provided an opportunity to deal with appropriate remedies, if appropriate. I would ask that the parties provide written submissions on the issues of remedies according to the following schedule:

i. Mr. Parsons and the Commission by October 6.
ii. The Respondent by October 27

DATED at Truro, Nova Scotia this 11th day of September, 2023.

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Dennis James, K.C.
Board