

Date Issued: December 30, 2008
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Indexed as: Harrison v. Nixon Safety Consulting and others (No. 3), 2008 BCHRT 462

IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Kori Harrison

COMPLAINANT

A N D:

Nixon Safety Consulting Inc., Con-Forte Contracting Co. Ltd., Navigator
Development Corporation, and Greg Ford

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kurt Neuenfeldt

Counsel for the Complainant:

Thomas D. Schiller

Counsel for Con Forte Contracting Ltd. and
Navigator Development:

Sean Fairhurst

On his own behalf:

Greg Ford

No one appearing on behalf of Nixon Safety
Consulting

Hearing Dates:

October 29, 30, 31, 2007
November 1, 2, 8, 30, 2007

1. Introduction

[1] Kori Harrison filed a complaint against Nixon Safety Consulting Inc. (“NSC”), Con-Forte Contracting Co. Ltd. (“Con-Forte”), Navigator Development Corporation (“Navigator”), and Greg Ford, in which she alleges that the respondents discriminated against her in employment on the basis of sex (sexual harassment), contrary to s. 13 of the *Human Rights Code*.

[2] Con-Forte, Navigator and Mr. Ford deny that they discriminated against Ms. Harrison in any way. NSC participated in the complaint process to a limited extent, filing a response in which it also denied discriminating against Ms. Harrison. On October 27, 2006, NSC’s counsel notified the Tribunal and the other parties that he was withdrawing from the record. Counsel went on to provide the mailing address for NSC, as listed in the Alberta Corporate Registration system on October 27 2006. Thereafter, the Tribunal forwarded all notices concerning the complaint to NSC at that address.

[3] The Notice of Hearing and a subsequent Notice of Rescheduled Hearing were sent to NSC at the above-noted address, but no one attended the hearing on behalf of NSC. Pursuant to *Rules 7 and 9 of the Tribunal’s Rules of Practice and Procedure*, a party to a complaint is deemed to have received correspondence from the Tribunal if that correspondence is sent to the last mailing address provided by a party. I am satisfied that NSC had notice of the hearing.

2. Decision

[4] For the reasons which follow, I find that Mr. Ford sexually harassed Ms. Harrison and that NSC terminated her employment when she complained. I find that NSC terminated her employment at the urging of Navigator, and with the tacit approval of Con-Forte. At the end of this decision, I set out the remedies I have ordered, and a direction on further submissions.

3. Organization of the Decision

[5] After listing the witnesses called by the parties, I set out background information, and review the witnesses' evidence. I then set out my findings of fact. Finally, I give my analysis, incorporating the submissions of the parties, and give my decision on the complaint. Unless otherwise stated, any collective reference to the respondents does not include NSC.

[6] In coming to my decision, I have considered all the evidence, and all the written and oral submissions, provided by the parties. However, I set out only that which is necessary to put the conclusions I reach in context. In making credibility findings, I note that I am entitled to accept some, none, or all of each witness' testimony.

4. The Witnesses

[7] For Ms. Harrison, I heard from her, Mario Curatolo, Cory Krebs, and Niall Campbell. For the respondents, I heard from Greg Ford, Rod Goodman, Dave Westbrook, Marco DeDominicis, Steven Brown, Jack Kinakin, Nick Piattelli, and David French.

[8] In assessing the witnesses' evidence, I have kept in mind the often repeated observation of the B.C. Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at p. 357, that the real test of the truth of a witness' testimony is the harmony of that person's story with what a practical and informed person would readily recognize as reasonable, in that place and in those conditions.

[9] For reasons set out later in this decision, in key areas, I prefer the evidence of Ms. Harrison and her witnesses to the respondents' evidence.

5. Background

[10] During the time period relevant to the complaint, Navigator, Con-Forte and NSC were all companies incorporated in Alberta, with head offices in Calgary. Mr. DeDominicis was the sole owner of Con-Forte and a part owner of Navigator. He was president of both companies.

[11] Navigator was incorporated in early 2005, while Con-Forte was formed in 1976. Navigator was created as a single purpose entity solely to build a multi-story concrete condominium project in Kelowna known as the “Lofts”. According to Mr. DeDominicis, Navigator sub-contracted with Con-Forte, probably verbally, for it to do “cast in place” concrete work on the Lofts.

[12] Jason Nixon owned and operated NSC, which employed Kathy Burton, a Certified Safety Officer (“CSO”). Mr. Nixon and Ms. Burton both worked out of Calgary. On safety issues, NSC reported to Mr. Westbrook, Navigator’s senior project manager for the Lofts, who in turn reported to Mr. DeDominicis.

[13] In about July 2005, Mr. Westbrook contracted with Mr. Ford to be Navigator’s on site project manager at the Lofts. The contract of employment was initially verbal. Mr. Ford did not sign a written contract until 2006. Con-Forte contracted with Mr. Goodman to superintend its on site operations.

[14] Messrs. Westbrook, Goodman and Ford were all independent contractors. After they began working at the Lofts, Mr. Ford and Mr. Goodman shared an office rented by Navigator and located adjacent to the construction site. Although Mr. Westbrook visited the site on a regular basis, he was based in Calgary.

[15] Mr. Nixon, on behalf of NSC, and Mr. Westbrook, on behalf of Navigator, entered into a contract for NSC to provide site safety services during the Lofts’ construction. On October 7, 2005, Navigator confirmed the contract with a purchase order, issued under Mr. Westbrook’s signature.

[16] Soon after October 7, Mr. Nixon hired Ms. Harrison to work for NSC at the Lofts as a safety officer. Mr. Nixon hired her after she had an initial meeting with Mr. Goodman. Ms. Harrison and Mr. Nixon never met in person.

[17] At the time of the hearing, Ms. Harrison was 27 years old, and a single mother of three children, for whom she received no financial support. She and her children lived with her grandmother. After graduating from high school, she took some courses at a local college. When she began working for NSC, she had some background in the

construction industry. When she started at the Lofts, she had her Level Three first aid certificate, but was not qualified as a CSO.

[18] Ms. Harrison began working for NSC on October 18, 2005. Her employment was subject to a three month probation period, ending January 18, 2006. She was to work a five day, forty hour week, at a rate of \$20 per hour.

[19] When she started working, Ms. Harrison joined Mr. Ford and Mr. Goodman in the site office located immediately adjacent to the Lofts. Construction was at a preliminary stage when she first started, as a building permit had not yet been issued.

[20] On November 4, 2005, Ms. Harrison complained to Mr. Goodman about Mr. Ford. The nature of her complaint is in dispute. I will return to this issue later in the decision.

[21] On December 8, 2005, Ms. Harrison complained to Mr. Nixon about Mr. Ford sexually harassing her at the workplace. The validity of that complaint is also in dispute. Again, I will also return to this issue later in the decision.

[22] Mr. Nixon, Mr. Westbrook, and Mr. Dedominicis made enquiries about Ms. Harrison's December 8 complaint. Thereafter, Mr. Westbrook instructed Mr. Goodman to see to it that Ms. Harrison and Mr. Ford worked in separate locations on the construction site. Ms. Harrison made no further allegations against Mr. Ford after December 8.

[23] On December 9, Mr. Ford, through his lawyer, notified Ms. Harrison that he believed she was defaming him with her allegations, and cautioned her to stop.

[24] On December 13, Mr. Nixon reprimanded Ms. Harrison, in writing, for being late for work on December 12 and 13. On December 18, 2005, Mr. Westbrook complained to Mr. Nixon that Ms. Harrison was being disruptive on the work site. On December 20, 2005, Mr. Nixon terminated Ms. Harrison's employment. She filed her human rights complaint on January 27, 2006.

6. The Evidence

A. *Ms. Harrison's Evidence*

[25] Mr. Curatolo, Ms. Harrison's boyfriend, was instrumental in Ms. Harrison getting a job with NSC. In September 2005, Mr. Curatolo spoke to his friend, Mr. Goodman, and learned that the Lofts project needed a safety officer. Mr. Curatolo suggested that Ms. Harrison would be a good prospect for the position. After their conversation, Mr. Curatolo told Ms. Harrison about the job opportunity and gave her Mr. Goodman's name. Mr. Curatolo heard later that Mr. Goodman had recommended Ms. Harrison for the job.

[26] At the hearing, Ms. Harrison confirmed that Mr. Curatolo had told her that Mr. Goodman was looking for a site safety officer. She phoned Mr. Goodman, and he invited her to the Lofts' site office for an interview. Ms. Harrison was excited about the job opportunity. She hoped to become qualified as a CSO, and wanted more experience as an on-site safety officer.

[27] Ms. Harrison went to the site office, introduced herself to Mr. Goodman, and gave him her resume. They talked about her safety training and her previous work at other construction sites. While he did not ask her if she was a CSO, she told him that she was scheduled to take more safety courses in November 2005, to which he replied that she would have to speak to Mr. Nixon of NSC about her plan. Mr. Goodman told her she would get a call from Mr. Nixon, telling her when she would start, and the meeting ended. Although Mr. Ford was in the office and introduced himself, the conversation was primarily between Ms. Harrison and Mr. Goodman.

[28] Soon after the meeting with Mr. Goodman, Mr. Nixon called Ms. Harrison at her home. During the conversation, in which Mr. Nixon offered her the job, she told Mr. Nixon that she was enrolled to take a safety officer course in November, and he said he would be willing to pay for it. He did not mention that she would be on probation to start. He also told Ms. Harrison that she was to do some filing and other support work for Navigator, but not for Con-Forte.

[29] Mr. Nixon told Ms. Harrison that he would send her the necessary safety manuals for the job site, and that it was her job to enforce the rules he put in place.

[30] On Ms. Harrison's first day of work, she met with Mr. Goodman, who went over the site plans with her. They discussed what trades would be used, the various documentation that had to be arranged, including Workers Compensation Board ("WCB") paperwork, and the supplies needed for the office. They also discussed plans for establishing a first aid trailer. A trailer owned by another construction company had to be removed from the job site before a first aid trailer could be put into position. The intended trailer also had to be extensively renovated and stocked with first aid supplies.

[31] On her first day, Ms. Harrison went with Mr. Ford to buy office supplies, including three journals. The journals were intended for use by her, Mr. Goodman and Mr. Ford in relation to the Lofts construction. According to Ms. Harrison, after she began work at the Lofts, she made entries periodically throughout the day, but did not necessarily record things in the order in which events occurred.

[32] A review of her journal confirms that it is a relatively detailed record of Ms. Harrison's daily work-related activities at the Lofts. In it, she sets out the various things she did for Mr. Ford and, to a lesser extent, for others working at the Lofts, including Mr. Goodman. For the most part, she did not record personal concerns in the journal, with the exception of the entries such as those for November 4, December 8, and December 20, three key dates in the complaint. These and other entries in her journal are set out later in this decision.

[33] Ms. Harrison testified about several conversations she had on or about October 19. She alleges that during a conversation with Mr. Ford, he told her that he had once used hard drugs, but that sex was now his vice of choice. She also alleges that he told her that he would put in a good word for her at work if she agreed to have sex with him.

[34] The same day, Mr. Ford also complained to her that she was taking too long with an administrative task. She replied that she was not a secretary, and that she was not hired to do a secretary's job. Mr. Ford replied that if she could not do the job and commit to two hours a day of work for him, someone else would be found who could.

[35] Also on October 19, Ms. Burton visited the job site and spoke with Ms. Harrison. During her visit, Ms. Burton completed a Site Hazard Assessment form ("SHA"), in which she noted various tasks to be completed by all workers present or by Con-Forte

specifically. Ms. Harrison explained at the hearing that an SHA would be completed two times a day if there was construction going on. However, when the October 19 SHA was prepared, it was more in anticipation of construction, noting the things that needed to be done.

[36] Ms. Harrison and Ms. Burton also spoke about the absence of first aid equipment at the Lofts. Ms. Burton was concerned about the lack of equipment, and Ms. Harrison noted that she had brought some of her own supplies. Some three weeks later, Navigator bought a large number of first aid supplies for the Lofts.

[37] When Mr. Nixon hired Ms. Harrison, she asked him to provide a written outline of her job duties. As she did not yet have her own computer or email account, she received the “List of Site Safety Officer Responsibilities Lofts Project” from Mr. Nixon, via an email dated October 24 which was forwarded to her through Mr. Ford. The list of duties included daily, weekly and monthly tasks. The last item states that she was to assist Navigator, with any time left over from her safety work, in administrative tasks.

[38] Ms. Harrison expected to discuss the list with Mr. Nixon in more detail on November 10, 2005, as in his email he said he planned to be in Kelowna on that date to meet with Mr. Ford. As noted earlier, however, Mr. Nixon never visited the Lofts worksite.

[39] On October 24, Ms. Harrison also received an employment letter from Mr. Nixon. The letter included the following statements:

We are happy to be able to offer you the position of Site Safety Advisor, effective October 18, 2005. This position is a probationary position for a three-month introductory period after which time there will be a performance evaluation and the position will become a full-time permanent position for the duration of the Navigator Development Corporation’s Loft Project in Kelowna B.C. The starting wage for this position will be \$20.00 per hour.

After your three-month probationary period, you will be eligible to participate in our benefit program, which includes medical and dental coverage.

This position is based on 8/hrs a day and 40/hrs a week. Overtime hours must be approved ahead of time by both Nixon Safety

[40] In a conversation they had shortly after Ms. Harrison received the letter, Mr. Nixon told Ms. Harrison that the Lofts project was expected to last about two years, and that he anticipated that they would have a long term working relationship. He also told her not to worry about the reference in the employment letter to the probationary period, as it was just standard contract language. He also mentioned to Ms. Harrison that he would have to pre-approve overtime.

[41] According to Ms. Harrison, initially, her work day began at 7:30 a.m. As part of her ancillary work for Navigator, Ms. Harrison says she was expected to take phone messages for Mr. Ford, check his computer for messages, and deal with various contractors.

[42] After about a week on the job, Ms. Harrison spoke to Mr. Ford about not taking either coffee breaks or lunch, so that she could leave early to attend to family matters. She discussed leaving early with Mr. Ford because he was the only person available to discuss the matter with, and he said it was fine. She recalled leaving early two or three times while working for NSC. She noted that according to a WCB requirement, she could not leave the job site if there were any tradesmen present, as someone with the required safety training had to be present.

[43] On November 2, Ms. Harrison noted in her journal that a crane was moving what was to be the first aid trailer, and that an electrician was scheduled to connect power to it. The next day, she recorded that some first aid supplies had arrived and that shelving needed to be installed in the first aid trailer.

[44] On November 3, Ms. Harrison noted in her journal that more first aid supplies had arrived. Ms. Harrison also noted that she was attempting, at Mr. Ford's direction, to complete a required WCB registration. She testified that she eventually completed the registration for Navigator, with the assistance of Mr. Westbrook, shortly before NSC terminated her employment.

[45] On November 4, Ms. Harrison made the following entry in her journal:

4:00 p.m. Talked w/ Rod [Goodman] about Greg [Ford] this afternoon. Rod feels that once site gets on track and active, I will be in site trailer and dealings w/ Greg will be minimal. I trust that Rod is correct.

[46] At the hearing, Ms. Harrison stated that she spoke to Mr. Goodman on November 4 because she was concerned about Mr. Ford propositioning her for sex. She believed Mr. Ford was beginning to “dump” work on her because she had refused his suggestions. In cross-examination, she stated that the note in her journal does not cover the full scope of the conversation, but that she told Mr. Goodman about the sexual harassment, and told him some of the details.

[47] Ms. Harrison did not recall mentioning to Mr. Goodman her allegation that during working hours, Mr. Ford was accessing pornography on a computer in the office. She testified that she did mention that Mr. Ford had touched and slapped her, and that he had offered to trade her some truck tires she needed if she would have sex with him. She also told Mr. Goodman she did not want to work with Mr. Ford. She recalled that Mr. Goodman was concerned about what she told him, and at first did not know what to do. He then told her she would have to have little or no contact with Mr. Ford once she moved to the first aid trailer.

[48] Ms. Harrison went on to explain that the last note in the journal entry, “I trust that Rod is correct”, was a reference to Mr. Goodman telling her that he thought that over time, once she and Mr. Ford worked in different locations, the situation would correct itself.

[49] At the hearing, Mr. Curatolo confirmed that about two weeks after Ms. Harrison started at the Lofts, she asked him what he knew about Mr. Ford. She told Mr. Curatolo that when she mentioned to Mr. Ford that she needed tires for her truck, Mr. Ford told her he would exchange tires for sexual favours. Mr. Curatolo immediately told Ms. Harrison to tell Mr. Goodman what was going on, in order to put a stop to it. As noted previously, she spoke to Mr. Goodman on November 4, 2005.

[50] According to Mr. Curatolo’s evidence, Ms. Harrison told him that Mr. Goodman said he was not surprised to hear the complaints against Mr. Ford. Mr. Goodman went on to suggest to Ms. Harrison that the problem would take care of itself once she moved into

the first aid trailer, as she would not have to see or work with Mr. Ford. Mr. Curatolo stated Ms. Harrison seemed satisfied with Mr. Goodman's response, as was Mr. Curatolo.

[51] Mr. Curatolo stated that Ms. Harrison also complained to him about Mr. Ford making lewd comments in the workplace, and about his unwelcome touching. For example, on one occasion, Mr. Ford put his hands on her shoulders and back, smacked her on her buttocks, and suggested that if they turned the blinds down, no one would be able to see them. She also mentioned to him that Mr. Ford asked her to look at pornography on his computer while at work. He would also talk in some detail about his sexual habits and his sexual relations with others.

[52] After she was hired, Ms. Harrison forwarded her timesheets directly to Mr. Nixon for approval. However, in mid-November 2005, Mr. Ford began to review them. Mr. Ford told Ms. Harrison that he did not want to see any overtime claims on the timesheets, and that he was going to inspect everything she sent to Mr. Nixon. He told her he was doing this because Navigator was paying NSC for her services. As of November 24, Mr. Ford was signing her timesheets as "approved". In a follow-up conversation, after Ms. Harrison submitted a time sheet to Mr. Nixon showing one hour of overtime, Mr. Nixon told Ms. Harrison that Navigator was not responsible for any overtime work she did, and that overtime had nothing to do with Mr. Ford. Although Ms. Harrison worked some overtime after this incident, she never claimed for it again.

[53] On November 4, Ms. Harrison recorded in her journal that it could be some time before the first aid trailer phone line could be hooked up due to a strike. She records that she told the phone company that a phone was needed for emergency first aid services.

[54] On November 8, Ms. Harrison recorded that, at Mr. Ford's direction, she had organized his receipts and bills for the preceding four months. On November 9, Ms. Harrison recorded that she organized some of Con-Forte's accounts. She also indicates that she did some work for another project for "Marco". I take this to be a reference to Mr. DeDominicis.

[55] Her next entry, for November 10, states "move files into trailer". On November 18, she recorded that she cleaned the first aid room. She also noted:

Get a phone to reach trailer

...

Checked on Conforte employees. Dave is @ park place still! Some are at Greg's home.

[56] On November 24, Ms. Harrison recorded that Mr. Ford told her he did not want her to claim overtime.

[57] On November 29, Ms. Harrison noted in her journal that she rented a car for Mr. Westbrook. She also recorded that Ms. Burton visited the work site to review what she had done to date, that Ms. Burton was satisfied with her work, and that she expected to return in a month.

[58] On December 7, Ms. Harrison indicated in her journal that she faxed Mr. Nixon information about the CSO course she wanted to take, and noted that he was willing to pay for the courses. She believed that Mr. Ford and Mr. Goodman both knew that she would be taking a leave of absence to attend the course, and that she was planning on attending the first session in April 2006.

[59] Ms. Harrison stated at the hearing that she called Mr. Nixon three times on December 8. In addition to concerns about Mr. Ford, she also discussed what format her business cards should take, as this had become an issue for Mr. Ford and NSC. The issue was whether her business card should indicate she was with Navigator or with NSC. It was Ms. Harrison's evidence that Mr. Ford wanted her to use a Navigator business card showing her as a CSO and Navigator employee. Mr. Nixon told her not to, but to use an NSC business card with her correct designation.

[60] On December 8, Ms. Harrison made the following entry in her journal:

Talked w/ Jason [Nixon] regarding Greg Ford. Explained to Jason the sexual harassment issues, Greg's drug dealings ect. ...

Jason will keep me @ home tomorrow and will sort things out. –
Dave Westbrook is trying to reach Greg but cannot. I had to get the [...] steel contract signed by Tom and faxed back to Dave.

[61] Ms. Harrison's entire journal entry for Friday, December 9 is as follows:

Dec 9

Friday

At home

Greg Ford sent a threatening letter from his lawyer [...] to my home @ 5:30 pm

[62] At the hearing, Ms. Harrison stated that the lawyer's letter made her scared and nervous. She felt trapped. The letter, dated December 9, is as follows:

Please be advised that we represent Greg Ford

It has come to our attention that you have been making unfounded allegations calling into question Mr. Ford's character and professionalism. Accusations such as there are of extreme concern to us, given the detrimental and irreversible effects that they may have on our client's personal and professional reputation. The fact that these comments were made to persons in common employment with Mr. Ford is especially disconcerting. Should you continue making slanderous and defamatory comments, we will immediately take legal action.

Please accept this letter as a first and final warning to cease and desist from continuing on with this dangerous conduct. We also recommend that you refrain from any contact with Mr. Ford or person known to Mr. Ford: this situation, if aggravated, will only escalate from this point.

Please govern yourself accordingly.

[63] The relevant entries in Ms. Harrison's journal for Monday, December 12, are as follows:

Talked to Rod about moving all files out of office. Also talked w/ him about a copier, fax ect. ... he said that he would have no problem getting all of those things for the office. Talked to Jason, he will send me a phone, computer + business cards ASAP!

...

Removed all computer files for me off Gregs computer.
[Reproduced as written]

[64] At the hearing, Ms. Harrison explained how it came about that Mr. Ford's use of the internet became an issue. She noted that prior to December 8, Mr. Ford complained that his laptop computer was running slowly. He asked Ms. Harrison to see if she could find out what the problem was. Ms. Harrison spoke to Cory Krebs, a freelance computer

technician about the problem, and he suggested running a program on the computer that would scan for problems. After Mr. Krebs ran the program, he printed a report listing a large number of pornographic websites that had been accessed on the laptop. Mr. Krebs told her that these types of websites can result in a computer running slowly.

[65] At the hearing, Mr. Krebs testified that he is a computer consultant and technician. He confirmed that he attended the site office for the Lofts on three occasions, the first two times at Ms. Harrison's request. On October 10, 2005, he worked on a laptop computer in the office. On the second visit, on or about December 8, 2005, he cleaned up the computer's operating system, removed some "spy-ware", and erased some "bugs". He also helped Ms. Harrison print a report of the names of some websites that he said were causing problems with the computer.

[66] Included in the report were numerous pornographic websites, with some of the addresses appearing repeatedly. Mr. Krebs stated at the hearing that accessing these types of websites can cause computer performance problems. Mr. Krebs confirmed that the report did not indicate the date or time at which the websites were accessed. As well, the report does not indicate how long a site was accessed. Mr. Krebs confirmed that he did not submit an invoice to Navigator for this work, but did for some additional work in January 2006, after Ms. Harrison was fired.

[67] Returning to Ms. Harrison's evidence, she stated that on December 8, she had three telephone conversations with Mr. Nixon. One of the calls lasted about 45 minutes, and concerned, in part, Ms. Harrison's complaints about Mr. Ford. It took place while Ms. Harrison was in a graphic design shop dealing with the printing of some business cards. Ms. Harrison talked to Mr. Nixon about the sexual harassment allegations, and also discussed with him why Mr. Ford was signing her time sheets, and why Mr. Ford wanted her to obtain business cards showing Navigator as her employer.

[68] During the conversation, Ms. Harrison told Mr. Nixon what had been going on with Mr. Ford, and that he had been touching and propositioning her. When Mr. Nixon asked why she had not let him know sooner, she told him about her November 4 conversation with Mr. Goodman, and that she had believed that the problem would go away. She also told Mr. Nixon about the printout from Mr. Ford's computer. At the end

of the conversation, Mr. Nixon asked her to send him an email about what had been occurring, as he needed something in writing. She believed he was going to give the email to Mr. Marco and Mr. Westbrook, and knew that Mr. Ford would get a copy. Mr. Nixon told her that there was no way this sort of thing would be tolerated. He also told her not to go into work the next day, and that he would call her. Ms. Harrison noted at the hearing that, although she had never met Mr. Nixon in person, she found herself crying during the conversation.

[69] At the hearing, Ms. Harrison stated that her December 8, 2005 email to Mr. Nixon, complaining about Mr. Ford, is accurate. Although the email is addressed to Mr. Nixon, he is referred to in the third person. What follows is a synopsis of the email.

- Throughout her employment at the Lofts, Ms. Harrison was disturbed by Mr. Ford's conduct.
- When she began working, Mr. Ford told her she worked for him, and that she had to commit to at least two hours a day of secretarial support for him. When she responded that her duties for NSC came first, he responded that he would find someone else if she found his request problematic. As a result of his demands, she began to do as he asked, contacting trades, getting quotes and bids, completing expense reports, making personal calls and booking appointments for him.
- Mr. Ford became sexually aggressive towards Ms. Harrison, suggesting that any sexual relations they might have could be kept confidential.
- Sometimes when Mr. Ford came into the office, he smelled of marijuana. Ms. Harrison said that once while in a vehicle together while running an errand, Mr. Ford smoked marijuana and offered her some.
- Mr. Ford would spend extensive time periods away from the work site, often in the company of a friend. Mr. Ford and the friend had both been in a drug rehabilitation program prior to Mr. Ford and Ms. Harrison working together.
- Mr. Ford regularly made sexually loaded comments to Ms. Harrison, to the extent that she raised the matter with Mr. Goodman. Ms. Harrison says Mr. Goodman told her that once she moved into a safety trailer on site she would no longer be in close contact with him.
- Ms. Harrison was reluctant to tell Mr. Nixon about her problems with Mr. Ford, as Mr. Ford always told her she worked for him, and that he had the power to fire her. Due to family responsibilities and debt problems, Ms. Harrison could not risk losing her job. It would be her word against Mr.

Ford's if there was a dispute. She also stated that she was intimidated by the fact that Mr. Ford bragged that he knew the owner of the project.

- Ms. Harrison alleges that a week before she wrote the email, Mr. Ford offered to trade tires for her truck for sexual favours.
- Ms. Harrison found out that Mr. Ford was frequenting pornographic websites on a computer she believed was owned by Navigator. When she confronted Mr. Ford and Mr. Goodman about what she had found, Mr. Goodman seemed uncomfortable, while Mr. Ford seemed pleased, noting that his computer would work better, but that "a guy has to get off somehow."
- After noting some other concerns, Ms. Harrison ends her email by stating that she trusts Mr. Nixon and Con-Forte will do their best to help her with the problem and will provide her with security in the days following.

[70] Ms. Harrison testified that, on December 9, Mr. Nixon told her to move into the safety trailer, although in her opinion, it was not yet ready for use. It had no computer, printer or phone, and was not properly set up for first aid use. She denied being previously told by Mr. Ford or Mr. Goodman to move to the safety trailer.

[71] Mr. Curatolo testified that he recalled speaking to Mr. Goodman shortly after Ms. Harrison complained to Mr. Nixon about sexual harassment. Mr. Goodman told him that things would have smoothed over if she had just waited until she was in her own trailer on the site. She and Mr. Ford would not have to see each other anymore, and that would have been the end of the problem.

[72] Again, on December 9, Mr. Nixon told Ms. Harrison that the situation was being dealt with, but that while Mr. Ford had admitted to watching pornography on his computer, he denied harassing her or making inappropriate comments. Mr. Nixon went on to say that she should not worry about her job, in that it was Mr. Ford whose position was in jeopardy.

[73] Ms. Harrison reported to work on the following Monday, December 12, as instructed by Mr. Nixon, and was told to go to the first aid trailer. The plan was for her to move immediately into the trailer Mr. Wiens, a site superintendent, was already using. Mr. Nixon also discussed with her whether she wanted to make a police complaint about what had happened, but her preference was to continue on with her work.

[74] As recorded in her journal, on December 12, Ms. Harrison removed all her personal information from Mr. Ford's laptop, including the December 8 email to Mr. Nixon.

[75] On December 15, Ms. Harrison made the following entry in her journal:

I was written up for being late "the other day". I was not late and Jason said that "somebody" claimed that I was. Jason sent me a xmas bonus of \$250.00 which was lovely. Kathy [Burton] will send in a report to Jason [Nixon] w/ my concerns.

[76] The warning note referred to was an "Employee Write Up Form" completed by Mr. Nixon. It was in an envelope delivered to her in person by Ms. Burton, along with Ms. Harrison's pay and the Christmas bonus. It states:

It was brought to our attention that on Dec 12/13 you were late for work. This has caused our client to complain. You must report to work at the time designated by the clients site supervisor in the future.

[77] Ms. Harrison called Mr. Nixon about the note, to tell him she had not been late. He told her to be careful, as she would be watched more closely now by Navigator, and that they were looking for mistakes. He also said that in future she should report to Mr. Wiens.

[78] At the hearing, Ms. Harrison confirmed that this was the first warning, verbal or written, that she had received about her employment at the Lofts.

[79] On December 20, Ms. Harrison received a letter from Mr. Nixon, notifying her that, as of January 1, her services were no longer needed. The letter states, in part:

We are writing to inform you that as of January 1, 2006 we will no longer require your services on 'The Lofts Project'. Over the past few weeks it has become apparent that you are not fitting in to the role that we need on the "Lofts Project" and upon review with our client Navigator Development it is clear that you are not meeting the requirements of the site safety adviser position on the project. As we made it clear to you when you were hired for the project this was a probationary position until January 18, 2006 and that we reserved the right to terminate this agreement any time during that three-month period, we felt that it has become apparent that this situation is not working out and that it would not be fair to you or our client to prolong your employment.

...

[80] Mr. Nixon sent the letter to Ms. Harrison by fax. On the cover page of the fax is the following handwritten note:

Will, please deliver to Kori

Thx,

Greg

As I understand this entry, Mr. Ford received the fax in the site office, and in turn instructed Mr. Wiens to deliver it to Ms. Harrison.

[81] After she received the letter, Ms. Harrison was stunned and upset. She called Mr. Nixon, who she says told her repeatedly that it was not his decision to let her go, as he was happy with the job she had done. Ms. Harrison testified that Mr. Nixon told her Navigator wanted her out. He also told her that it was unfortunate that he did not have another construction site to send her to.

[82] Ms. Harrison finished the day's work, packed her things, and let Mr. Wiens know how the filing system worked. Among other things, she left the safety stickers she gave to workers once they had completed their safety training.

[83] According to Mr. Curatolo's evidence, Ms. Harrison called him soon after she got the termination letter from Mr. Nixon. Mr. Curatolo immediately called Mr. Goodman, to find out what had happened, but Mr. Goodman said he did not know anything about the termination. Mr. Curatolo asked Mr. Goodman to call Ms. Harrison, to let her know what was going on. Despite his request, Mr. Goodman never talked to her.

[84] Mr. Curatolo confirmed that he did not talk to Mr. Goodman again about Ms. Harrison until the summer of 2006.

[85] In cross-examination, Ms. Harrison stated that neither Mr. Goodman nor Mr. Ford told her to move to the first aid trailer prior to December 12, and that the trailer was still not set up properly when she moved.

[86] Ms. Harrison was asked to review paragraph 24 of section E of her complaint form, in which she stated:

When the Complainant smelled marijuana on Ford when he arrived at work, he explained that he had bought a deodorant spray and that she would never smell it ...

[87] Ms. Harrison stated that she smelled marijuana on Mr. Ford on the second day of work, October 19, 2005. She went on to say that she noticed the smell a couple of times a week after that, and that she also smelled it on him when she went with him to purchase a cell phone at a local mall. She believed that the trip occurred sometime between the middle and end of November, but could not be sure. She confirmed that she never recorded Mr. Ford's use of marijuana in her journal, and could not confirm that she noticed it only during working hours.

[88] Ms. Harrison was asked to review paragraph 25 of section E of her complaint form, in which she stated:

Ford further advised that everyone had to have a vice and sex was his vice of choice, and further that if the Complainant ever wanted to make a better wage or climb the corporate ladder then he could make that happen in return for sexual favours.

[89] Ms. Harrison stated that Mr. Ford made these comments on October 18, 2005, and repeated them on three or four other occasions, but she could not recall the exact dates.

[90] Ms. Harrison was asked to review paragraph 26 of section E of her complaint form, in which she quotes Mr. Ford as bragging that he was an amazing lover, and that he needed more than one woman. According to her, he went on to brag about having sex with various women. Ms. Harrison could not recall with any degree of certainty when these comments were made, but thought it was during the first week she worked.

[91] In response to the comments made by Mr. Ford, Ms. Harrison testified that she told him, during her second week at the Lofts, that she was there to do her work. She repeated this comment to him on several occasions.

[92] Ms. Harrison confirmed that, as per her complaint form, Mr. Ford told her that "he wanted her to look sexy at work and told her to wear skirts." Although she did not record the comment in her journal, she believed he first made the comment in the third or fourth week of her employment.

[93] Ms. Harrison confirmed the statement in her complaint form, that as of the second week of employment, she feared losing her job, because Mr. Ford held a position of power over her. She also recalled warning him about sexually transmitted diseases, starting in about the third week of her employment. She again confirmed that she recorded none of this information in her work journal.

[94] Ms. Harrison stated that she told Mr. Ford to stop making his comments in the second week of work, and that his comments were such by the second week of work that she often went home and cried. Ms. Harrison said that she believed Mr. Ford enjoyed seeing her angry and upset about the comments he made to her.

[95] Ms. Harrison stated that she became aware that Mr. Ford was looking at pornography on his computer while at work when he asked her to look at pornography on the computer during the second or third week of work. She did not know what to say, but tried to go on with her work. Ms. Harrison was disgusted that Mr. Ford was watching this sort of material while she was in the office with him. She recalled that, on each occasion, Mr. Ford stated that “a guy has to get off somehow”.

[96] Mr. Ford repeated the same comment when Ms. Harrison and Mr. Krebs ran the internet history report on about December 8. After the December 8 comment, Mr. Goodman jokingly asked Mr. Ford when he had time to work.

[97] Returning to job site issues, when he hired her, Mr. Nixon told Ms. Harrison that construction was to start soon, but it turned out that there were delays. Ms. Harrison was not concerned about the delay, as it gave her time to do her preparatory work for the site.

[98] Ms. Harrison understood that it was necessary to have a first aid attendant on site; otherwise no work could take place. She understood that work started at 7:30 a.m., and that sometimes she would have to stay longer than the standard eight hour shift.

[99] Ms. Harrison agreed that she wanted to become a CSO, and that to do so, she needed to work at least one year in the construction industry. It was not necessary that she work under a CSO during that year. Ms. Harrison knew Ms. Burton was a CSO, but she did not consider herself as working side by side with Ms. Burton, as Ms. Burton was to be on the job site about once a month.

[100] Ms. Harrison was uncertain as to whether Mr. Nixon told her during her interview that she would be subject to a three month probationary period. She agreed that a probationary period was a standard practice, and that she could be let go if she did not do her job. She did not dispute the fact that the October 24, 2005 letter of employment referred to a probationary period.

[101] Ms. Harrison confirmed that, after she was hired, Mr. Nixon told her that part of her job would be setting up a safety program for Navigator, that NSC would provide the details of the plan, and that it was her job to enforce it. Her work also included enforcing the occupational health and safety rules, and providing safety orientation for all workers on site.

[102] Ms. Harrison denied that in carrying out her duties she had ever been flirtatious with the workers on the job site. She agreed that she had been friendly.

[103] Ms. Harrison denied the suggestion that on one occasion she had lifted her top during a conversation with Mr. Goodman about photos of women in a calendar. She also denied dressing in a revealing manner when conducting site orientation meetings with the workers.

[104] Ms. Harrison confirmed that the list of job duties she received from Mr. Nixon referred to tasks that needed to be done on a daily, weekly and monthly basis. Ms. Harrison was of the view that the monthly duties did not necessarily have to be done by a CSO, but could be done by a person with the necessary experience. She felt her monthly reports would have been corrected if she had done anything wrong.

[105] The safety plan which Mr. Nixon sent to Ms. Harrison was designed for an Alberta project, and he told her to update it for the Lofts. After she finished the changes to the safety plan, she posted copies in the site lunchroom and in the site office.

[106] Ms. Harrison confirmed that part of her job was to keep track of the contractors and workers who received the site orientation. Ensuring that contractors had gone through the orientation was an important issue in regard to any liability for onsite injuries. She understood that it was important, for liability purposes, that NSC have its name on the safety documentation. When new workers came on site, it was Ms.

Harrison's job to tell the workers about the safety plan and tell them where copies could be found if they wanted to refer to them.

[107] Ms. Harrison understood that Mr. Nixon was to bring her a cell phone when he came to the work site on November 11. In the meantime, Ms. Harrison was using her own cell phone for work related purposes, but was not reimbursed for the expense. It was only after she complained to Mr. Nixon about Mr. Ford that Mr. Nixon offered to pay her cell phone expenses.

[108] Ms. Harrison confirmed that on October 24 she also discussed with Mr. Nixon setting up an email account for her. After it was set up, Ms. Harrison accessed it through Mr. Ford's computer. Ms. Harrison testified that at first she assumed the laptop computer being used by Mr. Ford was owned by Navigator, as it was used by him and her for work purposes, and was sometimes left in the office overnight.

[109] Ms. Harrison assumed that others using the office would be able to access her journal, as she left it at work. She stated she did not make all the entries for a day chronologically. She recorded what she did in a day, but not necessarily in the order set out.

[110] Ms. Harrison was referred to a "Project Hazard Assessment Form" ("PHAF") she completed on October 28, 2005. It was on Con-Forte letterhead. She used the form because Mr. Goodman gave it to her, and in her mind, Navigator and Con-Forte were the same companies, owned by the same person, using the same forms. Sometime after October 24, when Ms. Harrison asked Mr. Nixon about using a PHAF from Con-Forte, he stated that she should use whatever forms were in the office, even though four days earlier he said the documentation should have NSC's name on it. On the November 4 and 10 PHAFs, Ms. Harrison also indicated that the primary contractor was "Navigator/Con-Forte". In PHAFs completed on December 19 and 21, Ms. Harrison also noted that the prime contractor on site was "Navigator/Con-Forte".

[111] Ms. Harrison stated she was never spoken to about the "proper" use of forms on site. She stated that Mr. Goodman told her to use the Con-Forte form, and that Mr. Nixon had told her to use whatever form was at hand. She was never spoken to about the

proper designation of the prime contractor, or the letterhead to be used on safety documentation.

[112] During her evidence, Ms. Harrison was questioned about her manner of dress while at work. She stated she always wore jeans, a t-shirt or shirt, a hoodie, a jean or winter jacket, and a safety vest. She wore steel-toed safety boots at all times, and a hard hat when not in the office. No one ever told her that her manner of dress at work was inappropriate. She did not know if anyone mentioned her manner of dress to Mr. Nixon.

[113] Ms. Harrison stated that she had an argument with Mr. Ford on December 7, concerning a number of issues. They argued about what her business cards should say, and she again complained to him about him harassing her.

[114] Ms. Harrison stated that on December 8 she went to proof business cards that were to be printed for her. On Mr. Ford's instructions, the cards were to indicate that she worked for Navigator at the Lofts as a CSO. She testified that she did so at Mr. Ford's direction, as he thought it would be good advertising for Navigator, given it was the first project the company had had in Kelowna.

[115] Ms. Harrison agreed that one of the safety documents displayed at the Lofts describes her as a "Site Safety Officer" and gives her personal cell number.

[116] Ms. Harrison took the position that she could not move from the site office to the first aid trailer for some time after she started. Through mid-November, it could not be used because another trailer had to be moved. As of November 1, there was no phone, power or fax in the trailer. It needed to be cleaned out and an office had to be set up. When she moved into the trailer after December 8, there were no filing cabinets, nor had a phone or computer been installed.

[117] Ms. Harrison rejected several suggestions put to her by Mr. Ford in cross-examination. She denied that she did not do the amount or type of work for him that she alleged or that he had asked her to dress more appropriately for the workplace, and not to wear tight jeans. While Ms. Harrison agreed that Mr. Ford would have overheard some of her conversations with Mr. Curatolo, she testified that she had not mocked Mr. Curatolo in front of Mr. Ford and Mr. Goodman. She agreed that Mr. Ford answered the

phone once when Mr. Curatolo called, but stated that he did not call her at work again after that.

[118] Ms. Harrison denied that she became angry with Mr. Ford when he refused her permission to get business cards that said she was working for Navigator and was a CSO. It was Ms. Harrison's position that it was Mr. Ford who told her to put that information on her business cards, as he believed it was good publicity for the company.

[119] Ms. Harrison denied that while employed by NSC, she told Mr. Ford's wife that she used her sexuality to manipulate men.

[120] Ms. Harrison denied that she flirted with men on the job site, or that she had told Mr. Ford on one occasion that she had been a "bad girl" and needed a spanking. She denied telling Mr. Ford that she had once worked as a stripper in a Kelowna bar. She also denied that she became angry when he asked her why she was putting up personal photos in the office when her stay there was temporary. Ms. Harrison maintained that she was never asked to leave the office until she made the complaint to Mr. Nixon about Mr. Ford's behaviour, at which time Mr. Nixon told her to move to the first aid trailer.

[121] Finally, Ms. Harrison denied that she filed her human rights complaint in order to get revenge on Mr. Ford and enrich herself.

[122] The last evidence to review in this section is Mr. Campbell's (given by conference call). Mr. Campbell stated he was hired by NSC in January 2006 to work as a CSO at the Lofts. He worked in that capacity until late April or early May 2006. When he started working, he was told there had been a safety person on site earlier, but that she was let go because of a dispute.

[123] Mr. Campbell, who knew Ms. Harrison prior to working at the Lofts, spoke to her once he began working. Mr. Goodman and Mr. Ford had told him they believed she had taken some items missing from the work site, including safety stickers and manuals. Mr. Goodman asked Mr. Campbell to contact Ms. Harrison and ask her to return the items. Mr. Ford also wanted Mr. Campbell to speak to Ms. Harrison in an effort to get information to help him defend against her human rights complaint. When Mr. Campbell called Ms. Harrison, she denied that she had removed items from the office. Mr.

Campbell noted that some of the materials Ms. Harrison was accused of taking were found in the site office soon after the call.

[124] Mr. Campbell was not happy with aspects of his work at the Lofts, and gave notice that he was going to quit at least twice: once because his pay was late and another time because Mr. Westbrook wanted him to do labourer's work. Mr. Campbell stated that NSC still owed him \$3,700, and that he believed that NSC owed money to Ms. Burton and others.

[125] Finally, Mr. Campbell testified that, from his knowledge of Ms. Harrison, it did not make sense that she would 'go to court' without reason.

B. Ms. Harrison's Evidence on Mitigation

[126] At the hearing, Ms. Harrison filed a letter dated April 14, 2007, from a construction company, in which its foreman confirms that he offered Ms. Harrison a job as a safety officer in October 2005, but that she could not take it as she was already employed.

[127] Ms. Harrison testified that, in January 2006, Mr. Nixon contacted her to find out if she was interested in working at another work site for another project. Ms. Harrison declined the position, and did not discuss any details of the proposed work with Mr. Nixon.

[128] After leaving the Lofts, Ms. Harrison took some part-time work at a gym over the Christmas holidays, and worked there through January and February 2006. She had also worked as a waitress, and was working as a waitress on a part-time basis at the time of the hearing.

[129] On February 6, 2006, Ms. Harrison submitted an application for Unemployment Benefits through EI. In the form, she was asked to describe the final incident of misconduct that resulted in her dismissal. In reply, she stated:

While in employment for Nixon Safety I made a complaint that I was being sexually harassed at work. 1 week later I was fired because I was easier to get rid of then the person I made the complaint against.
[Reproduced as written]

[130] Initially, Ms. Harrison did not try to get employment in the construction industry because she was registered for school to redo her first aid ticket which was about to expire. She received her CSO designation in the summer of 2006. She applied for work as a CSO, and obtained a job with another company in October 2006.

[131] Ms. Harrison obtained the following safety-related training:

- March 21 2006: Claims and Disability Management certificate;
- April 4, 2006: Safety Audit certificate;
- May 5, 2006: Trades Safety Coordinator certificate; and
- June 15, 2006: Construction Safety Officer certificate.

Ms. Harrison also took several first aid courses. Ms. Harrison filed receipts related to the safety courses she took.

7. The Respondents' Evidence

A. Evidence of Greg Ford

[132] Mr. Ford, who had a long history in the construction industry, was hired by Navigator to supervise construction of the Lofts. He was supervised by Mr. Westbrook. Mr. Ford's duties included liaison with the various trades, suppliers and architects on site. When he began working for Navigator in July 2005, construction had not yet started.

[133] Although Mr. Ford started work for Navigator on the Lofts project in July 2005, he did not sign his written contract with Navigator until February 29, 2006. The contract as filed at the hearing was never executed by a Navigator representative. From July 2005, Mr. Ford's sole source of income was from Navigator. Mr. Ford stated that he continued working at the Lofts until close to the project's completion. He stopped working, by mutual agreement, when he needed to take off time from work due to a serious injury.

[134] Mr. Ford recalled that Ms. Harrison began working on site on October 18, 2005. She was hired by NSC to provide certified safety services for the site operations.

[135] Initially, when Ms. Harrison started working, the atmosphere was friendly. However, in his view, it soon became overly-friendly. For example, Mr. Ford said that Ms. Harrison would talk incessantly about personal issues. At the same time, he agreed that she was very helpful in the office, or at least appeared to be.

[136] Shortly after starting work, Ms. Harrison bought journals for herself, Mr. Goodman and Mr. Ford to use during the Lofts project. Mr. Ford stated that, while he had used the journal, he had not been able to locate it for the hearing.

[137] In cross-examination, Mr. Ford agreed that Ms. Harrison helped him with some of his office work, as per the list of job duties given to her by NSC. However, he maintained that while she did her work enthusiastically, he could have done the work in less time. Mr. Ford denied telling Ms. Harrison that she had to work a specific number of hours per day for him. She only worked for him on a volunteer basis. He stated that over time, he became intolerant of her assistance, as she talked incessantly.

[138] Mr. Ford stated that, while at work, Ms. Harrison had a habit of playing voice messages from her boyfriend, Mr. Curatolo, and that she would comment, in a self-satisfied and deprecating manner, that he sounded pathetic. She would ask Mr. Ford what he thought she should do in regard to Mr. Curatolo. Ms. Harrison played the messages five or six times, until he told her to stop. She also played highly personal voice-messages left by her father. In Mr. Ford's opinion, the voice messages indicated that Ms. Harrison was a highly manipulative person.

[139] On another occasion, Mr. Ford alleged that Ms. Harrison danced around the office "like a stripper" and told him that she had once worked as one in a Kelowna bar. He believed this incident took place sometime in mid to late November.

[140] Mr. Ford's evidence as to whether he knew about Ms. Harrison's November 4 complaint to Mr. Goodman was unclear. He indicated that Mr. Goodman told him about her complaint, but that Mr. Ford thought it was ridiculous. He then stated that he recalled Mr. Goodman telling him about a complaint from Ms. Harrison, that Mr. Ford had allegedly suggested he buy her lingerie while they were at a mall. He heard nothing more about the November 4 complaint.

[141] Mr. Ford went on to say that the first aid trailer was ready for Ms. Harrison's use as of November 4. He stated that power had been hooked up, but he could not recall if the office had a desk. He agreed that no phone was installed, but said that she could have used a portable phone.

[142] Mr. Ford maintained in cross-examination that he began asking Ms. Harrison to move out of the site office as of November 4. Rather than stating that she would not move, Ms. Harrison simply continued to work out of the site office. He called Mr. Westbrook about wanting her to move on several occasions, but became more adamant on December 8 after their confrontation about the business cards. However, he confirmed that he never sent anyone an email, or another type of communication, on the subject.

[143] Mr. Ford alleged that, on about November 15, Ms. Harrison, after dropping something on the floor of the office, said in a "baby's voice" that she had been a "bad girl", and needed a spanking. She first went to Mr. Goodman's desk, inviting him to hit her on the buttocks, and when he refused, she went to Mr. Ford's desk. Mr. Ford stated that he felt uncomfortable, but swatted her away with the back of his hand.

[144] Mr. Ford testified that on December 1 or 2, Ms. Harrison came into the office, complaining of a back injury, saying how sore she was. Mr. Ford told Ms. Harrison that she ought to make an appointment with his wife, who was a chiropractor. She agreed, and Mr. Ford made an appointment for her on about December 5. After the appointment, Mr. Ford's wife complained to him about Ms. Harrison wearing extremely tight clothing and using foul language while in her office.

[145] Mr. Ford also recalled that, while at work, Ms. Harrison repeatedly asked for a cell phone, but that he told her it was not his job to get her a phone, and that it was NSC's responsibility.

[146] On December 6, Mr. Ford met with Ms. Harrison in the office, telling her that she should wear clothes more appropriate for the work site. The tight low-cut jeans she was wearing were not appropriate. Mr. Ford testified that Ms. Harrison became very upset about what he was saying.

[147] In his evidence, Mr. Ford next went on to describe the controversy around what Ms. Harrison's business cards would state. Prior to December 8, Ms. Harrison said she wanted cards that showed her as an employee of Navigator. Mr. Ford says he told her she would have to speak to Mr. Nixon about this, as she worked for NSC. On December 8, Mr. Ford confirmed that she could not use Navigator's name on her cards, and that she could not misrepresent herself as being a CSO.

[148] Later the same day, after Mr. Ford and Mr. Goodman returned to the office from a meeting at another work-site, Ms. Harrison "proudly" presented them with a printout of the websites Mr. Ford had accessed on his computer. Later in his evidence, he stated that she was more smug about the incident than anything else. Mr. Ford did not think much of the issue at the time, as it was his personal computer, and how he used it was up to him. He confirmed that he accessed pornography on his computer while at work, for a few minutes a day. In any event, he maintained that he never asked Ms. Harrison to fix his computer.

[149] Mr. Ford stated at the hearing that while he "surfed porn" while at work, Ms. Harrison never looked at the websites with him. He also stated that he was not present when Ms. Harrison was alleged by Mr. Goodman to have lifted her top.

[150] When Mr. Ford came to work on December 9, he was confronted by Mr. Goodman, who asked him what he had done, as there was a big problem with him and Ms. Harrison, in that she had made a sexual harassment complaint against him. Again, Mr. Ford said he did not think much of the problem at the time, aside from being irritated with, and increasingly intolerant of, Ms. Harrison.

[151] Mr. Ford stated that, after Ms. Harrison made her December 8 complaint, Mr. Westbrook contacted him on December 9, to ask him what was going on. Mr. Ford stated he told him the accusations were crazy. Mr. Westbrook told him to have no further contact with Ms. Harrison. Mr. Ford said that Mr. Westbrook told him that Ms. Harrison was satisfied with the arrangement that she would move to the first aid trailer and that he would not have contact with her.

[152] When asked in cross-examination if Mr. Westbrook wanted to know his version of events, Mr. Ford replied "not really". Mr. Ford also said he spoke to Mr. Nixon about

the accusations, and denied that anything untoward had happened. He did not see the December 8 email from Ms. Harrison to Mr. Nixon until shortly before the start of the hearing. He stated that he was never told an email had been sent, but was just told about the allegations Ms. Harrison was making. In Mr. Ford's view, Ms. Harrison's December 8 email to Mr. Nixon was an example of her building a case against him. Mr. Ford stated he played no further active role in any investigation about her complaint.

[153] Mr. Ford stated that when he noticed that Ms. Harrison had claimed an hour of overtime, he contacted Mr. Westbrook. He did so because he did not think it was fair that Navigator be charged for overtime that was not worked. Mr. Westbrook told him that there should be no overtime charges against Navigator as NSC was on a fixed-sum contract. He agreed that he should not have said anything to Ms. Harrison about the overtime claim, as it was not a concern for Navigator but for NSC.

[154] Mr. Ford stated that several of the hazard assessment forms (PHAFs) completed by Ms. Harrison were incorrect. They should not have been done on Con-Forte letterhead, and should have shown only Navigator as the prime contractor. He was less certain as to what the significance of these errors was.

[155] Mr. Ford confirmed that an ad placed in a Kelowna newspaper, on December 12, 2005, for labourers and carpenters for the Lofts, gave Ms. Harrison and Mr. Goodman as contacts. The ad does not mention either Navigator or Con-Forte.

[156] Mr. Ford was referred to the "Employee Write Up Form" given to Ms. Harrison by Mr. Nixon on about December 13, reprimanding her for being late for work. He stated he had never seen the form before the hearing, and had nothing to do with it being issued to Ms. Harrison, and had not complained to NSC.

[157] Mr. Ford agreed that there was sexual banter going on in the office, but took the position that Ms. Harrison invited it. In the end, Mr. Ford said that he felt sexually harassed by Ms. Harrison.

[158] Mr. Ford stated that, before Ms. Harrison left the Lofts, he was not aware of any policy in place in regard to sexual harassment, nor did he receive any orientation in regard to it. After she left, policies were put in place by Con-Forte and Navigator.

[159] In cross-examination, Mr. Ford confirmed that there were delays in getting the Lofts started, due to problems getting necessary warranty coverage for it. There were also delays caused by problems getting a building permit. The permit was finally issued on December 19, 2005.

[160] Mr. Ford stated that he played no active role in Ms. Harrison being fired. He believed she was let go because she was late for work and was not willing to do certain aspects of her job. However, he could not say what it was that she was not doing. He never sent an email to Mr. Westbrook complaining about her performance, nor did he complain to Mr. Westbrook or Mr. Nixon about her attire. Mr. Ford said he complained only to Mr. Goodman about the situation, and also talked to Mr. Westbrook about Ms. Harrison wanting Navigator business cards.

B. Evidence of Navigator and Con-Forte

1. Rod Goodman

[161] In September 2005, Mr. Goodman was speaking to Mr. Curatolo, a long time friend, when Mr. Curatolo mentioned that his girlfriend, Ms. Harrison, was looking for work in construction site safety. Mr. Goodman was happy to hear about Ms. Harrison, because, at the time, it was hard to find people for that role.

[162] Ms. Harrison called Mr. Goodman in early October, and they arranged a meeting at the site office. When they met on October 8, Ms. Harrison told Mr. Goodman about her qualifications and experience and he agreed to pass her name along to NSC. He knew NSC was looking for a local safety person for the Lofts. He did not know the qualifications NSC was looking for, and could not recall if Ms. Harrison gave him a résumé. Although present, Mr. Ford did not play an active role in the first meeting.

[163] Mr. Goodman testified that the excavation for the Lofts began and finished in October. However, because there were problems with finalizing insurance and permit issues, nothing further could be done after that except to build the framing for the concrete to be poured. As Mr. Goodman put it, progress on the Lofts came to a standstill, and there was not much for those on site to do.

[164] According to Mr. Goodman, Ms. Harrison first worked out of the site office because the first aid trailer was not ready. When she started work, Mr. Westbrook told Mr. Goodman to get part of the former “show” trailer ready for use as a first aid trailer. This required another trailer on site to be moved, and the show trailer to be repositioned. The move took place on about November 1, after the show trailer was gutted. Before part of it could be converted for first aid use, the trailer had to have power and a phone connected, and needed shelves, a desk, and a bed. Mr. Wiens, who was to use the rest of the trailer, moved into it on about November 4.

[165] At the hearing, Mr. Goodman described the type of conversations Mr. Ford and Ms. Harrison had in the site office as fairly open “high school” banter. There was swearing and comments containing sexual innuendo. No one objected to what was being said during the first two weeks Ms. Harrison was on site.

[166] When Ms. Harrison first started at the Lofts, she assisted both Mr. Ford and Mr. Goodman with minor administrative tasks. On occasion, she help Mr. Goodman set up job interviews. Goodman described her as being helpful at first, but that over time it got to be “a bit much”.

[167] In Mr. Goodman’s opinion, Ms. Harrison began over-stepping her bounds. For example, on one occasion, she called him at 7:30 a.m., wondering where he was. He took exception to the call, because he did not think he had to report his whereabouts to anyone. In Mr. Goodman’s view, Ms. Harrison got progressively more demanding, and after about three weeks, he wanted Ms. Harrison to move out of the site office. In his evidence, he stated that the first aid trailer was ready for her on November 4.

[168] Mr. Goodman noted that he and Mr. Ford had the only keys to the site office. Ms. Harrison would regularly borrow Mr. Ford’s key to open the site office in the morning, because Mr. Ford and Mr. Goodman were not necessarily there to do it.

[169] Mr. Goodman recalled that, on one occasion, Ms. Harrison played three messages she had received on her phone from Mr. Curatolo, and one she received from her father. This happened in about the third week she was on the job. Mr. Goodman said he found it embarrassing to listen to the messages left by Mr. Curatolo, as they had been friends for many years, and he had not been aware of this side of him before. He described the

message from Ms. Harrison's father as one of the most bizarre phone messages he had heard and said he felt sorry for Ms. Harrison because of it.

[170] Prior to November 4, Mr. Goodman recalled that Ms. Harrison had dropped an item on the floor, and asked him to "spank" her for being a "bad girl". He declined, but suggested that she ask Mr. Ford, who smacked her "on the butt".

[171] On another day, probably in late October, Ms. Harrison and Mr. Goodman had a conversation about pictures on a wall calendar. They both expressed their opinions as to whether the women in the pictures had "real" or "fake" breasts. Mr. Goodman could not remember if Mr. Ford was present that day. According to Mr. Goodman, the next day, when Mr. Ford was out of the office, Ms. Harrison pulled up her shirt and commented to Mr. Goodman that she did a good job of disguising the size of her breasts. He testified that he did not mention this incident to Mr. Ford until after Ms. Harrison left the Lofts.

[172] Mr. Goodman recalled that, on November 4, Ms. Harrison spoke to him about Mr. Ford. She said only that she was not comfortable working with him, to which Mr. Goodman replied that she did not have to worry as she would soon be moving to the first aid trailer. According to Mr. Goodman, Ms. Harrison agreed and the discussion ended. She did not specifically mention that she felt Mr. Ford was sexually harassing her. In cross-examination, he said that he did not want to know why she made the comment. He was not particularly worried about what she had to say, and it raised no "red flags" for him. She never brought the matter up again.

[173] Mr. Goodman also recalled that Mr. Curatolo called him on the evening of November 4. He wanted to know what kind of person Mr. Ford was, and why Ms. Harrison was upset. Mr. Goodman told him he was not sure, but that he would take care of the problem. At the hearing, Mr. Goodman stated that Mr. Curatolo did not say that Mr. Ford was sexually harassing Ms. Harrison. He also stated that he did not know why Mr. Curatolo was asking the kinds of questions he was.

[174] Mr. Goodman testified that he found Ms. Harrison's manner of dress inappropriate for the work place, in that she wore tight jeans. The tops she wore varied from tight to baggy to dressy. As not much work was going on at the site at first, he did not think her dress was much of an issue, but he thought that when work started in

earnest, it would have been more appropriate for her to wear clothes she could move around in more easily. In cross-examination, he agreed that his concerns were an issue of common sense. They had nothing to do with any Navigator, Con-Forte, or WCB rules.

[175] Mr. Goodman stated at one point that he believed he mentioned the issue of Ms. Harrison's clothing to Mr. Westbrook after she conducted an orientation for several workers in the site lunch room. She was wearing a low cut top and tight jeans, with the top of her underwear visible in the back when she knelt down to point out something related to the orientation. According to Mr. Goodman, her manner of dress was the "talk of the day", and after it happened, the men were no longer listening to what she had to say. Mr. Goodman said he found Ms. Harrison's manner of dress a distraction for the other workers at the site, and that it opened the door for inappropriate comments. However, in cross-examination, he was much less certain of when he spoke to Mr. Westbrook, or about what.

[176] Mr. Goodman went on to say that, over time, he did not think Ms. Harrison was doing enough safety sweeps of the job site, something that was part of her job. While it did not pose much of a problem in the first weeks, it became an issue for him as construction on the site ramped up. He did not mention anything to Ms. Harrison at the time, because she was not his employee and he did not see it as his role. Rather, he contacted Mr. Westbrook at the end of November, to tell him that Ms. Harrison should be paying more attention to her work.

[177] Mr. Goodman stated that, on December 7, Ms. Harrison and Mr. Ford had an argument about her business cards and her cell phone. According to Mr. Goodman, Ms. Harrison wanted to get Navigator cards that indicated she was a CSO, but Mr. Ford refused to let her. According to Mr. Goodman, this was the first time he heard her raise the issue of her business cards.

[178] On Thursday, December 8, Mr. Goodman and Mr. Ford arrived at the site office after the start of the day. Upon entering, they found a large computer printout of pornographic websites Mr. Ford had accessed on his computer. Mr. Goodman responded by asking Mr. Ford how he got any work done. In cross-examination, he stated that he

was surprised by the size of the printout. He recalled Mr. Ford once asking him to look at a pornographic website once in the site office, after hours, in mid or late November.

[179] Later on December 8, Mr. Goodman got a phone message from Mr. DeDominicis. However, they were not able to speak together until the next day, at which time Mr. DeDominicis told Mr. Goodman that Ms. Harrison had made a sexual harassment complaint against Mr. Ford. Mr. DeDominicis did not provide Mr. Goodman with any particulars, nor did he provide him with a copy of Ms. Harrison's written allegations. Mr. Goodman, despite apparently having no details of the allegations, replied that he had seen nothing that would suggest that Mr. Ford was sexually harassing Ms. Harrison.

[180] When Mr. Goodman told Mr. Ford about the complaint, Mr. Ford denied the accusation. Mr. Goodman did not give Mr. Ford any specifics of the complaint.

[181] Mr. Goodman called Mr. DeDominicis to relay Mr. Ford's response, and then asked what he should do. In cross-examination, he agreed that he also told Mr. Westbrook and Mr. DeDominicis that Mr. Ford and Ms. Harrison had engaged in childish behaviour, but that there had been nothing sexual. Prior to December 8, Ms. Harrison had never complained about Mr. Ford to Mr. Goodman, except on the one occasion when she said he made her uncomfortable. Mr. DeDominicis said that Mr. Ford and Ms. Harrison should be separated, and that they should have no contact. Mr. Goodman was directed to separate Ms. Harrison and Mr. Ford. He and Mr. Wiens were to act as her on-site liaisons in future. Once she moved to the first aid trailer the following Monday, Mr. Goodman thought that was the end of the matter. In cross-examination, he confirmed that he had no further discussions about Ms. Harrison's complaint on the weekend of December 10 and 11.

[182] Mr. Goodman stated that he found out the following week that Mr. Nixon had told Ms. Harrison not to come in on Friday, December 9. When she came in on Monday, December 12, she was about 40 minutes late for work. Before her arrival, Mr. Goodman had complained to Mr. Westbrook about her absence, because a concrete pour was scheduled for that day, and the company could face a fine if the pour went ahead without a safety officer present. As I understand Mr. Goodman's evidence, in the end, the pour was not held up by her absence, as the concrete was not due to be delivered until later in

the day. Mr. Goodman testified that he did not complain to Mr. Westbrook about Ms. Harrison being late on December 13, but thought that Mr. Wiens might have.

[183] Mr. Goodman stated that Ms. Harrison had been late for work before December 12, but added that he always knew why she was away and that her reasons were legitimate. He never asked anyone to discipline or fire Ms. Harrison because of those absences. He did not find out that she had been fired until Mr. Curatolo called him on December 20, wanting to know why Ms. Harrison's employment had been terminated.

[184] Mr. Goodman also kept a daily journal or log of what he did at the Lofts work site. Mr. Goodman did not disclose the journal until after he began giving his evidence, as he stated he had misplaced it and only discovered it just before the hearing began, when looking for some documents unrelated to the complaint. He said he was not searching for the log book as such, because no one had asked him to. He stated at the hearing that he "more or less" made his entries on the day events occurred. The log consists primarily of a record of weather conditions and who was working for Navigator or Con-Forte on a given day. There are some comments about Ms. Harrison. On October 18, Mr. Goodman recorded the following comment:

Wife made comment about Kori's clot [?] & shoes

[185] Mr. Goodman could not remember the context in which the comment was made, except that he recalled that his wife asked him if Ms. Harrison was dressed in an appropriate manner for a safety person. When asked in what circumstances his wife made the comment, he said that he imagined his wife must have stopped by the site office.

[186] On November 3, Mr. Goodman wrote "Kori driving me nuts" in his journal, but at the hearing he could not remember why he wrote the comment. On November 7, he noted that Ms. Harrison was not coming in because her daughter was sick. On November 16, he recorded that Ms. Harrison was not present at the work site and did not answer her phone. He does not record when he called her, or if Ms. Harrison later provided an explanation for her absence.

[187] On December 2, Mr. Goodman made the following entry:

Meet 2 Guy's for Job Interview

Kori came In pulled up chair

Told them what she expects from

Them. Im fuckin dumbfounded

Stay away from Me Please [reproduced as written]

Mr. Goodman testified that he was upset because Ms. Harrison had joined in and interrupted him while he was interviewing two potential workers.

[188] On December 12, Mr. Goodman noted in his journal that Ms. Harrison was late, arriving at 7:40 a.m.

[189] Mr. Goodman did not make log entries regarding Ms. Harrison for November 4, the day she told him she was concerned about Mr. Ford; December 9, when Mr. DeDominicis asked him about the sexual harassment complaint; December 13; the second day she was criticised for being late for work; or December 20, the day NSC terminated her employment.

[190] Mr. Goodman testified that, at the time Ms. Harrison was hired, safety people were at a premium in the Kelowna area, and that it was preferable to keep her on staff even if the building site was not busy when she first started. When she started, she would often arrive earlier than Mr. Goodman and Mr. Ford, both of whom would often be away from the work site for extended periods of the day, and at different times.

[191] Mr. Goodman testified that he believed Ms. Harrison was in the habit of arriving at 7:30, although the start time was supposed to be 7:00. Prior to construction starting in earnest, Mr. Goodman was not particularly concerned, as it appeared that she was normally putting in eight hours a day.

[192] In cross-examination, Mr. Goodman stated that, although he and Mr. Ford wanted Ms. Harrison to move out of the site office and into the first aid trailer much earlier than she did, neither he nor Mr. Ford took any direct initiative to effect the move.

[193] Mr. Goodman explained that the City of Kelowna building permit for the Lofts could not be issued and the pouring of the concrete foundations could not start until a

new home warranty for the project was in place. He recalled that the first concrete pour took place on about December 13, and believed that the building permit had been issued on December 9. When it was pointed out to him that the permit was not issued until December 19, he agreed that the concrete had been poured without the required building permit.

[194] After Ms. Harrison left the Lofts, Mr. Goodman said that a female CSO was hired from a temporary labour supplier and worked at the site until Mr. Campbell started in early January.

2. *Dave Westbrook*

[195] As senior project manager for Navigator for the Lofts, Mr. Westbrook's duties included budgeting, contract negotiations with subcontractors, and liaison with architects and engineers involved in the project. Mr. Westbrook stated that he visited the Lofts about five times in November 2005, and six or seven times in December. Mr. Westbrook stated that Mr. Goodman worked for Con-Forte, and was supervised by Mr. Kuntz, Con-Forte's general manager in Calgary, and that Navigator and Con-Forte share office space in Calgary. Mr. Westbrook agreed in cross-examination that Navigator did not seek tenders for the concrete forming work at the Lofts, or for the project manager position. Instead, it contracted directly with Con-Forte.

[196] Mr. Westbrook confirmed in cross-examination that he was responsible for arranging safety services for the Lofts. He knew that Mr. Nixon, through NSC, had previously provided safety services to Con-Forte in Calgary, and met with him in early October 2005 to discuss the Lofts in Kelowna. He told Mr. Nixon he wanted safety services at the Lofts to BC standards, and wanted NSC to provide the appropriate safety manuals. Mr. Westbrook told Mr. Nixon that there were risks involved in the BC project, and that he wanted 100% safety coverage on site. Mr. Westbrook also told Mr. Nixon that he wanted a CSO. On October 7, 2005, Mr. Nixon called Mr. Westbrook, and they agreed that NSC would provide safety services at the Lofts for \$6000 per month. Mr. Westbrook immediately filled out a blank purchase order, and repeated that he wanted a CSO on site. However, this requirement was not set out in the purchase order.

[197] Mr. Westbrook testified that he got a call from Mr. Goodman, who told him a person with a Level 3 first aid certificate, Ms. Harrison, might be available to work at the Lofts. Mr. Westbrook called Mr. Nixon and told him about Ms. Harrison, but Mr. Westbrook says he repeated that he wanted someone with a CSO designation. Mr. Westbrook spoke to Mr. Nixon after Ms. Harrison was hired, who told him that he would be sending Ms. Burton, a CSO, to oversee Ms. Harrison's work at the Lofts. Mr. Westbrook accepted the arrangement as the best that could be had at the time. He knew Ms. Harrison had a Level 3 first aid certificate, and that this was adequate for WCB purposes. Mr. Nixon told Mr. Westbrook that both Ms. Burton and Ms. Harrison would look after compiling the safety manual for the Lofts site. Mr. Westbrook agreed that the first part of Ms. Harrison's employment was during the preconstruction phase. By early December, Con-Forte had begun form building and concrete pouring up to ground level.

[198] The office space used by Mr. Ford and Mr. Goodman, and eventually Ms. Harrison, was initially leased by Navigator. Later, the lease was taken over by Con-Forte. When Navigator was the lessee, it did not charge Con-Forte rent.

[199] Mr. Westbrook testified that Mr. Goodman never contacted him about the November 4 conversation with Ms. Harrison concerning her first complaint against Mr. Ford.

[200] Mr. Westbrook could not explain why Ms. Harrison was criticized at the hearing for the manner in which she filled out some of the safety related forms, in particular for misidentifying the prime contractor. He agreed that on at least some of the forms done before her arrival at the Lofts, Mr. Nixon had made the mistake of listing himself as the prime contractor.

[201] It was Mr. Westbrook's recollection that the building permit for the Lofts was obtained on December 19, but that some work had already started. Permits for the excavation and building of the foundation were already in place, and the excavation started in mid-October.

[202] Mr. Westbrook stated that in October and November, he became concerned about the fact that safety reports for the Lofts were not coming to him with the frequency he expected. As a result, he contacted NSC in Calgary, saying he was not happy with what

was happening. Mr. Nixon told him that he would ensure that Ms. Burton made more regular trips to Kelowna.

[203] While in Kelowna in late November, Mr. Goodman reported to Mr. Westbrook that Ms. Harrison had some family problems that required her to leave the work site early. This was a problem for the project, as a safety person had to be on site before any work could be done.

[204] Mr. Westbrook testified that he also heard from Mr. Ford sometime in November, complaining that Ms. Harrison was wearing tight pants and loose tops at work, not in keeping with appropriate workplace clothing. Mr. Ford went on to tell Mr. Westbrook that he had raised his concerns with Ms. Harrison. Mr. Westbrook did not get any complaints from anyone else concerning Ms. Harrison's manner of dress.

[205] In the last week of November, Mr. Ford and Mr. Goodman complained to Mr. Westbrook that Ms. Harrison was refusing to move to the first aid trailer that was now available.

[206] Mr. Westbrook testified that he called Mr. Nixon on December 6. He asked Mr. Nixon to have Ms. Burton go to Kelowna and speak to Ms. Harrison about her manner of dress. He also complained about Ms. Harrison's demand for a cell phone and CSO business cards. A few days later, on December 8, Mr. Nixon confirmed with Mr. Westbrook that Ms. Burton had met with Ms. Harrison.

[207] Also in early December, Mr. Westbrook testified that he got a call from Mr. Ford, complaining that Ms. Harrison was demanded business cards showing her as being with Navigator, and indicating that she had a CSO designation. She also wanted a cell phone. Mr. Westbrook told Mr. Ford that the cell phone was the responsibility of NSC, and that Ms. Harrison should contact Mr. Nixon about it. At the hearing, Mr. Westbrook stated that he did not consider the issues being raised as serious ones. In any event, he made no notes of any of the conversations he had about Ms. Harrison.

[208] Mr. Westbrook testified that, on December 9, he was informed about a sexual harassment complaint concerning Mr. Ford. Mr. Westbrook met with Mr. Nixon and Mr. DeDominicis on December 9 for about 20 minutes to discuss the complaint. Mr.

Westbrook said he would contact Mr. Ford and Mr. Goodman about what was going on, which he did, and Mr. Nixon said he would contact Ms. Harrison to get her side of the story. During the meeting, Mr. Westbrook thought Mr. Nixon had something in writing from Ms. Harrison, but Mr. Nixon did not give Mr. Westbrook or Mr. DeDominicis a copy.

[209] Mr. Nixon told Mr. Westbrook and Mr. DeDominicis that Ms. Harrison accused Mr. Ford of inappropriate touching, a ‘slap on the backside’, and pornography on his computer. When Mr. Westbrook contacted Mr. Ford, Mr. Ford said that the allegations were completely fabricated. Mr. Goodman in turn told him that, while there had been some flirtation between Mr. Ford and Ms. Harrison, there had been no sexual harassment. Mr. Goodman’s comments surprised Mr. Westbrook, because when he had been on the Lofts site, he had seen nothing out of the ordinary. Mr. Westbrook’s investigation of the complaint took about 20 minutes, and again, he made no notes of any of his discussions.

[210] Mr. Westbrook spoke to Mr. Nixon the Monday following the complaint. Mr. Nixon told him he had sent Ms. Harrison home for the day on Friday, and would move her to the first aid trailer when she returned to work. Mr. Nixon went on to say that Ms. Harrison was happy with that arrangement. Mr. Westbrook then told Mr. Nixon he would call Mr. Ford, and warn him to stay away from Ms. Harrison. He then called Mr. Ford and told him to leave Ms. Harrison alone.

[211] Mr. Westbrook recalled Mr. Goodman complaining to him that Ms. Harrison was late for work on or about December 14, not showing up until 7:40 am, and that work could not start until she arrived.

[212] Mr. Westbrook wrote an undated letter to Mr. Nixon, in which he complained about Ms. Harrison. Based on Navigator’s computer records, Mr. Westbrook believed the letter was written on December 19, 2005. The letter is as follows:

It has come to our attention that Kory Harrison has been disruptive on the site with our site personnel and our forming contractor Conforte Contracting Ltd.

Please talk to her and if we have any further problems, we will have to have a meeting to discuss using your firm for our safety needs.

The letter does not mention a specific reason for Mr. Westbrook's complaint, beyond Ms. Harrison being "disruptive".

[213] At the hearing, Mr. Westbrook stated that he wrote the letter because he was concerned about Ms. Harrison's dress and attendance. He was also unhappy with the lack of reports he was getting from NSC and the slow progress with the safety manual.

[214] Mr. Westbrook went on to say that he never spoke to Mr. Nixon about the letter, nor did he ever recommend that Ms. Harrison be disciplined or her employment terminated. Furthermore, he never discussed the termination of Ms. Harrison's employment with Mr. Nixon after it happened. As well, he was unaware of anyone from Con-Forte speaking to Mr. Nixon about Ms. Harrison being fired. From December 20 to 31, he had no contact with Mr. Nixon.

[215] Mr. Westbrook next spoke to Mr. Nixon in mid-January 2006. He told him that he was not happy with NSC's work on the Lofts. The safety manuals were still not ready, and he was concerned that there might be a safety audit done, given that construction was well under way. Mr. Nixon said he would have the manuals ready by the end of January, but did not.

[216] Initially, Mr. Westbrook recalled that Navigator discontinued using NSC for safety services at the Lofts at the end of February 2006.

[217] Mr. Westbrook next spoke to Mr. Nixon in June 2007. He heard Mr. Nixon was working at a camp near Sundry, Alberta, and went to see him. Mr. Westbrook told Mr. Nixon that Navigator was involved in a sexual harassment complaint (Mr. Westbrook assumed Mr. Nixon was already aware of it) and asked if he would help the company. Mr. Nixon said he would come to the hearing, which was then scheduled for July 2007. He told Mr. Westbrook that NSC had ceased all operations.

[218] Mr. Westbrook confirmed that the building permit was not issued for the Lofts site until December 19, 2005. The delay was caused in part because there had been a change in the original building plans.

[219] Mr. Westbrook was at the Lofts site on about November 6, 2005. At the time, he asked Mr. Nixon to have Ms. Burton talk to Ms. Harrison about her dress at the work site.

He complained that he did not think her manner of dress – tight jeans and baggy tops – was appropriate. He never raised the matter with Ms. Harrison directly, as his approach would be to go through the management structure. He confirmed that prior to November 6, he probably never spoke to Mr. Nixon about what Ms. Harrison wore to work. He also confirmed that neither Navigator nor Con-Forte had a written dress code.

[220] Mr. Westbrook confirmed that, when he visited the Lofts, Ms. Harrison picked him up at the Kelowna airport, made telephone calls for him and got contracts signed on his behalf. He also confirmed that he never told her she had to move from the office she shared with Mr. Ford and Mr. Goodman to the first aid trailer. He had told Mr. Nixon, sometime in late November, that Mr. Ford was complaining that she would not move. Again, Mr. Westbrook had no notes of his discussions with Mr. Ford or Mr. Nixon.

[221] Also in cross-examination, Mr. Westbrook agreed that an assertion made in paragraph 11 of both Navigator's and Con-Forte's Response to Complaint Form – that Ms. Harrison "would regularly bend over in short skirts and attempt to ensure that Mr. Goodman and Mr. Ford were paying attention to her actions" – never happened. He agreed that to his knowledge, she never wore skirts for work, but he reiterated she wore tight jeans.

[222] Mr. Westbrook further confirmed that another assertion in Navigator's and Con-Forte's Response to Complaint Form – that Ms. Harrison demanded, on a daily basis, that she be given a cell phone, and demanded business cards that indicated she was a CSO – was based on information provided by Mr. Ford.

[223] Mr. Westbrook confirmed that Navigator does not provide training for anyone in regard to work site safety. Rather, the company hires professionals to look after that work.

[224] Mr. Westbrook confirmed that, during her employment, Ms. Harrison approached him several times in regard to getting the Lofts' WCB registration completed. Mr. Westbrook could not recall any of the communications Ms. Harrison recorded as having had with him regarding the WCB registration during November and December. The Lofts was eventually registered with WCB on about December 19, 2005.

[225] Mr. Westbrook recalled having a conversation with Mr. Nixon on about December 14, 15, or 16, relating a complaint from Mr. Goodman about Ms. Harrison being late for work and leaving early, thereby holding up construction. Mr. Westbrook told Mr. Nixon that this was unacceptable, and that he wanted different arrangements made. He also wanted to know where the safety manuals were. Mr. Westbrook had no other conversations with Mr. Nixon prior to Ms. Harrison's employment being terminated. At the hearing, Mr. Westbrook expressed the view that, if anyone's services should have been terminated, it should have been NSC's. He agreed that Ms. Harrison had been "caught in a squeeze." For example, he said he did not think she should have been terminated for the clothing he says she wore, the cell phone issue, or the business card demand, but simply should have been spoken to.

[226] In cross-examination, Mr. Westbrook agreed that NSC continued to receive payments for services rendered to Navigator. The last payment from Navigator to NSC was dated May 31, 2006. He did not know who the safety consultant on site was immediately after Ms. Harrison, but believed it was Mr. Campbell.

3. *Marco DeDominicis*

[227] As noted earlier, Mr. DeDominicis is president of both Navigator and Con-Forte.

[228] Mr. DeDominicis testified that on December 8, Mr. Nixon contacted him by phone, telling him that there was a sexual harassment complaint concerning the Lofts, and that the RCMP might have to be involved. The next day, Mr. Nixon met with Mr. DeDominicis in his office in Calgary. Mr. Nixon brought some sort of form with him that Mr. DeDominicis thought might have been hand written. In cross-examination, Mr. DeDominicis said it was unlikely that he would have read it. Mr. DeDominicis recalled Mr. Nixon saying that he would look into the complaint from his end.

[229] Mr. DeDominicis told Mr. Westbrook to look into the situation. As well, he called Mr. Goodman to ask him what was going on. Mr. Goodman denied that Mr. Ford had sexually harassed Ms. Harrison, and said there were just childish things going on between them. He recalled Mr. Goodman relating to him Ms. Harrison's suggestion to Mr. Goodman and Mr. Ford that they spank her. At the end of the conversation, Mr. DeDominicis did not feel he had an issue that needed to be solved.

[230] On December 9, Mr. DeDominicis says he and Mr. Nixon also discussed a complaint made by Mr. Ford against Ms. Harrison. Mr. DeDominicis expressed the view that neither Mr. Ford nor Ms. Harrison could be fired without more information.

[231] Mr. DeDominicis had a further conversation with Mr. Nixon a week or so after the December 9 meeting. Mr. Nixon stated he was watching Ms. Harrison's performance. Mr. DeDominicis stated he had no recollection of Mr. Westbrook telling him that NSC had terminated Ms. Harrison's employment shortly before Christmas.

4. *Steven Brown*

[232] Mr. Brown has been operating Okanagan Safety Systems and Solutions Ltd. since 2003. Prior to that, Mr. Brown had been involved in worker safety for many years with the WCB. In June 2006, Mr. Ford hired him as a consultant for Navigator to review the Lofts Occupational Health and Safety plans. He found deficiencies in a number of areas, and offered to make the necessary revisions. Mr. Brown eventually became site safety supervisor for the Lofts, monitoring the work of an onsite safety worker on a bi-weekly basis.

[233] I understand from Mr. Brown's evidence that only the City of Vancouver requires a CSO to be on site for certain projects, and that there was no such requirement for the Lofts. However, there was a requirement that there be someone on site with at least a Level 2 first aid certificate.

[234] Mr. Brown testified that, at the time the Lofts was being built, the construction industry in Kelowna was extremely busy. There were not enough workers to fill all the vacancies.

5. *Jack Kinakin*

[235] Mr. Kinakin worked at the Lofts for Con-Forte as a labourer and carpenter. In January 2006, Mr. Ford asked him for a written statement in regard to Ms. Harrison. In the statement, he said he found her "too friendly", and that he felt "somewhat uncomfortable with her clothing and generally flirtatious demeanour."

[236] Mr. Kinakin testified that he participated in a safety orientation session presented by Ms. Harrison sometime in early November 2005. The meeting took less than one half hour, and no one was present other than Ms. Harrison and himself.

[237] According to Mr. Kinakin, Ms. Harrison was wearing tight jeans and a small red winter jacket over a low-slung t-shirt. Mr. Kinakin thought Ms. Harrison's dress was more suited for a social event than for the workplace.

[238] During the safety meeting, Ms. Harrison went through a safety checklist with Mr. Kinakin while he sat at a table and bench. While going through the list, Ms. Harrison was standing up, with one leg on the bench, with her body hovering over the table. Her posture made Mr. Kinakin uncomfortable, and he backed away from her.

[239] In cross-examination, Mr. Kinakin agreed that he was not suggesting that Ms. Harrison's manner of dress was an invitation by her to be sexually harassed.

[240] Mr. Kinakin also stated that while on the work site, Ms. Harrison talked to him about non-work related matters more than the norm. He would walk away from her because it made him uncomfortable.

[241] In cross-examination, Mr. Kinakin stated he was asked by Mr. Ford to be a "character witness" concerning Ms. Harrison. He understood this to mean that he was to give a general description of Ms. Harrison's conduct on site, and how she related to other workers.

6. *Nick Piattelli*

[242] Mr. Piattelli worked for Con-Forte at the Lofts while Ms. Harrison was there. In January 2006, Mr. Goodman asked him to write a statement about her time on the work site.

[243] Mr. Piattelli's statement is brief:

Statement of Kori Harrison's appearance

I Nick Piattelli witness

Unnecessary appearance of Kori Harrison and unprofessional work ethics.

Spent more time talking with the men than doing her job.

Sincerely “Nick Piattelli”

Jan. 10. 06

[244] Mr. Piattelli testified that he also participated in a safety orientation session presented by Ms. Harrison in late October 2005. It took place in the site lunch room, and about 15 people were present.

[245] Ms. Harrison went through a list of safety issues, making those present all aware of the rules for the site. Mr. Piattelli recalled that Ms. Harrison was wearing clothes he did not consider appropriate for a work site. She had on tight, low-cut jeans, a low-cut shirt or sweater, and a jacket.

[246] At the hearing, Mr. Piattelli clarified that his comment about Ms. Harrison’s work ethic was in relation to her manner of dress. She also spent an inordinate amount of time “chatting up one of the young kids” on the site. Instead of working, the young men would stop and talk with her.

[247] In cross-examination, Mr. Piattelli agreed that he did not know all of Ms. Harrison’s duties, had not seen her job description, and did not know what she did when not around him.

[248] Mr. Piattelli went on to say that he wrote his statement after Mr. Goodman told him Ms. Harrison had made a sexual harassment complaint.

7. *David French*

[249] Mr. French wrote a statement on January 20, 2006 regarding Ms. Harrison. He could not recall who asked him to write it.

[250] Mr. French attended a safety orientation meeting with Ms. Harrison sometime early in November. About 10 people were present. He recalled that Ms. Harrison was wearing low-cut pants, and a tight white top. From the back, her skin was uncovered below the waistline and her thong underwear was visible.

[251] Mr. French felt Ms. Harrison was unprofessional during the meeting, in that she was too chatty and not serious enough. Overall, Mr. French thought that there was a lack

of safety enforcement on the site. In cross-examination, Mr. French also agreed that it was unprofessional to look at pornography while on the work site.

[252] In March 2006, Mr. French took over the site safety role at the Lofts, under the oversight of Mr. Brown. At the time, he had Level 1 first aid, and got his Level 2 training in June 2006. He has since obtained his CSO certification.

[253] After he began looking after safety issues, Mr. French was asked to look for any reports done by Ms. Harrison in October through December 2005, but he could not locate anything.

[254] Mr. French confirmed that while doing the safety work at the Lofts, he completed two hazard assessment forms. He did not note the correct name of the prime contractor on either one, but had not realized what he was filling out at the time. He stated that properly naming the prime contractor was an important issue in regard to WCB coverage for injured workers.

8. Findings of Fact

[255] Credibility is a key issue in this complaint. Counsel for Ms. Harrison and for the corporate respondents both argued that the principles found in *Faryna v. Chorny* lead to the inevitable conclusion that their clients' view of events is the correct one. Ms. Harrison made several allegations against Mr. Ford. For his part, Mr. Ford denied all the allegations except one.

[256] Overall, I find Ms. Harrison's version of events more in harmony with what a practical and informed person would readily recognize as reasonable, within the environment of the Lofts worksite.

1. Journals

[257] I find Ms. Harrison's daily journal to be a generally accurate record of her work at the Lofts, created contemporaneously as events occurred. I do not find, as suggested by Navigator and Con-Forte, that it was viewed by her as a "private" document. There is no reason to conclude that entries in the journal were made after the events described in an effort to bolster her complaint. The language in the journal regarding Mr. Ford is

circumspect until December 8, as would be expected in a document that would have been accessible to others at the Lofts.

[258] I find Mr. Goodman's journal is also a genuine work-related document, but it is much sparser than Ms. Harrison's journal.

[259] Mr. Goodman made six references to Ms. Harrison in his journal. One was his wife's observation about Ms. Harrison's clothing her first day on the job, another concerned her participation in a job interview, and there were two references to her not coming to work or being late (on November 16 and December 12). His journal contains less detail of day to day issues at the Lofts than Ms. Harrison's, and contains no reference to significant events: Ms. Harrison's November 4 complaint; her December 8 complaint; Mr. Goodman's involvement in the follow-up regarding the December 8 complaint; or Ms. Harrison's dismissal on December 20.

2. *Qualifications and NSC Supervision*

[260] When Ms. Harrison was hired by NSC, safety officers were at a premium at the time in Kelowna. Navigator and Con-Forte were aware of Ms. Harrison's qualifications: she held a Level Three first aid certificate. Mr. Westbrook agreed to the arrangements Mr. Nixon promised to make, to ensure that she was supervised by a CSO.

[261] NSC's supervisory on-site presence consisted of visits from Ms. Burton. NSC's principal, Mr. Nixon, never visited the site. This lack of on-site supervision by Mr. Nixon was not Ms. Harrison's fault.

3. *Employment Relationships*

[262] The employment relationships of the principal witnesses were varied. Ms. Harrison was the only person employed in the traditional sense. Messrs. Ford, Goodman and Westbrook were all styled as independent contractors. Ms. Harrison provided administrative support services to Mr. Ford, as contemplated by her contract of employment. To a lesser extent, but as set out in her journal, Ms. Harrison also provided administrative support services to Mr. Goodman. For example, she was involved in hiring workers, as her name was given in ads as a contact person along with Mr. Goodman. Had Mr. Goodman not wanted her to provide services to Con-Forte, he could

simply have told Ms. Harrison to stop. Navigator and Con-Forte had a close and interrelated working relationship at the Lofts.

[263] Mr. Goodman was the person Ms. Harrison looked to with her November 4 complaint, and the person Mr. Westbrook asked to look into her December 8 complaint. Mr. Goodman complained to Mr. Westbrook about Ms. Harrison being late for work on December 12, and, on the same date, directed her, on Mr. Westbrook's instructions, to move into the first aid trailer.

[264] In my view, the working relationships between Ms. Harrison, Mr. Ford, and Mr. Goodman were, for the purposes of a human rights analysis, inextricably linked. Both Mr. Ford and Mr. Goodman were clearly in positions of authority over her in the workplace. As such, she was in an "employment" relationship, as that term has been broadly defined in the human rights case law, with Navigator and Con-Forte. See, for example, *Nixon v. Vancouver Rape Relief Society*, 2002 BCHRT 1 (rev'd, but not on this point, *Vancouver Rape Relief Society v. Nixon et al.*, 2003 BCSC 1936; *Vancouver Rape Relief Society v. Nixon*, 2005 BCCA 601) (paras. 72-73).

4. *Harrison's General Comportment and Dress*

[265] Mr. Ford described Ms. Harrison as being incompetent, manipulative, and annoying. At the hearing, he expressed concerns about her manner of dress. He suggested she invited "a spanking" and danced around the office as if she were a stripper. Mr. Goodman described her as meddlesome and also expressed concerns about her clothing. His main concern appeared to be the distraction her dress caused on the worksite, and the practicality of what she was wearing, given the demands of her job. At the same time, he agreed that before construction ramped up at the Lofts, how Ms. Harrison dressed was not an issue.

[266] Ms. Harrison denied she invited Mr. Ford to hit her on the buttocks, or danced around the office 'like a stripper'. She also testified that while at the work site, she wore safety boots, jeans, t-shirts, sweaters, hoodies and jackets. When outside on the site, she wore a hardhat and a first aid safety vest. The respondents' witnesses variously described her as wearing clothes that were too tight, too loose, too revealing, or too dressy – not the sort of clothes one expected to see on a worksite. Much was made of the reaction of the

men who were present during safety orientations who saw her underwear when she bent over. Some of the same witnesses described her as being chatty, flirty and overly friendly.

[267] The fact that Ms. Harrison may have had an outgoing personality is not a basis on which to criticize her as a worker. As to her manner of dress, Navigator and Con-Forte went so far as to make the spurious allegation, in their Responses to the Complaint, that Ms. Harrison regularly wore short skirts to work, bending over so as to ensure that Mr. Goodman and Mr. Ford would notice. This significant allegation was not pursued at the hearing. The evidence about Ms. Harrison's underwear being exposed during a safety demonstration was of little relevance to the issues to be determined at the hearing. I prefer Ms. Harrison's evidence that she did not invite either Mr. Ford or Mr. Goodman to hit her on the buttocks. I do not accept the evidence that she danced around in the office 'like a stripper', or lifted her top when she was with Mr. Goodman. In the end, I find the attempt by the respondents to portray Ms. Harrison as someone who deliberately dressed and acted in a sexually provocative manner, and the implicit suggestion that she sexualized the workplace herself, without merit.

5. Mr. Ford's Laptop Computer Use

[268] There is no dispute that, on December 8, Mr. Krebs created a printout of the pornographic internet websites Mr. Ford viewed up to that date using his laptop computer, or that Mr. Ford accessed pornography on his laptop in the site office. An issue is whether he asked Ms. Harrison to view pornography on his computer while she was in the site office. I find that he did so, on at least one occasion.

[269] The corporate respondents argue that it is difficult to understand why Ms. Harrison would continue to use Mr. Ford's computer to store personal information on up until December 12, given that she was allegedly fearful of him. As I understand the evidence, Mr. Ford's computer was the only one in the site office, and was being used regularly for communication between workers with Con-Forte, Navigator, and NSC. It was the only way for Ms. Harrison to access her email. In all the circumstances, I do not see an inherent contradiction in her allegations against Mr. Ford and her continuing use of his laptop. As to Ms. Harrison's personal information being kept on the laptop, I have

no evidence before me as to whether that information was accessible to Mr. Ford, or whether it was password protected.

6. *Mr. Ford's alleged use of Marijuana*

[270] The corporate respondents argued that if Mr. Ford smoked marijuana during working hours, and smelled of marijuana on other occasions, as Ms. Harrison alleged in her evidence and in her December 8 complaint, she had a duty to report him immediately for breach of the safety plan. As I understand the argument, the fact that she did not goes either to the issue of her overall competency, if what she said was true, or to her credibility, if she concocted the accusation. In my view, there could be a number of explanations why Ms. Harrison did not raise the issue earlier with Mr. Nixon. For example, as a new employee, she could have feared that there would be serious and severe repercussions if she pursued the matter. Mr. Ford candidly admitted that he had had a serious drug problem in the spring of 2005, for which he received rehabilitation treatment. As part of his evidence at the hearing, Mr. Ford produced a certificate for a drug test he had done on December 12, 2005. The report was negative for all the drugs tested for, including marijuana. While I have no reason to doubt the validity of the report, I have no information before me as to how long after the fact marijuana use is detectable, the report does not assist me in assessing Ms. Harrison's allegations of earlier marijuana use.

[271] However, I do not need to make a finding as to whether Mr. Ford used marijuana as alleged by Ms. Harrison, as it is, in my view, of no direct relevance to the issue of sexual harassment, except in so far as it may go to diminish Ms. Harrison's overall credibility. I find that it does not.

7. *Mr. Ford's Comments and the November 4 Complaint*

[272] In her testimony, Ms. Harrison stated that, fairly early on in her work, Mr. Ford told her he would trade her truck tires for sex. In her December 8 email, she states that he made this statement to her about a week before the email. While there is no certainty as to when the comment was made, I accept that it was made.

[273] Mr. Goodman described Mr. Ford and Ms. Harrison as engaging in juvenile banter in the office. Ms. Harrison, Mr. Ford, and Mr. Goodman were not together for the

duration of the working day. Both Mr. Ford and Mr. Goodman were often off-site at different times. As a result, Mr. Goodman's observations as to the interaction between Mr. Ford and Ms. Harrison were necessarily limited, and it is reasonable to conclude that Mr. Ford was more likely to sexually harass Ms. Harrison when Mr. Goodman was not present.

[274] Ms. Harrison says Mr. Ford bragged about his sexual exploits, propositioned her, and regularly made sexually charged comments to her. There is an allegation that he hit her on the buttocks.

[275] Mr. Ford says that what was alleged by Ms. Harrison did not happen, or did not happen in the manner she alleges. His position was that if anyone sexualized the workplace, it was Ms. Harrison. The suggestion that he propositioned her for sex was simply a fabrication. He did not initiate the slap on her buttocks, she did. On one occasion, she mimicked a stripper. She regularly dressed in a provocative manner. Almost the entire content of her December 8 complaint letter to Mr. Nixon, by Mr. Ford's account, was a fabrication. He was the victim, not her. I do not accept Mr. Ford's characterization of the situation. A key consideration in coming to this conclusion is when Ms. Harrison first raised the issue of Mr. Ford's alleged sexual harassment: It was either November 4 or December 8.

[276] I accept Ms. Harrison's evidence that she raised the issue of Mr. Ford sexually harassing her with Mr. Goodman on November 4. She recorded that she had spoken to Mr. Goodman about Mr. Ford in her journal. In my view, it was logical for her to go to Mr. Goodman, as she was working with him on a daily basis, and he was a friend of Mr. Curatolo, while she had no personal relationship with Mr. Nixon. I also accept that she also discussed her concerns with Mr. Curatolo.

[277] I do not accept Mr. Goodman's evidence that Ms. Harrison only said that Mr. Ford made her uncomfortable, or that her comments would not raise any "red flags" for him.

[278] In my view, Mr. Goodman responded in the manner he did because he did not want the conflict between Ms. Harrison and Mr. Ford to become his problem. When Ms. Harrison told him of her concerns about Mr. Ford, Mr. Goodman was in an awkward

position. Mr. Goodman believed that the problem would simply go away, once the first aid trailer was ready and Ms. Harrison moved into it. He would then not have to deal with Ms. Harrison's complaint more formally.

[279] Mr. Goodman's response to Ms. Harrison makes more sense in the context of her having made a complaint of sexual harassment, rather than a vague statement that Mr. Ford made her uncomfortable.

8. *Move to the Trailer*

[280] A great deal of time was spent during the hearing about when the first aid trailer was ready for Ms. Harrison's use and whether Ms. Harrison refused to move to it once it was ready. The respondents argue that Ms. Harrison refused to move to the first aid trailer once it was ready, and instead continued to intermeddle in Messrs. Ford's and Goodman's work, making a general nuisance of herself.

[281] To repeat, November 4 is the day Ms. Harrison first complained to Mr. Goodman about Mr. Ford. If the first aid trailer was ready on that date as alleged in evidence, Mr. Goodman would not have had told her that things would improve once she was able to move.

[282] Ms. Harrison testified that the first aid trailer was still not fully ready for use when she moved into it on December 12. Ms. Harrison noted in her journal on that date that Mr. Nixon had told her he was immediately sending her a phone, a computer and business cards for her use. Again, I have no reason to conclude that this entry was a concoction, and it supports her position about the trailer.

[283] Overall, I prefer Ms. Harrison's evidence about the delay in her move to the first aid trailer to that of Mr. Ford or Mr. Goodman. She did not move earlier because it was not ready, not because she was stubbornly refusing to leave the site office. She recorded the problems with getting the space ready in her journal.

9. *Did Ms. Harrison Lift Her Top?*

[284] Mr. Goodman stated in his evidence that, on an unspecified date, Ms. Harrison lifted her shirt to show him that she was able to conceal the size of her breasts. I do not find this credible. I reach this conclusion for a combination of reasons. First, Mr.

Goodman made no note of the incident in his journal, although he did record other incidents such as Ms. Harrison's role in a job interview, his wife's alleged complaint about her clothing, and her being late for work. Second, he did not mention the incident when Mr. Westbrook contacted him about her December 8 complaint, but described her behaviour in the site office as being merely juvenile banter. Finally, Mr. Goodman never mentioned the incident to Mr. Ford until after Ms. Harrison was fired.

10. Events of December 5 and 6

[285] Mr. Ford testified that on December 1 or 2, Ms. Harrison came into the office, complaining of a back injury, saying how sore she was. Mr. Ford told Ms. Harrison that she ought to make an appointment with his wife, who was a chiropractor. She agreed, and Mr. Ford made an appointment for her on about December 5. After the appointment, Mr. Ford's wife allegedly complained to him about Ms. Harrison wearing clothes that were extremely tight, and using foul language while in her office.

[286] While the corporate respondents emphasized the fact that Mr. Ford's wife complained to him about how Ms. Harrison was dressed and spoke when she attended at her office for a chiropractic treatment, I did not have the benefit of hearing evidence directly from Mr. Ford's spouse on this topic. In any event, it is unclear to me why Ms. Harrison's alleged manner of dress or speech off the worksite would have any relevance to the issues I must decide. I give this aspect of the evidence no weight.

11. Events of December 7 and 8

[287] Ms. Harrison's testimony was that she became embroiled in an argument with Mr. Ford on December 7 over the issue of what was to be printed on her business cards. She says Mr. Ford insisted she get a Navigator card and state on it that she was a CSO, as it would be good advertising for Navigator in the Kelowna area. Mr. Ford says that it was Ms. Harrison who was insisting on a Navigator card, incorrectly noting that she was a CSO, because she wanted to present herself as someone she was not. I prefer Ms. Harrison's version of events regarding the business cards.

[288] I find that Ms. Harrison had several telephone conversations with Mr. Nixon the next day about this and other issues. I accept that she brought up the problems she was

having with Mr. Ford, including both the allegations of sexual harassment and the dispute about the business cards.

12. Conclusion as to Events up to December 8, 2005

[289] As set out above, I have accepted that, on November 4, Ms. Harrison told Mr. Goodman that she had concerns about her working relationship with Mr. Ford. Ms. Harrison set out the nature of the comments Mr. Ford made to her in some detail in her complaint to Mr. Nixon on December 8. Mr. Ford agreed that he took time during the work day to look at pornography on his laptop computer, and I accept that, on at least one occasion, he asked Ms. Harrison to take a look at it with him. Overall, I find that Mr. Ford was responsible for creating a sexualized atmosphere in the site office for Ms. Harrison.

13. Events on December 9

[290] I find that the investigation of Ms. Harrison's harassment complaint by Mr. Westbrook, Mr. Dedominicis and Mr. Nixon was cursory and superficial. As I understand the evidence, the entire initial meeting and investigation took approximately one hour. Mr. Westbrook thought that Mr. Nixon might have had a handwritten note setting out Ms. Harrison's complaints, but apparently he and Mr. Dedominicis never asked for or were given a copy. Despite having almost no details about what was being alleged, Mr. Westbrook called Mr. Goodman, a Con-Forte employee, and asked him what was going on, and also called Mr. Ford directly. Mr. Westbrook seemed to be satisfied by the bare assurances he received from Mr. Ford and Mr. Goodman that nothing untoward had happened. He did not provide Mr. Goodman with a copy of the complaint, so Mr. Goodman was responding to generalities, not specifics.

[291] Mr. Goodman had no hesitation in telling Mr. Westbrook that there had been no sexual harassment, despite having no specifics as to what was being alleged. Mr. Ford, for his part, said Ms. Harrison's allegations were a lie.

[292] Mr. Ford reacted immediately to Ms. Harrison's allegations. He retained counsel who wrote to Ms. Harrison on December 9, warning her about making further accusations against him. He also had a blood test done to establish that he had not been

using illicit drugs. These actions are completely at odds with his evidence that he did not think much of the accusations when they were made.

[293] In their written submissions, the corporate respondents provide their version of Ms. Harrison's motivation for making serious and extensive allegations of sexual harassment against Mr. Ford:

Mr. Goodman and Mr. Ford each testified to the repeated requests made by Ms. Harrison for a cell phone and business cards – she required these as hallmarks of status, and when they did not materialize she made the allegations against Mr. Ford.

[294] As stated earlier, in deciding what happened, I must determine which version of events a practical and informed person would readily recognize as reasonable, in that place and in those conditions. In my view, it is more reasonable to conclude that Ms. Harrison was the victim of a sexualized atmosphere created by Mr. Ford, rather than that she was the author of completely spurious allegations over relatively trivial issues. Given her personal circumstances – a single mother who needed work and was trying to advance in construction site safety, and her relatively low status within the working hierarchy at the Lofts – it does not accord with the preponderance of probabilities that she would have conducted herself as alleged by the respondents. She needed her job and wanted to keep it.

14. Events from December 12 to 18

[295] After Ms. Harrison's late arrival on December 12, Mr. Goodman directed her to move to the first aid trailer, and to report to Mr. Wiens in future. She states, and I accept, that she was not late the next day. She had no further confrontations or issues with Mr. Ford or anyone else on the worksite until December 19.

15. Events of December 19

[296] I do not accept the argument made by the corporate respondents that no one from Navigator or Con-Forte attempted to "recommend, persuade, instruct, induce or influence the termination of Ms. Harrison's employment."

[297] Mr. Westbrook wrote to Mr. Nixon on December 19, stating that Ms. Harrison had caused disruption with Navigator and Con-Forte staff. In my view, the meaning of

Mr. Westbrook's letter was clear: any future problems with Ms. Harrison could result in cancellation of the NSC contract.

[298] At the hearing, Mr. Westbrook stated that from his point of view, Ms. Harrison's dress, alleged tardiness, and other disputes on the work site were not the type of things that should have lead to her dismissal. It was his view that NSC's contract should have been terminated, not Ms. Harrison's employment. The question then becomes why he wrote the December 19 letter at all. It was the first and only correspondence NSC received about Ms. Harrison. In my view, it is reasonable to conclude that the "disruption" was Ms. Harrison's complaint against Mr. Ford. Despite Mr. Ford saying that he did not think much of her complaint, he immediately hired a lawyer to warn her against making any further allegations. He was clearly concerned. He also had a drug test done, presumably to refute her allegations of marijuana use. Allegations had been made that he viewed pornography at the worksite, something he conceded to his employer. In short, he suspected his position was becoming precarious, given Ms. Harrison's allegations, and he reacted strongly. In the end, Ms. Harrison was a less important part of the workforce at the Lofts than Mr. Ford, particularly as construction was finally getting underway in earnest. In my view, the message to Mr. Nixon was clear – Ms. Harrison was expendable, and the contract with NSC was in jeopardy.

16. Events on and after December 20

[299] I accept Ms. Harrison's evidence that, immediately after she received the notice that she was fired, she contacted Mr. Nixon, who told her he was letting her go, not because he wanted to, but because Navigator wanted her out. That evidence is consistent with my conclusions regarding what actually occurred.

[300] Ms. Harrison was, according to her Employment Insurance Record of Employment, paid up to December 30, 2005, and earned a total of \$8,421.21 insurable earnings. I accept that sometime in January 2006, Mr. Nixon offered Ms. Harrison another position at another worksite, but she turned it down. She then went on to obtain further safety officer training, starting in March 2006.

[301] There was some dispute as to when the relationship between NSC and Navigator ended. I find that it came to an end as of the last payment NSC received from Navigator, on or about April 30, 2006.

9. Analysis

[302] The complaint is brought under s. 13 of the *Code*:

13 (1) A person must not

(a) refuse to employ or refuse to continue to employ a person, or

(b) discriminate against a person regarding employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

...

1. Submissions and Analysis

[303] With the exception of Mr. Ford's submissions, I refer to the submissions of the parties within the context of the specific points of analysis.

[304] Mr. Ford's submissions were brief. He stated that Ms. Harrison's complaint was filed out of revenge, and for financial gain. After a very brief review of two factual disputes in the complaint, Mr. Ford stated that in his view, the dispute between the parties arose because Ms. Harrison was angry with him because she did not get the specific business cards she wanted. She was also angry with him because he caught her trying to claim overtime that was not justified, and because he wanted her to move out of the shared office.

[305] Mr. Ford noted that Ms. Harrison's accusations have affected his reputation and cost him money, but submitted that in the end, those allegations were not supported by the facts. Her motivation was revenge, and her evidence was fabricated. He stated, on the other hand, that he came to the hearing with a clear conscience.

[306] In her submissions, Ms. Harrison maintained that in law, NSC cannot be considered an employer under the *Code*. As I understand Ms. Harrison's oral submissions, because NSC was an extra-provincial entity not registered to do business in BC, the Tribunal has no jurisdiction to make any orders against it. Navigator and Con-Forte say there is no authority for this proposition.

[307] In *Carlisle v. Law School Admission Council*, 2004 BCHRT 353, the Tribunal dealt with an analogous situation. In that case, the complainant required an accommodation for a test administered in BC. However, the corporate respondent argued that, because it did not perform any activities within the province of British Columbia, and because the conduct which formed the basis of the complaint occurred outside of British Columbia (provision of a requested accommodation), the Tribunal did not have jurisdiction over it.

[308] In *Carlisle*, the Tribunal stated

While I accept that LSAC's decision with respect to the accommodations which would, or would not, be offered to Mr. Carlisle were made in Newport, Pennsylvania, they were clearly implemented in British Columbia, the alleged denial of accommodation was with respect to a test occurring in British Columbia, and the impact of that denial was felt by Mr. Carlisle in British Columbia. (para. 15)

[309] Here, the ultimate decision to fire Ms. Harrison was made in Alberta by NSC. However, as in *Carlisle*, that decision was implemented in BC, with respect to the employment of a BC resident working in BC. The impact of the termination was clearly felt by Ms. Harrison in BC.

[310] As in *Carlisle*, I find that the Tribunal has jurisdiction to consider and dispose of the complaint as against NSC. As I find that the complaint is justified, I have the jurisdiction to make whatever remedial orders are appropriate, and cannot decline to exercise that jurisdiction. As noted by Navigator and Con-Forte, any order against NSC can be registered with the BC Supreme Court and enforced extraterritorially.

[311] Navigator conceded that Ms. Harrison provided services to it, and that it constituted a party in control of her work environment. On the other hand, Con-Forte relied on the analysis in *Andrews v. Chilli House Thai Bistro and Chen (No. 2)*, 2007

BCHRT 88, following *Crane v. British Columbia (Ministry of Health Services)*, 2005 BCHRT 361, to support its argument that it was not Ms. Harrison’s employer for human rights purposes. As stated in *Crane v. B.C. (Ministry of Health Services) and others*, 2005 BCHRT 361 (rev’d, but not on the point for which it is cited in this decision, *HMTQ et al v. Emergency Health Services Commission et al*, 2007 BCSC 460):

The interpretative principles to be applied in understanding and applying these terms and concepts are clear, having been discussed many times in a number of court and tribunal decisions. They are to be applied broadly and flexibly, in order to ensure that the remedial purposes of the *Code* are furthered. (para. 71)

[312] In *Crane*, the Tribunal, after considering the applicable jurisprudence, made the following observations:

Drawing together the strands of this jurisprudence, I summarize the applicable principles as follows:

- a) “Employ”, “employer” and “employment” are to be given a large and liberal interpretation which will best achieve the purposes of the *Human Rights Code*;
- b) The determination of the identity of the employer or employers is a highly fact-specific enquiry; no one “test” can be developed which will serve in all contexts;
- c) While no one “test” can be developed, there are a number of factors or considerations which may be relevant to the determination of employer status. The most important of these include:
 - (a) “Utilization” – this is the concept discussed in *Pannu*, *Rosin* and *Fontaine*, which looks to the question of whether the alleged employer “utilized” or gained some benefit from the employee in question;
 - (b) Control – did the alleged employer exercise control over the employee, whether in relation to the determination of his or her wages or other terms and conditions of employment, or in relation to their work more generally, such as the nature of the work to be performed or questions of discipline and discharge?;

- (c) Financial burden – did the alleged employer bear the burden of remuneration of the employee; and
- (d) Remedial purpose – does the ability to remedy any discrimination lie with the alleged employer? This concept was discussed in *Tulk* and *Reid*.

It should go without saying that the relative weight to be given to these four, and any other relevant factors, will depend on the particular factual context in which the issue arises ...

The importance of the remedial purpose in determining which entity or entities is the employer is not, however, simply a matter of looking around for a party with “deep pockets” who has the financial wherewithal to pay a damages award. Rather, it is a question of situating the analysis within the context and purposes of the *Code*... (paras. 79-81)

[313] Like Navigator, Con-Forte did not pay Ms. Harrison’s wages. Unlike Navigator, it was not a party to NSC’s contract. Like Navigator, Con-Forte utilized Ms. Harrison’s safety services, and could not undertake construction unless she was present. Despite the statement in her letter of employment that she was only to provide non-safety support services to Navigator as time permitted, Ms. Harrison assisted Mr. Goodman in hiring new employees (Ms. Harrison’s and Mr. Goodman’s names were given as contacts for prospective employees at the Lofts) and provided him with other administrative services. As well, Mr. Goodman was in a position of authority over Ms. Harrison and was involved indirectly in her hiring. She looked to him for help in regard to her November 4 complaint, and he was in a position to intervene on her behalf at that time, had he seen fit to do so.

[314] Mr. Goodman made inquiries on behalf of Mr. Westbrook after Ms. Harrison’s December 8 complaint, and saw to it that Ms. Harrison moved to the first aid trailer on December 12. After that date, he and Mr. Wiens were to be her on-site contacts.

[315] In my view, given the particular factual context of this complaint, including the close working relationship between Navigator and Con-Forte in the Lofts project, I find that, along with NSC and Navigator, Con-Forte was also Ms. Harrison’s “employer”. Even if Navigator and Con-Forte were not Ms. Harrison’s employers, they were the proximate cause of the dismissal. Again, the threat contained in Mr. Westbrook’s letter

to Mr. Nixon is apparent. Mr. Goodman, a contract employee with Con-Forte, complained about Ms. Harrison on December 12. Mr. Westbrook, who wrote the December 19 letter to NSC, answered to Mr. DeDominicis, the president of both companies.

2. *Was Ms. Harrison Sexually Harassed?*

[316] I agree with Ms. Harrison's submission that many of the issues raised by the respondents in the course of the hearing are not relevant to the issues I must decide, particularly her relative friendliness or manner of dress. Furthermore, the issue is not whether Ms. Harrison moved to the first aid trailer as soon as she could or whether she completed paperwork in a particular way. Whether faults could be found in Ms. Harrison as to how she fulfilled her responsibilities is only potentially relevant to the extent that it could have a negative impact on her overall credibility. I find that it does not.

[317] As stated in many decisions of the Tribunal, sexual harassment is a form of sexual discrimination: *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252, [1989] S.C.J. No. 41 (Q.L.). The Supreme Court of Canada defines sexual harassment broadly as:

... unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment. It is...an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it.... (para. 56)

[318] The Court went on to quote with approval the following descriptions of sexual harassment:

...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 innuendos, and propositions for dates or sexual favours.... (para. 49)

[319] The Supreme Court of Canada went on to say:

...Sexual harassment is not limited to demands for sexual favours made under threats of adverse job consequences should the employee fail to

comply with the demands. Victims of harassment need not demonstrate that they were not hired, were denied a promotion or were dismissed from their employment as a result of their refusal to participate in sexual activity. This form of harassment, in which the victim suffers concrete economic loss for failing to submit to sexual demands, is simply one manifestation of sexual harassment, albeit a particularly blatant and ugly one. Sexual harassment also encompasses situations in which sexual demands are foisted upon unwilling employees or in which employees must endure sexual groping, propositions, and inappropriate comments, but where no tangible economic rewards are attached to involvement in the behaviour (*Janzen* at para. 52).

[320] After reviewing the evidence, I find that Ms. Harrison was subjected to unwelcome conduct of a sexual nature that detrimentally affected her work environment and led to adverse job-related consequences for her. As noted above, that conduct started early on in her work at the Lofts. Her November 4 complaint to Mr. Goodman produced what proved to be an ineffectual result, in that she was not able to move from the office she shared with Mr. Ford before problems arose again.

[321] Mr. Ford's comments and activities in the workplace created a sexualized environment for Ms. Harrison. Mr. Ford touched Ms. Harrison inappropriately. He propositioned her for sex, and reacted negatively when she did not respond positively. He viewed pornography on an apparently regular basis in the workplace, and on at least one occasion, asked Ms. Harrison to look at the material with him.

[322] According to Ms. Harrison, she met Mr. Ford's comments with silence or with statements that she was there to work. The power differential between Ms. Harrison and Mr. Ford was clear: she was new to the workplace, she was trying to establish a career, and she was a single mother who needed the job; Mr. Ford was the highest ranking individual on-site for the prime contractor, Navigator. In all of the circumstances, it is clear that Mr. Ford knew, or ought to have known, that his conduct was inappropriate and unwelcome. Mr. Ford sexually harassed Ms. Harrison in the course of her employment.

[323] When things came to a head on December 8, Mr. Ford was not prepared to accept Ms. Harrison's accusations against him. He denied any misconduct to Navigator's senior management, and retained a lawyer to warn Ms. Harrison off any further accusations.

[324] The investigation into Ms. Harrison's complaint by the corporate respondents, including NSC, was cursory, and within six working days Mr. Westbrook, on behalf of Navigator, gave a clear message to NSC: Ms. Harrison's presence was a problem, and NSC's contract was in jeopardy.

[325] Navigator and Con-Forte argue that there was no evidence that they caused a breach of the employment contract between NSC and Ms. Harrison, and that therefore the link between any damages that might flow from her dismissal and them has not been made out. I disagree. I conclude that NSC fired Ms. Harrison because of the thinly veiled threat contained in Mr. Westbrook's letter of December 19. The reasons given for the termination as set out in Mr. Nixon's December 20 letter were nothing more than pretextual. In my view, the termination of Ms. Harrison's employment was directly linked to the sexual harassment which she was subjected to. For purposes of a human rights analysis, it is irrelevant that the termination took place during Ms. Harrison's probationary period. Discrimination against a person regarding employment, or any term or condition of employment, because of sex, is prohibited under the *Code*, regardless of when it occurs during that person's employment.

3. Conclusion

[326] I find that Ms. Harrison's complaint is justified. Mr. Ford sexually harassed Ms. Harrison in the course of her employment at the Lofts. Mr. Goodman, Con-Forte's representative on site, failed to deal with the harassment when he learned of it. NSC, at the indirect urging of Navigator, terminated her employment soon after she complained about the harassment. All the respondents, including NSC, therefore discriminated against Ms. Harrison, contrary to s. 13 of the *Code*, and share joint and severable liability for that discrimination.

10. Remedy

[327] I will now consider the application of the remedial sections of the *Code*, given the foregoing findings of fact and analysis. Subsections 37(2) through (4) of the *Code* set out the various compensatory remedies available to Ms. Harrison.

37 (2) If the member or panel determines that the complaint is justified, the member or panel

(a) must order the person that contravened this *Code* to cease the contravention and to refrain from committing the same or a similar contravention,

(b) may make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to this *Code*,

(c) may order the person that contravened this *Code* to do one or both of the following:

(i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;

(ii) adopt and implement an employment equity program or other special program to ameliorate the conditions of disadvantaged individuals or groups if the evidence at the hearing indicates the person has engaged in a pattern or practice that contravenes this *Code*, and

(d) if the person discriminated against is a party to the complaint, or is an identifiable member of a group or class on behalf of which a complaint is filed, may order the person that contravened this *Code* to do one or more of the following:

(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this *Code*;

(ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;

(iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.

(3) An order made under subsection (2) may require the person against whom the order is made to provide any person designated in the order with information respecting the implementation of the order.

(4) The member or panel may award costs

(a) against a party to a complaint who has engaged in improper conduct during the course of the complaint, and

(b) without limiting paragraph (a), against a party who contravenes a rule under section 27.3 (2) or an order under section 27.3 (3).

...

1. *Mandatory Order*

[328] Pursuant to s. 37(2)(a), I order that NSC, Navigator, Con-Forte, and Greg Ford refrain from committing the same or a similar contravention of the *Code*.

2. *Discretionary Orders*

a. *Declaration*

[329] Pursuant to s. 37(2)(b), I declare that the conduct complained of is discrimination contrary to the *Code*.

b. *Wage Loss*

[330] Ms. Harrison argues that the Tribunal should award an amount equivalent to what she would have earned to the completion of the Lofts project, however long it took. She also argues that she should recover any pay increases she would have received during the course of the project, and be compensated for the cost of the health and welfare related benefits she would have received, once she passed her probationary period. Ms. Harrison argues that any monies she earned after she left the Lofts should not be deducted from any wage loss compensation. Briefly stated, Ms. Harrison argues that the Tribunal should not continue to import the common law duty of mitigation into its wage loss calculations, as it is not required to do so under the provisions of the *Code*. She also suggested in closing submissions that there should be no reduction in compensation for wage loss, as it was clear the respondents had not taken her human rights complaint seriously.

[331] Navigator and Con-Forte argue that, had Ms. Harrison remained in NSC's employment, she would have been in no better position than Mr. Campbell, whose employment ended on about April 30, 2006, when NSC stopped operating and its contract with NSC was terminated. Navigator and Con-Forte say that damages for lost wages should put the employee in the same position as if the employment contract had

not been broken for a discriminatory reason. Ms. Harrison's employment would have ended when Mr. Campbell's did. Navigator and Con-Forte also argue that it is not possible to compensate Ms. Harrison for the value of the benefit plan promised by NSC, as there was no evidence led as to its value.

[332] I am not convinced that the Tribunal should depart from its long-standing approach in regard to compensation for wage loss: mitigation is a factor to be taken into account in the particular circumstances of a given complaint. As stated in *Senyk v. WFG Agency Network* (No. 2), 2008 BCHRT 376 (para. 437):

...the purpose of compensation in a human rights context is to restore the complainant to the position he or she would have been in had the discriminatory act not occurred

To conclude otherwise would be to ignore the compensatory nature of s. 37(2)(d)(ii).

[333] When Ms. Harrison's employment was terminated, there were 18 working days left in her probationary period. She had some replacement work after she left the Lofts, but not in construction safety. Although she declined an offer of employment from NSC in January 2006, it is understandable that Ms. Harrison might be reluctant to be re-employed by NSC, particularly give the nature of her complaint and the ultimately ineffective response of NSC to it. However, it appears she rejected the offer out of hand, with little or no discussion as to what might be involved. I agree that an important consideration is the fact that NSC's contract was cancelled with Navigator, and it ceased operations.

[334] As noted earlier, there was some uncertainty in the evidence as to exactly when NSC ceased operations. However, the last record of payment from Navigator to NSC is dated May 31, 2006, and appears to be a payment for an invoice from NSC dated April 28, 2006. Ms. Harrison attended safety training courses from March through June 2006, and would not have been available for work while doing so. Despite Mr. Nixon's assurances, it is not at all clear that NSC would have paid for her courses, as well as her salary, particularly after April 30. Finally, I have no way of determining what the value of the promised health and welfare benefits was. There is no certainty that Ms. Harrison would have received them, or that she would have been given any pay raises.

[335] Having considered all the factors in evidence, I find that it is appropriate to order that the respondents, including NSC, compensate Ms. Harrison for lost wages in the amount of \$14,144.00, based on the her hourly rate of pay of \$20.00 per hour, for 8 hours per day, and for 85 working days, from January 1, 2006 to April 30, 2006, inclusive of statutory holidays and vacation pay at a rate of 4%.

[336] I make no order that Ms. Harrison be compensated for the value of any benefits or pay raises, or for the courses she took in or after March 2006.

c. Expenses

Disbursements

[337] Ms. Harrison argues that she should be compensated for expenses such as photocopying, postage, faxing, document preparation and other expenses related to pursuing her complaint. While I agree that Ms. Harrison should be compensated for all of her reasonable out of pocket expenses (see below for legal expenses), it is not clear to me what the total of those expenses is. If the parties are unable to agree as to the amount of the expenses, they are to inform me in writing within 60 days of the date on which this decision is issued, and I will determine a process for the resolution of the issue.

Legal Expenses

[338] Ms. Harrison also argues that a broad approach should be taken in regard to compensation for her legal expenses, under s. 37(2)(d)(ii). She argues she should be able to recover the legal expenses she incurred in pursuing her complaint.

[339] A recent decision of the Tribunal, *Senyk v. WFG Agency Network (No. 2)*, 2008 BCHRT 376, considered the same argument. In *Senyk (No. 2)*, the Tribunal found that it has jurisdiction, under s. 37(2)(d)(ii) of the *Code*, to order a respondent to pay to a successful complainant compensation for all or a part of the legal expenses incurred by the complainant in filing and pursuing their complaint to hearing (para. 449).

[340] As *Senyk (No. 2)* was decided after this complaint was heard, but before this decision, it is appropriate to give the parties an opportunity to make further submissions on the application of *Senyk (No. 2)* to this complaint. I set out my directions for the timing of those further submissions at the end of the decision.

[341] I note for the parties' consideration that the procedural history of this complaint differs from that in *Senyk*. As set out in *Harrison v. Nixon Safety Consulting and others* (No. 2), 2007 BCHRT 394, prior to the hearing, Navigator, Con-Forte, and Mr. Ford made a time limited, "with-prejudice" settlement offer to Ms. Harrison that she rejected.

[342] Con-Forte, Navigator, and Mr. Ford then applied to have the complaint dismissed, pursuant to s. 27(1)(d)(ii) of the *Code*, on the basis that Ms. Harrison had refused a reasonable settlement offer. In *Harrison* (No. 2), I declined to dismiss the complaint prior to hearing, in part because the application was made after the time-limit had expired, with the end result that Ms. Harrison would get nothing (para. 36).

[343] In their submissions, the parties should address whether the existence of a rejected but significant settlement offer is a relevant consideration when assessing the potential recovery of legal expenses.

d. Injury to Dignity, Feelings and Self-Respect

[344] In her amended statement of remedy, dated April 16, 2007, Ms. Harrison sought \$20,000 for injury to dignity, feelings, and self-respect. Navigator and Con-Forte argue that the appropriate range of damages under this heading is \$5,000 to \$7,000. In support of their position, they cite a number of the Tribunal's decisions, including *Fougere v. Rallis and Kalamata Greek Taverna*, 2003 BCHRT 23; *Kwan v. Marzara and another*, 2007 BCHRT 387; *Hashimi v. International Crowd Management* (No. 2), 2007 BCHRT 66; and *Clarke v. Frenchies Montreal Smoked Meats and Blais* (No. 2) 2007 BCHRT 153.

[345] In *Fougere* (para. 133), the Tribunal adopted the seven non-exhaustive considerations to be taken into account when determining compensation for injury to dignity in sexual harassment cases set out in *Torres v. Royalty Kitchenware Ltd.* (1982), 3 C.H.R.R. D/858 (Ont. Bd. Inq.). They are:

1. the nature of the harassment, that is, was it simply verbal or was it physical as well;
2. the degree of aggressiveness and physical contact in the harassment;
3. the ongoing nature, that is, the time period of the harassment;

4. its frequency;
5. the age of the victim;
6. the vulnerability of the victim; and
7. the psychological impact of the harassment upon the victim.

[346] I will address each of these considerations in turn.

1. In the present complaint, the harassment was mainly verbal, and included direct propositioning for sex. It also included an invitation to view pornography in the workplace. I take Mr. Ford's physical contact with Ms. Harrison into account in point two.
2. There were no issues of threats of physical violence involved in Mr. Ford's conduct, but there was at least one incident of unwelcome contact when he slapped her buttocks.
3. The harassment began early on in Ms. Harrison's employment and permeated it. The harassment ended after December 8.
4. The harassment appears to have been more or less ongoing from October 18, 2005 until December 8, 2005.
5. Both Ms. Harrison and Mr. Ford are adults. There appeared to be no significant age disparity between them, as she is in her late 20s and he appeared to be in his mid 30s.
6. Mr. Ford was in a position of authority over Ms. Harrison. She in turn needed a job to support her two children.
7. Ms. Harrison presented herself as a self-reliant and motivated individual, but it was clear that she felt isolated and vulnerable by the turn of events at the Lofts. She gave evidence that events at the Lofts often reduced her to tears after the work day, and that she felt particularly vulnerable at the time Mr. Ford threatened her with legal action and when she was fired.

[347] The highest award to date for injury to dignity, feelings and self-respect for sexual harassment (\$10,000) was made in *Gill v. Grammy's Place Restaurant & Bakery Ltd.*, 2001 BCHRT 33. In *Gill*, the harassment was extreme and egregious, and not comparable to that in the present case. However, since 2001, damage awards for injury to dignity have risen generally. See, for example, *Senyk (No. 2)*, (para. 470), in which \$35,000 was awarded for injury to dignity in a complaint concerning discrimination in employment on the basis of a physical and mental disability, and *Datt v. MacDonald's Restaurants of Canada (No. 2)*,

2006 BCHRT 169 (para. 294), in which \$25,000 was awarded for injury to dignity in a complaint concerning discrimination in employment on the basis of a physical disability. In *Senyk (No. 2)* and *Datt*, the complainants had been employees of long standing, unlike the situation in the present complaint. As well, the reasons for the large compensatory awards for injury to dignity were distinct from those in the present complaint. While I agree that the nature of the harassment should attract a significant award under this heading, I do not agree that the amount proposed by Ms. Harrison is appropriate. Pursuant to s. 37(2)(d)(iii), I order the respondents, including NSC, to pay Ms. Harrison \$15,000 in compensation to her for injury to dignity, feelings and self respect.

d. Improper Conduct/Contravention of the Rules

[348] Ms. Harrison seeks damages under s. 37(4)(a) and (b) of the *Code*, on the basis that the respondents have engaged in improper conduct during the course of the complaint and have contravened the rules of the Tribunal. Those sections are as follows:

37(4) The member or panel may award costs

(a) against a party to a complaint who has engaged in improper conduct during the course of the complaint, and

(b) without limiting paragraph (a), against a party who contravenes a rule under section 27.3 (2) or an order under section 27.3 (3).

[349] In *Harrison v. Nixon Safety Consulting and others*, 2007 BCHRT 291, Ms. Harrison applied for better particulars, disclosure and costs from NSC, Con-Forte, Navigator, and Mr. Ford, pursuant to ss. 27.3 and 37(4)(a) of the *Code*, for failure to disclose arguably relevant documents. In *Harrison (No. 1)*, the Tribunal declined to award any costs, leaving it to the member hearing the complaint to determine the issue. In *Harrison (No. 2)*, I stated that it would be inappropriate to dismiss a complaint on a preliminary basis where the issue of costs was outstanding (para. 39).

[350] Ms. Harrison argues in her written submissions that NSC ignored the Tribunal process after a certain point, and that Mr. Ford, Navigator and Con-Forte breached the Tribunal's Rules and failed to disclose documents which would enable the parties to have meaningful discussions (presumably regarding settlement) and to get at the truth of the matters in dispute. In regard to Navigator and Con-Forte, Ms. Harrison says at one point

in her submissions that the two companies set up structures intended to allow them to hide discriminatory practices. For example, there was no disclosure of documentation going to the relationship of Navigator to Con-Forte, nor was there timely disclosure of Mr. Ford's contract with Navigator or of Mr. Goodman's journal. At the hearing, Ms. Harrison clarified her position, stating that the structural relationship between the two companies was not designed to defeat her complaint, but made it more difficult for her to pursue it.

[351] As I understand her oral submissions, Ms. Harrison argued that Navigator and Con-Forte did not disclose their documents until early November 2006, well past the time in which they were supposed to do so. They filed their reply to Ms. Harrison's amended statement of remedy in early December 2006, again well past the time limit. Ms. Harrison argues that these were both important breaches of the rules.

[352] Ms. Harrison also complained that Mr. Ford's document disclosure consisted of three documents, two of which were prepared after the complaint was filed. Before ceasing to participate in the process, NSC disclosed six documents, only one of which was new to Ms. Harrison. Of the ten documents disclosed by Navigator and Con-Forte, only one was from before her hiring, one was from during her employment, and eight were from after she was fired. In essence, Navigator and Con-Forte are saying that they had almost no documentation that was relevant to the hearing in their care and control. The majority of the documents disclosed for hearing came from Ms. Harrison. Ms. Harrison argues that the lack of documentation put her counsel at a disadvantage when cross-examining witnesses, and gave the tool of "instant deniability" to the respondents' witnesses.

[353] In Ms. Harrison's view, the lack of documentation, in combination with the respondents' irrelevant pursuit of "red herrings" added a day to a day and a half to the hearing.

[354] In their written submissions, Navigator and Con-Forte deny that they engaged in any misconduct, but state they are "not without sympathy" for Ms. Harrison in regard to NSC, given that it "has chosen to remain mute" since its solicitor removed himself from the record in October 2006.

[355] At the hearing, Navigator and Con-Forte argued that they had not been unduly or significantly dilatory in complying with the Tribunal's *Rules*, and had disclosed the relevant documentation they had. Documents demanded by Ms. Harrison were not produced simply because they did not exist.

[356] It is surprising that Navigator and Con-Forte had such a paucity of documents to disclose. However, with one exception, I am unable to conclude that they deliberately failed to make reasonable efforts to locate and disclose arguably relevant documents. Furthermore, the lack of documents has clearly not assisted Navigator and Con-Forte in some areas. For example, it has not helped them that they apparently kept no records of their investigation of Ms. Harrison's December 8 complaint against Mr. Ford. It has not helped them that there are no records of their alleged complaints to NSC about Ms. Harrison's performance, her dress, or the other issues they say reflected poorly on her as an NSC employee and, for my purposes, her general credibility.

[357] I am concerned that Mr. Goodman freely admitted that he made no attempt to locate his journal, but said he happened to come across it while looking for something else. It proved to be a relevant document, and should have been searched for and disclosed much earlier. In the end, however, I do not find that his late production of that document unduly delayed the hearing, or interfered with the efficiency of the hearing process. It was produced in time for him to be cross-examined on it without disruption of the hearing.

[358] Further disclosure by NSC would clearly have been of assistance to all the parties, as would Mr. Nixon's appearance at the hearing. Had NSC participated in the hearing, there is a strong possibility that the hearing would have been longer, not shorter. The reality is that NSC is no longer a viable company, and little would be gained from making a costs order against it. Overall, in the particular circumstances of this complaint, I do not believe it is appropriate to order costs against NSC. I note in passing that if I were to make a cost award as a result of a respondent's misconduct for procedural matters, the liability for those costs would not be joint and several, but payable only by the party responsible.

[359] I take a different view of the situation in regard to Mr. Ford, Navigator, and Con-Forte in regard to improper conduct during the course of a hearing. In their pleadings, Navigator and Con-Forte put forward an assertion that was not true, that Ms. Harrison regularly came to work in short skirts and would bend over so that Mr. Ford and Mr. Goodman would notice. During the course of the hearing, Mr. Ford, Navigator, and Con-Forte attempted to portray her as a person who caused her own problems, in that she sexualized the workplace, by dressing and acting provocatively, and conducting herself inappropriately when dealing with the workers on the site. Co-workers with Ms. Harrison, who had no direct knowledge of the central issues to be determined, gave evidence which appeared to be aimed solely at calling her general reputation into question. At one point during the hearing, Mr. Ford had to be cautioned not to confront Ms. Harrison outside the hearing room in regard to her having made a complaint. The unproven allegations of Mr. Ford, Navigator, and Con-Forte against Ms. Harrison have likely had the effect of damaging her reputation, both in her community and in the field of construction safety.

[360] In these circumstances, I am of the view that there should be a joint and severable cost award against Mr. Ford, Navigator, and Con-Forte, for improper conduct in the course of a hearing, in the amount of \$3,000.

e. Interest

[361] Pre-judgment interest is ordered in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended, for wage loss, from April 30, 2006. Post-judgment interest is ordered on compensation for expenses; costs; wage loss; and for injury to dignity, feelings and self-respect.

11. Direction on Further Submissions

[362] I remain seized of the matter. Given the time of the year, the parties will be given more than the usual time frame for submissions. Ms. Harrison has 35 days from the date of this decision to make submissions on the application of *Senyk (No, 2)* to this complaint. The respondents will have a further 14 days to respond. Ms. Harrison will have a further 7 days to reply.

[363] To repeat, if the parties are unable to agree on the amount of disbursement related expenses incurred by Ms. Harrison, they are to notify the case manager within 60 days of this decision.

Kurt Neuenfeldt