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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:

Tammy Ratzlaff

**COMPLAINANT**

A N D:

Marpaul Construction Limited and Albert Rondeau

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Chair:

Heather M. MacNaughton

On behalf of the Complainants:

M. Jeanne Meyers

No one appearing on behalf of the Respondents.

Hearing Date:

January 11, 2010

## I INTRODUCTION

[1] Tammy Ratzlaff filed a complaint alleging that she was sexually harassed in her employment with Marpaul Construction Limited (“Marpaul”), by its owner, Albert Rondeau (collectively “the respondents”). Ms. Ratzlaff’s complaint was filed under s. 13 of the *Human Rights Code*, which prohibits discrimination in employment on the basis of sex.

[2] Earlier in the Tribunal’s process, the respondents were represented by counsel who filed a response to the complaint on their behalf. In it, Mr. Rondeau admitted that he was the owner of Marpaul but denied the sexual harassment allegations.

[3] The hearing was originally scheduled to commence on September 15, 2009. Shortly prior to the hearing, respondents’ counsel unsuccessfully applied for an adjournment. On September 15, at the commencement of the hearing, the parties entered into settlement discussions and advised the Tribunal that they had resolved the issues in the complaint and that the hearing should be adjourned to allow for completion of the settlement.

[4] On October 16, 2009, Ms. Ratzlaff’s counsel advised the Tribunal that the settlement had not been completed and, as she was entitled to do, asked the Tribunal to reschedule the hearing. The hearing was rescheduled for January 11, 12, 14 and 15, 2010 and the respondents were provided with notice of the hearing by delivery of the Notice of Hearing to Mr. Rondeau, who was by that point no longer represented by counsel, by fax.

[5] On January 11, 2010, the first day of the hearing, Ms. Ratzlaff and her counsel appeared at the Tribunal’s offices for the hearing. Mr. Rondeau did not appear and no one appeared on behalf of Marpaul. Their non-appearance was not unexpected, as on December 15, 2009, Mr. Rondeau had written to the Tribunal advising that he would not attend “your meetings in January 2010 as I have previously given my statement to record my version of this incident at your office.” Nevertheless, as is the Tribunal’s usual practice, I stood the hearing down until 10:00 a.m. to provide the respondents with an opportunity to appear. They did not.

[6] I was satisfied that the respondents had notice of the complaint and of the hearing date, as evidenced by Mr. Rondeau's December 15, 2009 reference to the January hearing dates in his letter to the Tribunal.

[7] Ms. Ratzlaff and her husband, Randal MacKenzie, testified about the circumstances giving rise to the complaint. Because of the respondents' failure to appear, their evidence was uncontroverted. In any event, I found Ms. Ratzlaff to be a credible witness. She testified in a careful manner, frankly admitting when she did not recall the date or location of an event. Further, on two occasions, Ms. Ratzlaff tape recorded her interactions with Mr. Rondeau. The recording, which was filed with me in the form of a disc, and accompanied by an unofficial transcript, supported her evidence with respect to the events on those two occasions. Her resignation on the day following the culminating incident, which will be discussed below, was also consistent with her evidence about the harassment.

## **II THE FACTS**

[8] Marpaul hired Ms. Ratzlaff as a heavy equipment operator to work for it on road construction contracts or site preparation for residential development. She had undertaken a three-year training course to operate heavy equipment, and Marpaul was her first employer following the completion of her training. She was qualified to operate articulated rock trucks, packers and graders.

[9] Ms. Ratzlaff testified that she was excited at the opportunity to work for Marpaul because she would be able to put her training to use. She saw in Mr. Rondeau, who was older than her father, a mentor who would give her on-the-job experience in the various pieces of heavy equipment used in road building and site preparation for residential development. Mr. Rondeau told her that he would teach her the various aspects of the job. She knew that she was going to be working in a non-traditional working environment for women, but that did not concern her because she had previously been employed in construction traffic control, also a male-dominated work environment. She felt that the opportunity to earn more money and to be part of building something lasting was very exciting.

[10] Ms. Ratzlaff commenced her employment on September 11, 2007. She was paid \$22.00 an hour and was expected to be available to work ten hour days, five or six days a week. She initially worked in and around her home in Chilliwack on various projects. She testified that Marpaul appeared to have many jobs underway.

[11] Ms. Ratzlaff was the only woman on Marpaul's heavy equipment crew. Other women worked in the office but not on the job sites.

[12] Ms. Ratzlaff first became concerned about the attention Mr. Rondeau was paying to her because of sexual comments that he made to her. He first did so on October 13, 2007. They were travelling in his pick-up truck to a crew meeting at a local restaurant to discuss a contract they were to do in Kamloops. She recalled the date because a family member passed away that day. While in the truck, Mr. Rondeau said that she was beautiful and that he was lonely. He told her how she made him feel and that he knew what she could do for him. He also grabbed her hand. She was uncomfortable but did not want to make an issue about it so she just shrugged it off. She also testified that, having worked in construction before, she knew that inappropriate things were sometimes said and she had learned to ignore them.

[13] After the meeting in the restaurant, Mr. Rondeau asked Ms. Ratzlaff whether she would use her prior expertise and return to the Marpaul office to advise him with respect to a traffic control plan for the Kamloops job site. While in the office, he grabbed her buttocks and tried to hug her. She testified that Mr. Rondeau said that "he'd love to screw her until she could not walk" and that he enjoyed sex with younger women. Although she could not recall specifically whether these comments were made in the Marpaul office or in the pick-up truck, her best recollection was that they were in the office. Mr. Rondeau commented about enjoying sex with younger women on more than one occasion.

[14] Ms. Ratzlaff testified that she was shocked by Mr. Rondeau's behaviour and did not know what to do, but pushed Mr. Rondeau's hands away and said that she wasn't interested, and that her husband and son were waiting in her truck to pick her up.

[15] Ms. Ratzlaff was concerned about going to Kamloops with Mr. Rondeau as she knew that she and the crew would be away from home and staying in a motel together.

She considered whether she should quit her job but, because it was close to Christmas, and she needed the income, she had no choice but to continue her employment. She testified that she believed that, if she just stayed away from Mr. Rondeau, and did not put herself in a situation where she was alone with him, she could get through it.

[16] Ms. Ratzlaff testified that she had become friendly with two other members of the crew and mentioned her concerns to them. They offered to drive her to and from the motel to the job site, escort her to and from her room, and eat their meals with her, so that she could avoid being alone with Mr. Rondeau. They also agreed that they would not gather in her room but in one of theirs. Ms. Ratzlaff testified that she was careful to lock her room and not to open the door without using the “peep hole” to see who was there.

[17] When the crew first went to Kamloops, Mr. Rondeau arranged a meeting for 6:30 p.m., in his room, to discuss the job plan for the following week. She was the first crew member to arrive at the meeting. Mr. Rondeau told her that his wife was ill and that they no longer had sex because she slept 23 of 24 hours a day. He said that he found Ms. Ratzlaff very attractive and that he would like to have sex with her. He told her that he would not force her to have sex until she wanted to and that he was a man of his word and it would not affect her job.

[18] Ms. Ratzlaff testified that she telephoned her husband and told him about the incidents involving Mr. Rondeau and that she was concerned about being away from her support network in Chilliwack. She said that she didn’t want to be overly sensitive about what was being said to her and wondered whether her discomfort was reasonable. Her husband advised her to tape record her conversations with Mr. Rondeau so that he could determine whether she had a need to be concerned and sent a tape recorder to her for that purpose.

[19] Ms. Ratzlaff taped two conversations with Mr. Rondeau. The first occurred after she finished her work before the co-workers with whom she usually travelled finished theirs. Mr. Rondeau drove her back to the motel rather than have her wait for her co-workers. The second occurred after she worked later than her co-workers and Mr. Rondeau agreed to drive her to a dealership in Kamloops which was servicing her truck. On both occasions, the recordings indicate that Mr. Rondeau interspersed casual

conversation with sexual innuendo. He talked about wanting to make love to her, that he was willing to bide his time until she was willing, and said that if he was her husband he would have made sure that she had more than one child. On the recordings, Mr. Rondeau acknowledged that he was not making any headway with his advances to Ms. Ratzlaff and that he knew she was afraid of him. She testified that she felt very uncomfortable in these conversations but tried to put a brave face on and laugh the comments off.

[20] On Sunday, November 25, 2007, after a weekend at home, the crew was to return to Kamloops for the next week's work. Ms. Ratzlaff arrived in the early evening, unpacked and went to join her co-workers for dinner in one of their rooms. Mr. Rondeau arrived and Ms. Ratzlaff left, saying that she had to make some phone calls. A few minutes later, there was a knock on her door, and without checking who was there, Ms. Ratzlaff opened it. Mr. Rondeau forced his way into the room. He grabbed her throat and kissed her aggressively, forcing his tongue into her mouth. She said that he then grabbed her breasts and tried to get his hands into her vagina. She kneed him in the thigh but he repeated his conduct. He swore about the blinds being broken and asked her how she expected him to make love to her without the blinds being closed.

[21] Ms. Ratzlaff testified that the whole incident was a blur and that she did not recall how she got him out of her room. She was distraught and did not know what to do but she went and told her co-workers what had happened and that she was going to go home. They persuaded her to calm down and to stay until the following morning as it had started snowing and it was not safe to travel. She called her husband and her parents who told her to come home. Mr. MacKenzie testified that Ms. Ratzlaff was very upset, but despite his urging, she felt it would be unsafe for her to drive home in the snow. Ms. Ratzlaff testified that she could not decide what to do but she felt that she had to keep her job as her family needed the money. She stayed the night in the motel and went to the job site the next morning with her co-workers where they were told that the job was being shut down temporarily due to the winter conditions.

[22] Her co-workers escorted her back to her room, where she started to pack. Ms. Ratzlaff testified that she was visited in her room by Mr. Rondeau's brother, who had been told about the incident. He said that he would "smack Mr. Rondeau around and

force him to apologise”, but Ms. Ratzlaff asked him not to as she did not want to face Mr. Rondeau. She packed her belongings and went to check out of the motel. When she gave the hotel manager her keys, the manager indicated that he had been told that she was not to leave. Ms. Ratzlaff said she could not be forced to stay and left. On her way home, she called the site manager, and told him that she was quitting. He indicated that he understood and said that if she ever needed a reference she could call him.

### III ANALYSIS

[23] It has long been established in human rights cases that sexual harassment is a form of sexual discrimination. In *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252 the court defined sexual harassment as follows:

... 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)

[24] The Court quoted 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)

[25] 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. (para. 52)

[26] On the facts set out above, and applying these definitions of sexual harassment, I conclude that Ms. Ratzlaff experienced unwelcome conduct of a sexual nature which detrimentally affected her work environment and led to her resignation from her employment. The conduct in question was continual and both verbal and physical. I find that Ms. Ratzlaff's complaint under s. 13 of the *Code* is justified and that Mr. Rondeau sexually harassed her during her employment with Marpaul. As both Ms. Ratzlaff's and Mr. Rondeau's employer, Marpaul shares joint and several liability for the discrimination Ms. Ratzlaff suffered.

#### IV REMEDY

[27] The *Code*'s remedial provisions are set out in s. 37(2). The purpose of a human rights remedy is not to punish the discriminator but to compensate the victim and, to the extent possible, put them in the position they would have been in had the discrimination not occurred.

[28] In this case, Ms. Ratzlaff seeks an award for wage loss in the amount of \$22,000 and for the injury to her dignity, feelings and self-respect in the amount of \$25,000.

[29] The relevant portions of s. 37(2) provide:

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,

...

(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:



...

(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.

...

### **Mandatory Order**

[30] Pursuant to s. 37(2)(a), as is required, I order that Albert Rondeau and Marpaul Construction Limited refrain from committing the same or a similar contravention of the *Code*.

### **Injury to Dignity, Feelings and Self-respect**

[31] Ms. Ratzlaff testified that, following her resignation, she was devastated, scared, and traumatized. Mr. MacKenzie, who was not in the hearing room when Ms. Ratzlaff testified, also described her as traumatized by the events in Kamloops. She wondered how she could have handled it differently to keep the job that was so important to her. She had trained for three years to obtain the qualifications necessary for her to work as a heavy equipment operator and felt that she had an opportunity to earn more money than she had previously and to be a part of building something lasting. She was not naive about the nature of the work environment and the under-representation of women in it but she felt that she was strong enough to face that challenge. She testified that her confidence in herself, and in her ability to pursue her chosen field, was shattered and that she could not go back to working in it.

[32] Both Ms. Ratzlaff and her husband testified about the impact the harassment had on them, their home life and their twelve year old son, who could see how upset his mother was. He knew that something bad had happened to his mother, because she was distraught, but he did not understand what it was. Mr. MacKenzie testified that he did not know how to comfort Ms. Ratzlaff and that she was so emotional that he tiptoed around her for some time.

[33] Ms. Ratzlaff sought assistance from her family doctor and from Victim's Services. Through a colleague, she was put in touch with Vancouver Rape Relief which provided her with a counsellor. She testified that she tried really hard not to cry constantly but that she was not able to do anything until February. She said, "it wrecked her Christmas" and Mr. Rondeau's conduct "forced her whole family to pay." She also testified that she was forced to reassess her next career choice.

[34] Ms. Ratzlaff testified that she was able to return to work in traffic control beginning in March 2008 and that she worked in that field intermittently until October 2008, when she decided to retrain as a Sheriff's Officer.

[35] When determining the appropriate compensation for injury to dignity in sexual harassment cases, the Tribunal has adopted the seven non-exhaustive considerations 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.

[36] In this case, as I have indicated, the harassment was both physical and verbal. The physical conduct started with holding her hand and escalated during the employment period to the final assault. On more than two occasions, Mr. Rondeau physically touched Ms. Ratzlaff against her will. The final incident, which occurred in Ms. Ratzlaff's hotel room, was most egregious and aggressive.

[37] While the employment relationship was not a lengthy one, the harassment began almost as soon as the employment and permeated virtually all of Ms. Ratzlaff's

interactions with Mr. Rondeau. Ms. Ratzlaff could not have a conversation with Mr. Rondeau without there being some sexual suggestion in it.

[38] Ms. Ratzlaff testified that she was required to put safeguards in place with her co-workers to give her a measure of security. She also changed her behaviour to avoid contact with him and became more personally aware of her security. It was clear in her evidence that she blamed herself for opening the door to her motel room without checking who was knocking first. The harassment only ended because Ms. Ratzlaff resigned.

[39] While Ms. Ratzlaff is more mature than some victims of harassment, there was a significant age difference between her and Mr. Rondeau, whom she testified was older than her father. She testified that she hoped that Mr. Rondeau would teach and mentor her to be a success in a well-paying and non-traditional working environment for a woman.

[40] Ms. Ratzlaff was extremely vulnerable because her work required her to be away from home and from her support networks for extended periods of time. She was the only woman on the crew and staying in a motel that was paid for by her employer. As a result, her ability to avoid Mr. Rondeau was limited. She was also vulnerable because this was her first job as a heavy equipment operator and she wanted it to be a success. She was proud of having succeeded in the training and believed that she was a strong woman who was well-suited to the work environment. The abrupt end to her employment caused her to doubt her abilities.

[41] Ms. Ratzlaff was also vulnerable because she wanted to work and her family needed the income. Mr. Rondeau was in a position of authority over her and she needed his approval to keep her job and to obtain the on-the-job training and references she required. She was not in a position where she could walk away lightly from the job because it allowed her to apply her training and was part of her overall plan for success in her chosen field. As a result of what occurred, Ms. Ratzlaff was unable to pursue the career she had spent three years training for.

[42] Because of the *Torres* principles, and the particular circumstances of each case, there is a wide range in the Tribunal's awards for injury to dignity, feelings and self-respect in sexual harassment cases.

[43] Recently, in *Harrison v. Nixon Safety Consulting and others (No. 3)*, 2008 BCHRT 462, the Tribunal awarded \$15,000. In other discrimination cases, the Tribunal's awards under this section have ranged up to \$35,000: *Senyk v. WFG Agency Network (No. 2)*, 2008 BCHRT 376. This case does not present some of the factors that would result in an award at that level. However, I am satisfied that the award in this case should be higher than in *Harrison* because of the significant physical nature of the harassment Ms. Ratzlaff experienced and the fact that it occurred when she was isolated and vulnerable. I am satisfied that, in all the circumstances of this case, an award of \$25,000 for injury to dignity, feelings and self-respect is appropriate.

### **Loss of Wages**

[44] Ms. Ratzlaff was unemployed for a period of four months following her resignation. She then obtained work in her previous line of work of traffic control, earning a wage significantly less than she expected to earn with Marpaul. She is seeking her full wage loss for the four-month period, and a wage differential for the following seven months until she decided to seek retraining.

[45] I accept Ms. Ratzlaff's and Mr. MacKenzie's evidence that for four months following her resignation, Ms. Ratzlaff was unable to work as a result of the emotional impact of the harassment.

[46] Section 37(2)(d)(ii) permits me to award compensation to Ms. Ratzlaff for all or part of the wages she lost as a result of the discrimination that I have found. Orders under this section are discretionary and often based on the best evidence available to the Tribunal of the actual wage loss.

[47] Based on Ms. Ratzlaff's evidence about her expected ten hours of work for either five or six days a week and an hourly rate of \$22.00, Ms. Ratzlaff could have earned between \$1,100 and \$1,320 per week or between approximately \$4,400 and \$5,000 per

month. However, it was also clear from her evidence that there were days on which she did not work for ten hours because the equipment she was operating was not needed.

[48] Ms. Ratzlaff's record of employment from Marpaul, which she accepts is accurate, discloses her actual income during the months that she worked for it. It indicates the following bi-weekly amounts: \$663.52, \$1075.36, \$1,736.80, \$322.40, \$696.80, and \$1,809.60. The pay records indicate that Ms. Ratzlaff's wages were steadily increasing and that in the last four weeks in which she worked she earned approximately \$2,500. Ms. Ratzlaff testified that she had no reason to believe that she would not continue to earn that salary as Marpaul had continuing contracts in and around the Fraser Valley. As the respondents did not appear, her evidence in that regard was uncontroverted. As a result, I conclude that it is reasonable to award her wage loss for the first four months following her resignation in the amount of \$10,000.

[49] In the next seven months, Ms. Ratzlaff earned \$1,915.42 from one employer and \$3,010.28 from another employer. I am satisfied that she is entitled to the wage differential between her earnings and those she could have expected from Marpaul for that seven month period because I have concluded that Ms. Ratzlaff's decision not to pursue heavy equipment operator opportunities was reasonable in all the circumstances. Her evidence of the impact of the harassment on her confidence as a strong and capable woman was particularly persuasive in that regard. It is not surprising that she regrouped and chose to return to the work that she had done prior to her training and her experience with Marpaul and Mr. Rondeau.

[50] Based on an expected salary of \$2,500 per month from Marpaul, and deducting the money otherwise earned, Ms. Ratzlaff's wage loss differential in the next seven months is slightly more than \$12,000 and I have concluded that it is reasonable to award her wage loss in the amount of \$12,000.

### **Interest**

[51] 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 November 26, 2007. Post-

judgment interest is ordered on compensation for wage loss and for injury to dignity, feelings and self-respect.

## V CONCLUSION AND ORDER

[52] For the reasons given, I have found Ms. Ratzlaff's complaint of discrimination to be justified and have ordered the following remedies:

- (i) Under s. 37(2)(a), the respondents are to refrain from committing the same or a similar contravention of the *Code*.
- (ii) Under s. 37(2)(d)(iii), the respondents are to pay the complainant damages for injury to dignity, feelings and self-respect in the amount of \$25,000;
- (iii) Under s. 37(2)(d)(ii), the respondents are to pay the complainant her loss of wages in the amount of \$22,000; and
- (iv) The respondents are to pay pre-judgment interest pursuant to the *Court Order Interest Act* on the award for lost wages and post-judgment interest on all amounts ordered from the date of this decision until the date of payment.

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Heather M. MacNaughton, Tribunal Chair