



Garneau v. Buy-Rite Foods and others, 2015 BCHRT 77 (CanLII)

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British Columbia Human Rights Tribunal

CHRR Doc. 15-0077

Kyle Garneau

Complainant

v.

Buy-Rite Foods, Shingara Sumal, Sutej Sumal and Inder Sumal

Respondents

Date of Decision:
May 5, 2015

Before:
British Columbia Human Rights Tribunal, Parnesh Sharma

File No.:
13050

Appearances by:
Kyle Garneau, on his own behalf

DISABILITY — discriminatory treatment in employment on the basis of birth defect and

brain disorder (dysgenesis of the corpus callosum) — assault and harassment of disabled person — joking by co-worker — poisoned environment — SEXUAL ORIENTATION — harassment — perceived sexual orientation

BURDEN OF PROOF — elements of a *prima facie* case — EMPLOYMENT — obligation to provide discrimination-free workplace — LIABILITY — corporate liability for employee — DAMAGES — damages assessed for injury to dignity and self-respect and lost wages — compensation for injury to dignity and self-respect

Summary: The B.C. Human Rights Tribunal ruled that Buy-Rite Foods, its owner Shingara Sumal and his sons, Sutej Sumal and Inder Sumal (the "respondents"), discriminated against Kyle Garneau on the basis of physical and mental disability, and sexual orientation. The respondents did not participate in the hearing.

Mr. Garneau began working for Buy-Rite in March of 2001. He worked, at various times, at two different locations. The discrimination occurred at the store on 120th Street in Surrey, which was operated by Singara Sumal. Mr. Garneau became a supervisor in 2005, and his work schedule and hours remained relatively constant until 2013, when he was reduced to two shifts per week. Mr. Garneau agreed that one of the reasons for the reduction in his hours was that there was increasing involvement by the owner and his sons because of a downturn in the volume of business. But he also alleged that the reduction in his hours was a part of the discrimination he experienced.

Mr. Garneau testified that in 2005 he was diagnosed with dysgenesis of the corpus callosum. This is a birth defect, which means that the two hemispheres of the brain, instead of being separate, are fused. This affects Mr. Garneau both physically and mentally and is manifest in his physical appearance and weight. He told the Sumals of his disability in April 2008. Mr. Garneau is also gay. Although he is not public about his sexuality, the respondents perceived him to be gay.

Mr. Garneau testified that he was called "faggot", "idiot", "retard", "fucking stupid", and "fatty" by Sutej Sumal and Inder Sumal. Inder constantly asked him in a parroting way "are you gay, are you gay, are you gay". There was malice in the name-calling and it occurred in front of employees and customers and made him feel "less than human". This treatment began in 2012, and increased in frequency over time. Mr. Garneau said the comments were hurtful, frequent, and unprovoked. He told the respondents repeatedly that the name-calling was hurtful and offensive and asked them to stop, but they did not. Mr. Garneau testified that he was also assaulted and that his personal property was stolen by the respondents.

When his shifts were reduced, Mr. Garneau asked for them to be increased again. He could not make his mortgage payments because of his reduced income and his mortgage was foreclosed. He became very depressed and finally left Buy-Rite. Buy-Rite closed shortly thereafter, without paying its employees, including Mr. Garneau, for hours already worked.

The Tribunal found that discrimination was not a factor in the reduction of hours, but it found that Mr. Garneau was bullied, harassed, assaulted and discriminated against by the respondents. The Sumals viewed Mr. Garneau as someone who could be mistreated with impunity. This treatment affected him profoundly and adversely.

The Tribunal awarded Mr. Garneau one months' lost wages and \$15,000 as compensation for injury to dignity.

CASES CITED

Daley v. Emergency and Health Services Comm. (No. 1), [2006 BCHRT 341](#), 57 C.H.R.R. D/69: 37

Gichuru v. Law Society of British Columbia (No. 11), [2011 BCHRT 185](#), 73 C.H.R.R. D/54: 40

Gichuru v. Law Society of British Columbia (No. 3), [2013 BCSC 1325](#), CHRR Doc. 13-3113: 40

Gichuru v. Law Society of British Columbia (No. 2), [2014 BCCA 396](#), CHRR Doc. 14-3131: 40

Kooner-Rilcof v. BNA Smart Payment Systems, Ltd., [2012 BCHRT 263](#), 75 C.H.R.R. D/110: 39

Millar v. Sterling Fence Co., [2007 BCHRT 249](#), CHRR Doc. 07-339: 43

Moore v. British Columbia (Education), [2012 SCC 61](#), [2012] 3 S.C.R. 360, 75 C.H.R.R. D/369: 29

North Vancouver School Dist. No. 44 v. Jubran, [2005 BCCA 201](#), 52 C.H.R.R. D/1: 31

P.N. v. F.R. (No. 2), [2015 BCHRT 60](#), 81 C.H.R.R. D/71: 43

Québec (Comm. des droits de la personne et des droits de la jeunesse) and Mercier v. Montréal (City), [2000 SCC 27](#), [2000] 1 S.C.R. 665, 37 C.H.R.R. D/271: 30

Senyk v. WFG Agency Network (B.C.) Inc. (No. 2), [2008 BCHRT 376](#), 64 C.H.R.R. D/245: 43

Torres v. Royalty Kitchenware Ltd. (1982), [1982 CanLII 4886 \(ON HRT\)](#), 3 C.H.R.R. D/858 (Ont. Bd.Inq.): 44

Wallace v. United Grain Growers Ltd., [1997 CanLII 332 \(SCC\)](#), [1997] 3 S.C.R. 701: 46

LEGISLATION CITED

British Columbia

[Court Order Interest Act](#), R.S.B.C. 1996, c. 79: 51

[Human Rights Code](#), R.S.B.C. 1996, c. 210

s. 13: 1

s. 37(2)(a): 38, 51

s. 37(2)(b): 51

s. 37(2)(d)(ii): 39

s. 37(2)(d)(iii): 51

s. 37(4): 50

s. 44(2): 37

Rules of Practice and Procedure

r. 8(6): 5

r. 18(10): 8

r. 18(10)(a): 5

INTRODUCTION

[1] Kyle Garneau filed a complaint on September 8, 2014, alleging that he had been discriminated against by Buy-Rite Foods, its owner Shingara Sumal, and his sons Sutej (Scotty) Sumal and Inder Sumal (collectively "respondents"), in the area of employment on the basis of physical disability, mental disability, sexual orientation, and race contrary to [s. 13](#) of the [Human Rights Code](#) [R.S.B.C. 1996, c. 210].

[2] A hearing concerning Mr. Garneau's complaint was held on April 8, 2015. The respondents did not attend. Mr. Garneau was the only witness.

[3] I find the complaint justified for reasons as follows.

PROCEDURAL MATTERS

[4] The respondents were served with the complaint by regular mail on October 28, 2014, and given until December 2, 2014, to file a response. No response was received. The complaint was re-served, via registered mail, on December 31, 2014, with confirmed delivery by Canada Post; it was signed for by Manjit Kaur, wife of Shingara Sumal, on January 6, 2015. On January 12, 2015, a voice message, name intelligible [*sic*], was left for the Tribunal case manager responsible for this complaint. The message was returned to the telephone number provided, which was for Buy-Rite Foods, and the case manager left a message in turn; there was, however, no return call to the Tribunal. I am satisfied that the Tribunal notified the respondents of the complaint at the address provided by the complainant, based on the confirmed delivery and signed receipt of the Tribunal's "notice of complaint" and voice-message from Buy-Rite Foods.

[5] The respondents did not file a response to the complaint. Under r. 18(10)(a) of the Tribunal's Rules of Practice and Procedure, if a respondent does not respond within the time allowed, the address at which the Tribunal notified the respondent of the complaint is deemed to be the respondent's address for delivery. Under r. 8(6), a participant is deemed to have notice of a communication if it is delivered to the participant's address for delivery.

[6] At least three subsequent letters, including a "notice of hearing" and "notice of a pre-hearing conference", were returned undelivered and marked as "moved" by Canada Post. The notice of hearing was mailed February 20, 2015, and returned undelivered on February 26, 2015. A notice for a pre-hearing conference was mailed on March 13, 2015, and returned undelivered on March 18.

[7] A pre-hearing conference was held on March 27, 2015, as scheduled; Mr. Garneau attended but the respondents did not.

[8] With the exception of a voice-message, there has been no other communication from the respondents. I am satisfied that the respondents have elected not to participate in this process. Under r. 18(10), where the respondent has failed to respond, the Tribunal may make any other decision or order it considers appropriate in the circumstances. There being no good reason to delay matters, the hearing proceeded as scheduled.

[9] Mr. Garneau was unrepresented. I informed him that the statements in his complaint were not evidence and my decision would be based solely on the evidence presented at the hearing. I accepted into evidence a number of documents and photographs that he submitted.

[10] During the course of the hearing, Mr. Garneau withdrew his complaint of discrimination on the basis of race saying that he did not feel it played a major role in the treatment he experienced, and elected not to present evidence in this respect.

[11] Mr. Garneau testified in an open and frank manner. When he could not remember dates or recall certain events, he said so. I found him to be an articulate, thoughtful, and credible witness.

FACTS

[12] Mr. Garneau commenced employment at Buy-Rite Foods in March of 2001. He worked, at various times, at two different locations. Based on his description, the stores appear to have been franchises operated by different owners. The incidents complained of occurred at the Buy-Rite located at 9528 120th Street, Surrey, operated by Shingara Sumal. Mr. Garneau had worked at this location previously, from 2001 to 2008, and returned to it in May of 2012 and worked there until August 2014. The events he complains of occurred during this latter period.

[13] Mr. Garneau was promoted to the position of supervisor in May 2005 and remained as such until August 2014. His work schedule and hours worked remained relatively constant until November 2013, when his schedule was gradually reduced to two shifts per week. Mr. Garneau says the reduction in shifts was an example of discrimination he experienced but also agreed, in response to my clarifying question, that it coincided with the increasing involvement by the owner and his sons in the operations of the store and a downturn in the volume of business.

[14] Mr. Garneau, during the period of May 2012 to August 2014, was earning minimum wage. He says that Shingara Sumal, at the time he recommenced working at the 120th Street location in 2012, told him the rate of pay would be increased later but was not.

[15] Mr. Garneau testified that, while he had always known something was not 'right', it was not until July of 2005, when he was diagnosed, that he became aware of a birth defect. According to his doctor's letter, dated July 8, 2005:

[A] CT head scan demonstrated a developmental abnormality which is the dysgenesis of the corpus callosum. This is more of an accidental finding but might account for some his features that he has noticed throughout his life with regard to mild impairment of higher cortical function. He does not have any other consequences such as seizures. As mentioned earlier he does have the macrocephalic head and mild morphologic features. (Exhibit 4.)

[16] Dysgenesis of the corpus callosum is when the two hemispheres of the brain, rather than being separate, are fused. The corpus callosum connects the two hemispheres. But, in the case of Mr. Garneau, this is compromised. He says this has affected him both mentally and physically; it is also manifested in his physical appearance and weight.

[17] Mr. Garneau testified that he had first informed the Sumals of his disability when they assumed ownership of the Buy-Rite store in April 2008. Mr. Garneau is also gay, but

is not public about his sexuality. He says the Sumals perceived him to be gay.

[18] Mr. Garneau testified to being called "faggot", "idiot", "retard", "fucking stupid", "fatty" by Sutej Sumal and Inder Sumal. He says that Inder would harass him and constantly ask him in a parroting way "are you gay, are you gay, are you gay". He says there was malice in the name-calling and that it occurred in front of employees and customers and made him feel "less than human".

[19] The treatment Mr. Garneau complains of commenced when he returned to work for the Sumals in May of 2012. He says the comments, at first occasional, increased or became more pronounced with the progression of time. He testified the comments were hurtful, frequent, and unprovoked. He told Shingara Sumal and his sons, repeatedly, that the name-calling was hurtful and offensive and asked them to stop. But it continued. He says "I would stand up, they would (figuratively) push me down"; that whenever he confronted them, he would be laughed at and mockingly asked "what're you gonna do about it".

[20] Mr. Garneau testified he was physically assaulted by Inder on at least two occasions. He does not recall the date of the first assault but the second assault occurred in April of 2014. He reported it to the police, but Inder denied it and there was no investigation. He says that Inder assaulted and threatened him because he was seen as weak and gay; someone who could be "pushed around".

[21] Mr. Garneau testified that his personal property was damaged and stolen by the Sumals. Shortly after his complaint of assault to the police, Inder 'borrowed' his bicycle without permission and twisted the seat. Mr. Garneau says he had told Inder "not to touch my bike, but he laughed at me". Mr. Garneau's smart phone was stolen in 2012, which he later discovered in the possession of Shingara Sumal. He filed a complaint with the police after confirming that it was indeed his device; the police, however, did not pursue the matter. He, with his father, also confronted Shingara who then claimed to have purchased it on "Craigslist" and promised to return it, but never did.

[22] I asked Mr. Garneau how a stolen phone was discrimination and not a matter for the police. He replied that it was an example of how he was viewed and treated by the Sumals. He was perceived as vulnerable and that he and his property could be disregarded with impunity.

[23] When Mr. Garneau's shifts were reduced he asked Shingara for more hours explaining that he could not make his mortgage payments. Shingara replied that it was not his responsibility. Mr. Garneau testified that other staff members also had their shifts reduced owing to a downturn in business, but it impacted him the most as he was the only full-time employee. As a result, he was unable to make his mortgage payments and was foreclosed.

[24] Mr. Garneau testified he had contemplated leaving Buy-Rite Foods sooner than August of 2014, but was told by his father and others to keep working; "to deal with it". In May or June of 2014, Mr. Garneau says he filed a complaint with Worksafe BC when its policy on workplace bullying came into effect. As a result, Worksafe paid a visit to Buy-Rite and provided it with a list of tasks to undertake. According to Mr. Garneau, Buy-Rite did not comply.

[25] Mr. Garneau testified that he suffers from post-traumatic stress disorder ("PTSD"), but provided no medical reports. He says that, as a result of his treatment by the Sumals,

his self-esteem was lowered, his health is affected, he was not eating properly, and suffered from loss of sleep. He described the work environment at Buy-Rite as hostile.

[26] Mr. Garneau testified he continued working at Buy-Rite as he had no other job; that jobs for people with disabilities are difficult to find. He finally left Buy-Rite because Inder again threatened him with assault. He says he had become "very depressed and suicidal" but did not seek medical help because he felt ashamed and embarrassed. He said "I felt it was my weakness ... somehow it was my fault that they were bullying me. I was born with this disability and saw it as my fault, even though I knew it wasn't ... without support from my family and others I would not be here ..."

[27] After leaving Buy-Rite, Mr. Garneau was unemployed for one month before finding a similar position at No-Frills, another low-cost grocery store, in September 2014. However, he did not pass the probationary period and his contract was not extended. Mr. Garneau testified he could not keep up with the faster-paced work environment at No-Frills owing to his disability. Since then he applied for several other jobs, but remains unemployed. Mr. Garneau is now in counselling as recommended by his family doctor and on welfare assistance since December 2014.

[28] Shortly after Mr. Garneau left his position, Buy-Rite closed leaving its employees, including Mr. Garneau, unpaid for hours already worked.

ANALYSIS AND DECISION

[29] Mr. Garneau must prove the allegations in his complaint on a balance of probabilities. He is required to establish a *prima facie* case of discrimination. The requirements to establish a *prima facie* case of discrimination were recently affirmed by the Supreme Court of Canada in *Moore v. British Columbia (Education)*, [2012 SCC 61](#) [75 C.H.R.R. D/369]. To demonstrate *prima facie* discrimination, a complainant must show that he has a characteristic protected from discrimination; that he has experienced an adverse impact; and that the protected characteristic was a factor in the adverse impact. Once a *prima facie* case has been established, the burden shifts to the respondent to justify the conduct or practice. If it cannot be justified, discrimination will be found to have occurred.

[30] It is well established that persons who are perceived to possess a protected characteristic are protected from discrimination under the *Code: Québec (Comm. des droits de la personne et des droits de la jeunesse)* and *Mercier v. Montréal (City)*; *Québec (Comm. des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, [2000 SCC 27](#) [37 C.H.R.R. D/271], paras. 72 and 79.

[31] Mr. Garneau has established that he has both a mental and physical disability. He suffers from dysgenesis of the corpus callosum, a birth defect. I find that the Sumals were aware of this as Mr. Garneau had informed them in April 2008. As noted in his doctor's letter of 2005 (exhibit 4) there are certain physical manifestations of the birth defect (i.e., a macrocephalic head) that would have been apparent to the Sumals. Mr. Garneau has also established that the Sumals perceived him to be gay. While Mr. Garneau is private about his sexuality, the name-calling and taunts he experienced suggest he was perceived to be gay by the Sumals. (In any event, it is not necessary to establish that a respondent perceived a complainant to be gay to prove that such slurs discriminate on the ground of sexual orientation: *North Vancouver School Dist. No. 44 v. Jubran*, [2005 BCCA 201](#) [52 C.H.R.R. D/1].)

[32] While Mr. Garneau agreed that there may have been other reasons why his hours of work were reduced, he does submit that discrimination was a factor. I am unable to reach that conclusion on a balance of probabilities. I find his hours were more likely reduced as a result of a business decision and not discrimination. As stated earlier, particularly in view of the downturn in business, Shingara and his sons became more involved in the day-to-day operations of the store. In short, I cannot find that Mr. Garneau's disability and sexual orientation were a factor in the reduction of his hours.

[33] I accept Mr. Garneau's testimony that he was bullied, harassed, assaulted, and discriminated against by the Sumals and find that such treatment had significant deleterious effects. His self-esteem was affected; he testified to feeling depressed and suicidal; he found the constant name-calling, in front of customers and co-workers, hurtful and offensive. These slurs, exacerbated by the physical assaults and threats, had a profound impact; it made him powerless and, as he testified, to feel less than human. His repeated requests to the Sumals to desist was mocked and ignored; they were apparently oblivious, willfully ignorant, and/or indifferent to the impact of their behaviour upon Mr. Garneau.

[34] In all instances — mental disability, physical disability, and sexual orientation — I find Mr. Garneau's characteristics are protected from discrimination. It is apparent that the Sumals had little regard for Mr. Garneau and undoubtedly saw him as someone who could be mistreated with impunity. I find this treatment to have affected him profoundly and adversely.

[35] A protected characteristic need only be a factor in the adverse treatment. In this case, I find Mr. Garneau was mistreated and bullied primarily because he was seen as weak and vulnerable, but that his physical and mental disabilities and perceived sexual orientation were significant factors in the treatment he experienced. He has established a nexus between his protected characteristics and the adverse impact he experienced.

[36] I find Inder Sumal and Sutej Sumal largely responsible for discriminating against Mr. Garneau. I find Shingara Sumal, as the owner and operator of Buy-Rite, failed in his responsibility to ensure a harassment-free and safe work environment.

[37] It is established law that an employer is liable for the discriminatory acts of its employees. It does not, on its face, render the employees and other representatives acting on their behalf free from personal liability, provided that personal liability may be proved. In *Daley v. British Columbia (Ministry of Health) (No. 1)*, [2006 BCHRT 341](#) [57 C.H.R.R. D/69], the Tribunal noted that s. 44(2) of the *Code* "reinforces and gives statutory expression to the principles enunciated by the Supreme Court of Canada in *Robichaud v. Canada*, [1987 CanLII 73 \(SCC\)](#), [1987] 2 S.C.R. 84 [8 C.H.R.R. D/4326]". Section 44(2) provides:

44(2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his or her authority is deemed to be an act or thing done or omitted by that person.

Section 44(2) ensures that corporate and institutional entities are held legally responsible for the acts and omissions of their employees and that they are obligated to provide any remedies under the *Code*. An employer, against whom remedies can be directed, and which has the capacity to remedy discrimination in the workplace, is liable for acts of employees performed in the course of their employment.

REMEDY

[38] An order under s. 37(2)(a) is mandatory upon a finding that a complaint is justified. Therefore, I order Buy-Rite Foods, Shingara Sumal, Inder Sumal, and Sutej Sumal to cease the contravention of the *Code* and refrain from committing the same or a similar contravention.

[39] Subsection 37(2)(d)(ii) provides that a member or panel "may order the person that contravened this Code to ... 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". The discretion given to the Tribunal under this subsection must be exercised on a principled basis. See: *Kooner-Rilcof v. BNA Smart Payment Systems, Ltd.*, [2012 BCHRT 263](#) [75 C.H.R.R. D/110] at para. 68. The purpose of a wage loss award under s. 37(2)(d)(ii) is to put Mr. Garneau in the position he would have been in had the discrimination not occurred. This is the principle that is expressed as "making the complainant whole". I note also that the objective is not to enrich a complainant.

[40] In *Gichuru v. Law Society of British Columbia (No. 11)*, [2011 BCHRT 185](#) [73 C.H.R.R. D/54], petition dismissed (with one exception on another ground), [2013 BCSC 1325](#) [CHRR Doc. 13-3113]; appeal dismissed [2014 BCCA 396](#) [CHRR Doc. 14-3131], the Tribunal rejected an argument that, in accordance with common law principles, a respondent was responsible for all wage loss that was a foreseeable consequence of the discrimination. The discretion given to the Tribunal provides for a limit to be imposed on the extent of wage loss that is compensable. The Tribunal articulated the general principles applicable to the determination of wage loss at paras. 298–303, as follows:

In my view, having considered all of the authorities provided by the parties and those discussed above, I am of the view that Mr. Gichuru's compensation for wages lost must be considered in the context of the language of the Tribunal's enabling statute. The *Code* clearly provides the Tribunal with the discretion to 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 ...

First, the purpose of compensation under s. 37(2)(d)(ii) is to restore a complainant, to the extent possible, to the position he or she would have been in had the discrimination not occurred.

Second, the burden of establishing an entitlement to compensation is on the complainant.

Third, in order to establish such an entitlement, the complainant must show some causal connection between the discriminatory act and the loss claimed.

Fourth, once a causal connection is established, the amount of compensation is a matter of discretion, to be exercised on a principled basis, in light of the purposes of the remedial provisions of the *Code*, and the purpose of the award.

[41] I accept that lost wages flow from the discrimination, which caused Mr. Garneau to leave his employment. Mr. Garneau seeks \$11,480 in remedy for estimated wage losses he has suffered as a result of discrimination. The amount represents approximately seven months of lost wages based on a 40-hour work week at the minimum wage of \$10.25/hour. This is calculated from the month of his departure from Buy-Rite to present. I do not agree with his calculations. At the time he left his position, Mr. Garneau was averaging approximately 25 hours per week at Buy-Rite. He also commenced new employment in

September 2014; albeit he was unable [to] retain the position. He has been on welfare since December 2014. In view of this, I consider lost wages for one month to accurately reflect a compensable loss flowing from the discrimination. Buy-Rite or the Sumals are not responsible for Mr. Garneau being unable to retain employment at No-Frills or his future unemployment. Based on Mr. Garneau's pay statement (exhibit 10) for June 2014, I calculate he is owed approximately a net amount of \$936 for lost wages.

[42] The Tribunal has the discretion to award an amount of damages for injury to dignity, feelings and self-respect under s. 37(2)(d)(iii) of the *Code*. As detailed in the preceding paragraphs, the treatment accorded to Mr. Garneau was egregious. He did not provide any medical evidence of the impact of discrimination, but I found his testimony, in this respect, compelling. The purpose here is to compensate the complainant and not to punish the respondents. The nature of the respondent's conduct is, of course, relevant in the sense that it offers an informal barometer in arriving at what is admittedly a subjective, but informed, determination of compensation.

[43] Awards for injury to dignity are particular to the facts of the respective cases. There is a wide range of awards depending on the circumstances. For example, \$2,000 was awarded in a case where the complainant was dismissed while off work due to an injury sustained while working, and gave little evidence about the emotional impact of the termination. See: *Millar v. Sterling Fence Co.*, [2007 BCHRT 249](#) [CHRR Doc. 07-339]. \$35,000 was awarded in *Senyk v. WFG Agency Network (B.C.) Inc. (No. 2)*, [2008 BCHRT 376](#) [64 C.H.R.R. D/245], a case with egregious circumstances; more recently this Tribunal awarded \$50,000 in *P.N. v. F.R. (No. 2)*, [2015 BCHRT 60](#) [81 C.H.R.R. D/71].

[44] The determination of compensation for injury to dignity, feelings and self-respect is contextual and fact-specific. While *Torres v. Royalty Kitchenware Ltd.* (1982), [1982 CanLII 4886 \(ON HRT\)](#), 3 C.H.R.R. D/858 (Ont. Bd.Inq.), concerned a complaint of sexual harassment, it outlined several factors that I consider useful in quantifying an award for injury to dignity in this particular complaint. Those factors include (1) nature of harassment (for example was it verbal or physical); (2) degree of aggressiveness; (3) ongoing nature; (4) frequency; and (5) vulnerability of the victim. I consider all of the preceding appropriate in the context of this complaint.

[45] I find the nature of harassment, both verbal and physical, to be beyond the pale and egregious. Mr. Garneau described a bullying and hostile work environment. He was taunted and verbally and physical abused; it was ongoing and frequent. I find also that Mr. Garneau was in a particularly vulnerable position. He testified it is not easy to find and maintain employment owing to his disability. In this respect, his options were limited. He could not simply resign and find other employment. This is evidenced by his numerous unsuccessful applications, a short stint at No-Frills, and continuing unemployment after leaving Buy-Rite in August of 2014.

[46] The role and value of employment, from the tangible to intangible, in a person's life is perhaps immeasurable. It is simply sufficient to say that it facilitates the full and free participation in the economic, social, and cultural life of society, a key objective of the *Code*. In *Wallace v. United Grain Growers Ltd.*, [1997 CanLII 332 \(SCC\)](#), [1997] 3 S.C.R. 701 the Supreme Court of Canada had occasion to comment on the importance of employment:

The vulnerability of employees is underscored by the level of importance which our society attaches to employment. As Dickson C.J. noted in *Reference Re Public Service Employee Relations Act (Alta.)*, [1987 CanLII 88 \(SCC\)](#), [1987] 1 S.C.R. 313, at p. 368:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

[47] It was evident from his testimony that Mr. Garneau found full-time employment fulfilling. He enjoyed the work and the empowerment and independence it provided. He had worked steadily for Buy-Rite, at different locations, since 2001. He owned his own home and vehicle. It was only when the harassment, and its continuing nature and physical assaults, became unbearable that he resigned. The fact that he remained at Buy-Rite for as long as he did and at minimum wage is a testament to his commitment and desire for employment.

[48] Taking all of the preceding circumstances into account, I award Mr. Garneau the amount of \$15,000 as damages for injury to dignity, feelings and self-respect.

[49] Mr. Garneau also seeks compensation for the loss of his home (\$174,000) and car (\$6,000). I do not find these losses to be compensable. While I accept that the loss of employment contributed to Mr. Garneau's financial difficulties at the time, I cannot conclude that these consequences flow from the discrimination.

COSTS

[50] Mr. Garneau also seeks "Tribunal costs, if any". Under s. 37(4) of the *Code*, costs are available only for improper conduct. In this case, the respondents chose not to participate and, as a consequence, the hearing proceeded in their absence and an order was made. Mr. Garneau did not specifically argue, and I do not find, that the choice not to participate constitutes improper conduct. The request for costs is denied.

CONCLUSION

[51] Having found Mr. Garneau's complaint of discrimination justified, I make the following orders:

- Pursuant to s. 37(2)(a), I order the respondents to cease the contravention and refrain from committing the same or a similar contravention.
- Pursuant to s. 37(2)(b), I declare that the conduct Mr. Garneau complained of in this complaint is discrimination contrary to the *Code*.
- Pursuant to s. 37(2)(d)(ii), I order the respondents to pay to Mr. Garneau the sum of \$936 for lost wages.
- Pursuant to s. 37(2)(d)(iii), I order the respondents to pay to Mr. Garneau the sum of \$15,000 as compensation for injury to his dignity, feelings and self-respect.
- I order the respondent to pay post-judgment interest on the compensation for injury to dignity, feelings and self-respect, based on the rates set out in the [Court Order Interest Act](#), R.S.B.C. 1996, c. 79 from the date of this decision until paid in full.

The respondents are jointly and severally liable for the monetary awards ordered.