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British Columbia Human Rights Tribunal

CHRR Doc. 19-0097

Meyvis Araniva

Complainant

v.

RSY Contracting Ltd. and Robert Shawn Yule

Respondents

Date of Decision

May 10, 2019

Before

British Columbia Human Rights Tribunal, Devyn Cousineau

File No.

15903

Appearances

Mikhael Magaril, Counsel for the Complainant
Robert Shawn Yule, on behalf of the Respondents

Keywords

Sexual Harassment — sexual advances by employer — definition of sexual harassment — **Employment** — employment relationship between complainant and respondent — **Evidence** — credibility — **Damages** — damages assessed for injury to dignity and self-respect and lost wages — determining quantum by considering previous awards — expenses caused by contravention of human rights legislation

Summary

The B.C. Human Rights Tribunal ruled that RSY Contracting Ltd. and Robert Shawn Yule discriminated against Meyvis Araniva because of her sex.

Ms. Araniva was employed by Robert Yule as an administrative assistant for his company, RSY Contracting in May 2016. Mr. Yule needed an assistant to work part-time to start with, and potentially full-time, as his construction company was growing. Ms. Araniva understood that Mr. Yule's intention was to hire someone capable of growing with the company and to eventually manage it. As she was winding down another job, she began working one day a week, and subsequently her hours were increased.

Ms. Araniva worked in Mr. Yule's home, which was a condominium. On the main floor, there was an open area with a kitchen, dining room table, and a desk. When Mr. Yule was home, he would typically work from the dining room table, and Ms. Araniva would work at the desk.

The Tribunal found that Mr. Yule sexually harassed Ms. Araniva. A number of incidents occurred. On September 19, Mr. Yule left a bra and wig in Ms. Araniva's workspace. When Ms. Araniva complained, Mr. Yule treated it as a joke. He even suggested that the bra was hers. He mocked her concern about the lack of professionalism about their work relationship that this conveyed to her and accused her of being uptight. He failed utterly to understand the inappropriateness of this situation.

On another occasion Mr. Yule asked Ms. Araniva to go to a hockey game with him. The invitation was clearly social and made Ms. Araniva

feel uncomfortable. Mr. Yule persisted in asking her several times, and the Tribunal found that, considering other events, it was reasonable for Ms. Araniva to understand that he was asking her out on a date.

On September 29 and October 24 two incidents occurred that clearly were sexual harassment. On each occasion, Mr. Yule complimented Ms. Araniva's appearance, describing her as "beautiful" and "hot" and asked her to have sex with him. He asked her for a hug. On September 29, he made Ms. Araniva watch a music video depicting a sexual relation between a man and a woman, in which the woman is topless. On October 24, Mr. Yule asked Ms. Araniva to go on a date with him and suggested that her employment was making his girlfriend jealous. He followed her to the washroom and made her feel physically vulnerable while she was in that private space. His behaviour was sexual, negatively affected her employment and undermined her dignity. On both occasions Ms. Araniva left as soon as she could. On October 24, she left and never went back.

Ms. Araniva told Mr. Yule repeatedly that his conduct was unwelcome, that she was not attracted to him, and that his behaviour was not appropriate for a workplace. She was especially vulnerable because they were working in Mr. Yule's home, and most of the time there was no other person present.

Mr. Yule denied all of Ms. Araniva's allegations. He argued that it was in fact Ms. Araniva who brought her sexuality into the workplace, and accused her of trying to seduce him. The Tribunal rejected his claims, finding Ms. Araniva's account more credible.

Ms. Araniva also alleged that Mr. Yule reduced her hours of work after she rejected him on September 29 and refused to go to a hockey game with him. Although Mr. Yule agreed that he reduced her hours, he testified that it had nothing to do with her refusal of his advances. The Tribunal found that Ms. Araniva's refusal to accept Mr. Yule's sexual advances was a factor in the reduction of her work hours.

The Tribunal ruled that Mr. Yule sexually harassed Ms. Araniva.

The effect of the harassment on Ms. Araniva was extreme. When she left Mr. Yule's home on October 24 she was distraught. She was concerned about having lost her only source of income, and the need to find another job immediately. She was also extremely fearful and anxious, because the discrimination caused old fears, related to past trauma, to re-emerge. She became hyper-vigilant about her surroundings and the Tribunal accepted the testimony of her doctor that, following the harassment, she suffered from trauma and stress-related disorder.

The Tribunal ordered Mr. Yule to pay Ms. Araniva \$8,000 as compensation for lost wages, \$4,336 for expenses, and \$40,000 for injury to dignity.

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Legislation Cited

British Columbia

[Court Order Interest Act](#), R.S.B.C. 1996, c. 79: 147

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

- s. 13: 1, 89, 105
- s. 37(2)(a): 115, 147
- s. 37(2)(b): 115, 147
- s. 37(2)(d)(ii): 118, 125, 147
- s. 37(2)(d)(iii): 132, 147
- s. 37(4): 117


REASONS FOR DECISION


I. INTRODUCTION

[1] Meyvis Araniva was employed by Robert Yule as an administrative assistant for his company, RSY Contracting Ltd. ("RSY"). She worked out





of his home. She alleges that, on two occasions, Mr. Yule made sexual advances towards her in the workplace. She also alleges that, on a third occasion, Mr. Yule left a bra and his underwear near her desk, making her feel very uncomfortable. She says that, when she rejected his advances, he cut her hours of work. Ms. Araniva eventually left her job because of the harassment. She argues that the respondents discriminated against her on the basis of her sex, in violation of [s. 13](#) of the [Human Rights Code](#) [R.S.B.C. 1996, c. 210] ("Code").

[2] Mr. Yule denies engaging in any sexual or otherwise inappropriate behaviour toward Ms. Araniva. He says that he cut her hours because he was disappointed with her performance and RSY was having financial difficulties. Mr. Yule argues that Ms. Araniva has fabricated the allegations against him in order to gain a financial windfall. 

[3] I heard this matter over four days. There were no other witnesses to the occasions when Ms. Araniva says Mr. Yule sexually harassed her. As such, that issue turns entirely on the parties' credibility and, in particular, whose version of events better accords with the preponderance of probabilities. For the reasons that follow, I have preferred the evidence of Ms. Araniva. I find that Mr. Yule sexually harassed Ms. Araniva in her employment and cut her hours of work in part because she rejected his advances. In doing so, the respondents have violated [s. 13](#) of the [Code](#). 


II. WITNESSES AND CREDIBILITY


[4] Six witnesses testified during this hearing. Ms. Araniva and Mr. Yule, the principal actors, each testified. In addition, Ms. Araniva led evidence from her long-time friend Byron Cook and expert evidence from a psychologist, Dr. Tracy Lindberg. Dr. Lindberg was qualified as an expert in clinical psychology, including the diagnosis and prognosis of psychological disorders. Mr. Yule called his father, John Yule, and his girlfriend, Andrea Nokleby, to testify on his behalf. 


[5] As I have said, this case turns on credibility. The versions of events presented by Ms. Araniva and Mr. Yule, both given under oath, are irreconcilable. This requires me to determine, on a balance of probabilities, whose testimony is more credible. In doing so, I may believe none, part, or all of a witness' evidence, and may attach different weight to different parts of their evidence: *R. v. D.R.*, [1996 CanLII 207 \(SCC\)](#), [1996] 2 S.C.R. 291 at para. [93](#). I apply the principles summarized by Justice Dillon in *Bradshaw v. Stenner*, [2010 BCSC 1398](#), aff'd 2012 BCCA 296, leave to appeal refused, [2012] S.C.C.A. No. 392 (QL) at para. 186: 


Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides ... The art of an assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony


seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally ... Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time ... [Citations omitted.]


[6] For reasons I will explain in greater detail throughout my decision, I have preferred Ms. Araniva's evidence over Mr. Yule's where there is a conflict. Ms. Araniva's testimony was clear and consistent. It is corroborated by text messages and emails. It is further corroborated by the decline in Ms. Araniva's mental health after the events with Mr. Yule took place, which was confirmed by her friend Mr. Cook as well as the expert opinion of Dr. Lindberg. There was no evidence to support any cause for that rapid and dramatic decline other than her encounters with Mr. Yule. 

[7] In that regard, I found both Mr. Cook and Dr. Lindberg to be reliable and credible witnesses. Their evidence was consistent and believable. Aside from lending support to Ms. Araniva's allegations, the significance of their evidence relates primarily to the appropriate remedy in this case, and I return to it there. 

[8] In contrast, Mr. Yule's version of events has not been consistent over time or, in some instances, throughout this hearing. During the hearing, he became increasingly determined that Ms. Araniva had framed him and had been working towards this plot from very early on in their relationship. He speculated that her motivation in doing so was to achieve a "financial windfall". I did not find that motivation rang true, given that these proceedings have now consumed three years of the parties' lives, at a significant emotional and physical toll on Ms. Araniva, and that any ultimate award before this Tribunal is unlikely to be so lucrative to warrant such elaborate lengths. Further, in my view, had Ms. Araniva intended to frame Mr. Yule for sexual harassment, she would have made up more egregious allegations than the ones in this case, which ultimately have not involved any significant sexual touching or physical threat. 


[9] In addition, Mr. Yule's testimony did not accord with text messages between the parties during the relevant time frame, in which he never denied, questioned, or addressed Ms. Araniva's accusations that he was acting inappropriately, making her feel unsafe, making sexual advances, and flirting. His alternate explanation for events, simply put, did not make sense in light of the parties' relationship, the tone of their communications, and their respective characters. 

[10] I have accepted Ms. Nokleby's evidence. Although I do find that she was effectively an advocate for Mr. Yule throughout this proceeding, I accept that she would not have tolerated Mr. Yule engaging in sexual conduct with Ms. Araniva and would have had no reason to expect it was occurring. However, she was ultimately not a witness to the behaviour which Ms. Araniva says constituted sexual harassment and so her evidence could not be determinative of those issues. 


[11] Finally, I found John Yule's testimony of limited value. He 


demonstrated a willingness to simply agree with anything that might help his son and disagree with anything that might not. He described Ms. Araniva as "full of lies" and emphasized that it was "not possible" the allegations against Mr. Yule were true, notwithstanding that, with one exception, he did not witness any of them. Under cross-examination he denied having any knowledge of any sexual harassment complaints against Mr. Yule. But when asked the same question by Mr. Yule in re-examination, he readily acknowledged that he was aware of the allegations in this case. He admitted that his memory had faded over time, and indeed Mr. Yule repeatedly interjected during his testimony to emphasise that the events in question were a "long time ago". Given these frailties in his evidence, I could not prefer John Yule's testimony where it conflicted with Ms. Araniva's.


III. FACTS


[12] In this section I set out my findings of fact. I do not refer to everything that the parties presented, but rather only what is necessary to reach my decision. 


A. Beginning of Employment


[13] Mr. Yule is the principal of RSY, a construction and drywall company. In May 2016, he posted a job ad seeking applicants for an "Admin / Personal Assistant". In the ad, he said that the position was "part time to start 20 plus hours a week and potentially full time." He described the work as "[o]ffice administration position / personal assistant for a growing contracting / construction company" and said that he was "[l]ooking for someone long term to grow with the company". 

[14] Ms. Araniva responded to the ad and met with Mr. Yule for an interview on June 10, 2016. The interview took place in Mr. Yule's home. Ms. Araniva testified that, during the interview, Mr. Yule told her that the company was growing and that he was really looking for someone who could work for him full-time. She understood that Mr. Yule's intention was to hire someone capable of growing with the company and to eventually manage it. 


[15] Mr. Yule denied that he conveyed to Ms. Araniva during her interview that it would be a long-term, full-time, position. He testified that he was looking for someone who could work for him part-time to organize receipts for tax season and perform various other administrative duties. He says that, while he always envisions his company growing, it is not true that he represented to Ms. Araniva that she would have the possibility of working full-time or eventually managing the company. He says he would have waited to see how she performed before suggesting that. 


[16] I prefer Ms. Araniva's account of this initial conversation. It is more consistent with the job advertisement that Mr. Yule posted. In that ad, Mr. Yule expressly said that he was looking for someone "long term to grow with the company" and that it would be a part-time position "to start" and then potentially full-time. It is also consistent with an email that Mr. Yule wrote to Ms. Araniva on June 30, in which he said, "I hope you see a future with this company". 

[17] Shortly after their interview, Mr. Yule phoned Ms. Araniva to offer her the job. Ms. Araniva was not available to start full-time work for Mr. Yule right away because she was still winding down her previous job. Given the urgency of some of the work, however, she offered to start out with Mr. Yule one day per week. She then worked for him one day per week until the end of June. 

[18] Ms. Araniva performed her work for Mr. Yule in his home, which was a condo. On the main floor, there was an open area with a kitchen, dining room table, and a desk. When Mr. Yule was home, he would typically work from the dining room table while Ms. Araniva worked at the desk. 


B. Early Concerns

[19] A theme throughout Ms. Araniva's testimony is that she values and expects to work in a professional environment. I accept that this is true. All of her email communications, whether with Mr. Yule or with other business contacts, have a professional tone. She took pride in the job that she held before coming to work for Mr. Yule, in which she had an important role and where she testified that she was treated with dignity and respect. When she began her work for Mr. Yule, she was 40 years old. She needed her work to support herself and her daughter. During the hearing, Ms. Araniva presented as extremely put-together and mature. 

[20] From early on in their relationship, Ms. Araniva clearly expressed to Mr. Yule her expectations of a professional work environment. On June 30, she had arrived to work to find Mr. Yule's family was visiting and the condo, as a result, was full of people. She quickly left to work from her home instead. She explained her reasons for doing so in an email to Mr. Yule later that day: 

I understand that family will visit and that's important — I just feel that on those occasions I should work from home, because it's not conducive for a professional office environment that is needed for me to do the best work possible for your company — after all that's what we're both trying to achieve.

I will do my best to facilitate any project you give me. I have all the capabilities to organize your office and set a structure that works for you but the one thing I need is a clean space to work.

[21] Ms. Araniva says that she developed concerns fairly early on about her relationship with Mr. Yule. In particular, she found that he did not treat her with respect or foster a professional working environment. She testified that he would often mimic her voice when she was on the phone and would accuse her of sitting around all day while he was out doing the hard work for the company. She began to take photographs to show the physical progress that she was making in organizing his office and the value that she was adding to the company. I accept Ms. Araniva's account of her relationship with Mr. Yule. It is corroborated by the photographs submitted in evidence from this time, as well as the evidence about Mr. 

Yule's character more generally.

[22] The evidence about Mr. Yule, which I accept, is that he was very hard working and has great ambitions for his company. However, Ms. Araniva was his first administrative employee. When she arrived, she set up the office infrastructure in his condo and began to implement, for the first time, proper filing and office systems. By Mr. Yule's own admission, which was corroborated by Ms. Nokleby, he was unfamiliar with basic principles of overseeing office staff or human resources — indeed, he describes his first experience with Ms. Araniva as essentially a trial by fire.



[23] At the time that he hired Ms. Araniva, Mr. Yule was under a great deal of stress and hoping that she could relieve his load. He was not happy, however, with the pace at which this was happening. He felt that Ms. Araniva should have been able to do more in a shorter amount of time and blamed her when he found himself still having to engage in administrative-type work. During the hearing, he described Ms. Araniva as incompetent in significant areas and expressed frustration when Ms. Araniva was unable to complete certain tasks on her own.



[24] I have found this assessment of Ms. Araniva to be unfair in all of the circumstances. For example, Mr. Yule complained that she needed to ask him for the company's GST number and his craigslist password in circumstances where such requests are perfectly reasonable for a new employee in Ms. Araniva's position. Mr. Yule also complained that Ms. Araniva did not understand the financial aspect of his business, and in support of that complaint pointed to an email dated October 6. In that email, Ms. Araniva was responding to a question from Mr. Yule and attempting to explain that a project which he thought had earned money had actually generated a loss for the company. In doing so, she couched her answer with the caveat that "this is not my area" and expressed confusion about what Mr. Yule was asking. I accept her explanation that, in doing so, she was attempting to give Mr. Yule room to save face in a situation where his question did not make sense. Ultimately her assessment of the information was correct, and it was Mr. Yule who was wrong. Nevertheless, in the hearing, Mr. Yule continued to press this point as evidence that she was unqualified for her job. In doing so, he demonstrated two things to me: first, that he was grasping for examples to support his position that Ms. Araniva's hours were reduced because of her poor performance, and second, that he more likely than not did express exasperation at Ms. Araniva during her employment in the manner she described and for reasons that were not her fault.




[25] The evidence in the hearing also supported that Mr. Yule liked to joke around and could be silly or childish in circumstances that required a more professional touch. Even Ms. Nokleby acknowledged that he would sometimes tease people and could act in a childish way, though she couched that testimony with her view that most women think their boyfriends are childish and sometimes everyone could be childish. However, Mr. Yule's lack of maturity in respect of certain matters was also demonstrated in response to the circumstances giving rise to this complaint, which I describe in more detail below.




[26] Ms. Araniva's testimony that she felt disrespected in her work is





consistent with her behaviour at the time. After accepting the job with Mr. Yule, she stopped looking for other work. However, beginning in late August, she began to apply for other jobs. This corroborates her testimony that she felt disrespected in her workplace and, for that reason, stopped feeling hopeful that this could be a long-term employment.

[27] In sum, I accept Ms. Araniva's evidence that she began to develop concerns about the professionalism of her working relationship with Mr. Yule, and did not feel respected in her work, from a very early stage. 


C. September 19: Underwear, Bra and Wig


[28] The first incident in which Ms. Araniva says that Mr. Yule sexualized her workplace happened on September 19. Ms. Araniva testified that, when she arrived at work that day, she discovered a bra, a pair of men's underwear and a wig laying next to her desk. She was shocked and very uncomfortable. She took a photograph of the items. 

[29] Mr. Yule's explanation for how these items ended up in Ms. Araniva's workspace has changed over time. There is no question that the bra belonged to his girlfriend and the wig was his. He initially appeared to acknowledge that the underwear was his but, at one point during the hearing, speculated looking at the photograph that it was not underwear but rather a sweatshirt. I did not find this plausible, particularly given that up until that point, he had accepted that it was underwear and he had presumably seen the items in person at the time. If it had in fact been a sweatshirt — and it is clear from the photograph that it is not — in my view Mr. Yule would have corrected the record long ago. His attempt to suggest during the hearing that it was a sweatshirt undermined his credibility. 

[30] In an affidavit sworn July 28, 2017, in respect of Ms. Araniva's complaint with WorkSafeBC, Mr. Yule said: 

In specific response to her allegation about the fact that she found a bra and wig on the office chair, I can say that the bra belonged to my girlfriend Andrea Nokleby. She had been at my apartment over the weekend and accidentally left it in the home office. I was embarrassed when I realized that it had been left there ...[\[1\]](#)

[31] In this hearing, Mr. Yule testified that he did not know how the items came to be in Ms. Araniva's work space. He resiled from his earlier acknowledgement that he and Ms. Nokleby had left the items there by mistake. As the hearing progressed, he became increasingly convinced that it was Ms. Araniva herself who had found the items and planted them in order to frame him. He speculated that she could have retrieved the items from his bedroom. He ultimately testified that "Meyvis is the one that planted it". There was no evidence to support this theory and I cannot find any merit in it. Mr. Yule's willingness to give this testimony, under oath, contradicting his earlier affidavit, undermined his credibility. 

[32] For her part, Ms. Nokleby agreed that the bra was hers and testified that she had left it in the common area by mistake. She says that, 

at that point, Mr. Yule was still in the process of moving into his condo and it was a mess, resulting in the items being overlooked.

[33] The evidence was inconsistent about where the items were left — whether it was beside the desk, on Ms. Araniva's chair, or next to the kitchen island, which appears to be the place at which the photograph was taken. I attribute this inconsistency to the fading of memories over time. Ms. Araniva testified that, after finding the items, she moved them away from her work space using a broom. She could not remember where or exactly when she took the photograph. Notwithstanding this inconsistency, I am satisfied that the items were left somewhere near Ms. Araniva's work space and that she was upset by them. I do not find that Mr. Yule deliberately placed them there, but rather accept that it was an inadvertent oversight after he spent the weekend with his girlfriend.

[34] After she found the items, Ms. Araniva initially thought that Mr. Yule might still be at home, because his bedroom door was closed. Once she figured out that he was not there, she tried to call him, but he did not answer the phone. Eventually, he phoned her around lunchtime. Ms. Araniva told him about the items being left beside her desk and asked what the meaning of it was. She testified that Mr. Yule just laughed and asked her "do you normally leave your underwear and bra around?" Ms. Araniva was upset that Mr. Yule was not taking her concerns seriously and told him that she did not find it funny and expected that it would not happen again. She says that, at this point in the conversation, Mr. Yule switched subjects back to work.

[35] Later that day, Mr. Yule returned to the condo and continued to laugh about the incident. He asked Ms. Araniva what she thought it meant, and she responded angrily: "I don't know, maybe you cross dress or are a prostitute?". He laughed at that and shortly afterward called his father. Ms. Araniva testified that Mr. Yule put his father on speaker phone and laughingly relayed the situation to him. After the call ended, Ms. Araniva reiterated to Mr. Yule that she was very uncomfortable and really needed her work environment to be a professional one. She says that he did not respond to this, but rather kept treating the situation as a joke. She says that he told her to "lighten up" and mocked her for being old and acting like a baby.

[36] In his testimony, Mr. Yule denied ever having a conversation with Ms. Araniva about the items. I did not find this credible. First, it is not clear how he would have learned about the items if not through a conversation with Ms. Araniva. Second, it is not consistent with Ms. Araniva's approach of addressing issues directly as they arose.

[37] I find that Ms. Araniva's version of her conversations with Mr. Yule is more consistent with the relationship between the parties. Her testimony that she attempted to raise a serious concern with Mr. Yule and he laughed it off is consistent with later text messages and the testimony about his manner generally.

[38] Mr. Yule also denied having a conversation with his father about the items, in front of Ms. Araniva. He agreed that he spoke to his father several times a day on the phone but testified that they never had this

particular conversation and in particular he did not use a conversation with his father to mock Ms. Araniva. Mr. Yule's father, John Yule, also testified that they never spoke about a bra and a wig and that Mr. Yule never called to ridicule Ms. Araniva. However, for the reasons that I have explained above, I find that John Yule's evidence is not reliable both because his memory has faded with the passage of time and because his evidence was clearly tailored to defend Mr. Yule. I find that Ms. Araniva's version of events accords better with Mr. Yule's behaviour, which at times could be immature and inappropriate.

D. September 29: Sexual Advances

[39] The next significant incident occurred on September 29. That morning, Mr. Yule called Ms. Araniva just as she was leaving her house to come to work. He asked her whether she was coming in that day and then, when she said yes, asked her not to because he was sick. After they hung up, Ms. Araniva texted Mr. Yule:



I was going to bring soup for lunch. Do you want me to drop it off outside your door and I'll text u when I leave it outside so u can retrieve it? Let me know straight of way. [As written.]

She explains that she was trying to be nice by offering to give Mr. Yule her soup when he was sick. This text message corroborates Ms. Araniva's account that Mr. Yule originally told her that he was sick that day — which was not true.

[40] After this text, Mr. Yule phoned Ms. Araniva back and asked her to come into work. When Ms. Araniva told Mr. Yule that she did not want to get sick, he assured her that she would not. She testified that she understood that she had no choice but to go into the office that day.




[41] When Ms. Araniva arrived for work, she says that there were no signs that Mr. Yule was sick. Rather, he was in a mood which Ms. Araniva says she had never witnessed before. He was extremely excited and talkative, jumping from one topic to the next very quickly. Ms. Araniva says that he was looking her up and down in a flirtatious way. He began to compliment Ms. Araniva's appearance: "Meyvis, you're so beautiful", "you're so hot". Ms. Araniva understood that he was hitting on her and responded by saying that she was flattered but not interested in a romantic relationship. Nevertheless, Mr. Yule persisted. Ms. Araniva says that he suggested that they sleep together, and she firmly — and repeatedly — said no. He asked her to hug him and she said no. Finally, Ms. Araniva says that Mr. Yule insisted that she watch the music video for Chris Isaak's "Wicked Game", telling her to pay attention and that it was important. That video depicts a sexual relationship between a man and a woman, and scenes where the woman is not wearing a top. Ms. Araniva described the situation as "bizarre" and repeatedly told Mr. Yule that she could not perform her work in these circumstances.





[42] Ms. Araniva thought Mr. Yule was on drugs and felt very uncomfortable. She told him that she wanted to go home, but Mr. Yule





insisted that she join him for lunch. She understood that at lunch they would be joined by a business contact with information about a particular procurement process. She understood, therefore, that it was a business lunch and not a social gathering. She agreed to go.


[43] Mr. Yule denies that he made advances towards Ms. Araniva that morning. He agrees that he was in an excited mood, because he had just been awarded a big contract. He described himself as jovial and excited, and having an "exciting energy". He says, however, that Ms. Araniva's allegations are ridiculous given the fact that Ms. Nokleby — his girlfriend — was on her way over to his condo that day. 


[44] Ms. Nokleby arrived at the condo around mid-morning. At this point, Ms. Araniva had never met her before and did not know that she and Mr. Yule were in a relationship. She was surprised, therefore, when Mr. Yule immediately suggested that the three of them engage in a group hug. While neither Mr. Yule or Ms. Nokleby specifically remembered the group hug, they both agreed that this was something that Mr. Yule would do. 

[45] Ms. Nokleby testified that she and Mr. Yule had made plans to spend that day together and so she was not originally expecting Ms. Araniva to be there. This explains why Mr. Yule originally told Ms. Araniva not to come into work. 

[46] Before the three left to go to lunch, Ms. Nokleby had a few minutes alone with Ms. Araniva. She testified that nothing about Ms. Araniva's demeanour suggested that she was uncomfortable or reluctant to come to lunch and that Ms. Araniva did not make any comment that would suggest that she felt unsafe. To the contrary, she recalls that Ms. Araniva made a passing comment to the effect that she enjoyed her work for Mr. Yule. I accept this evidence but do not find that it undermines Ms. Araniva's account. Rather, it is consistent with Ms. Araniva's professional approach to her work and her understanding, at the time, that Ms. Nokleby was a business associate. In such circumstances, I do not think she would have disclosed to Ms. Nokleby her concerns about Mr. Yule or let on that anything was amiss. Indeed, I accept Ms. Araniva's testimony that she was relieved that another woman had shown up because, in her view, that would put an end to Mr. Yule's erratic and inappropriate behaviour. 

[47] The three went to lunch. The mood was celebratory, and they had drinks. At some point, Ms. Araniva realized that it was not a business meeting and in fact Mr. Yule and Ms. Nokleby were dating. She was relieved that Mr. Yule had a girlfriend. 

[48] After the lunch, the three shared a taxi back to a skytrain station. Ms. Nokleby was the first to leave the taxi. After she left, Ms. Araniva says that Mr. Yule asked her to come back to the condo to do some more work but that she refused. She described him as persistent. Mr. Yule denies this, but nevertheless agrees that there were other tasks that he had wanted her to complete that day. 

[49] Ms. Araniva left and immediately after, Mr. Yule called Ms. Nokleby and arranged for the two of them to spend a few more minutes together. 

[50] Ms. Araniva says that, after she left, Mr. Yule kept calling her to ask her to come back to work but she refused. She says that she stopped answering his calls. Instead, at 3:55 she texted him:



Robert, go home and sleep it off. Stop messing around silly! Don't forget I'm your assistant. Stop flirting.

She explains that she took a light tone in this text message, using the word "silly", because she did not want to make Mr. Yule feel uncomfortable. She figured that, after he sobered up, he would be embarrassed by his behaviour and she did not want to make him feel ridiculed.

[51] In his response, Mr. Yule did not deny that he had been flirting with Ms. Araniva. Instead, he texted simply "You're funny" before switching to a work-related question. In his testimony, he said that he did not know what Ms. Araniva was referring to in her message so instead just got straight to business. He said that, in retrospect, this text message had "obviously" been planted by Ms. Araniva as evidence against him.



[52] I find that this text message corroborates Ms. Araniva's version of events. Her suggestion that Mr. Yule "sleep it off" and request that he stop flirting and "messaging around" is consistent with her testimony that she thought he was under the influence of drugs and acting inappropriately. She again sought to establish professional working boundaries with Mr. Yule, reminding him that she was his assistant. I do not find it credible that an employer would ignore such a message from their employee in circumstances where there was no foundation for the suggestion of inappropriate behaviour.



[53] The next day, Ms. Araniva returned to work. Mr. Yule was not home but the two talked on the phone. Ms. Araniva again expressed that she did not welcome Mr. Yule's advances and did not appreciate his behaviour the day before. She says that, again, he ignored her concerns and simply responded by changing the subject to business.



E. Invitation to Hockey Game

[54] Around this same time, Ms. Araniva says that Mr. Yule had been asking her to go to a hockey game with him. She says that she was feeling very anxious about this request and strongly did not want to go. From her perspective, this was a proposed date and not connected to her work. She avoided the subject but eventually told Mr. Yule that she would not go to the game with him. She testified that Mr. Yule seemed annoyed when she ultimately declined the invitation.



[55] Mr. Yule denies inviting Ms. Araniva to a hockey game. He says that he had offered Ms. Araniva concert tickets for her and her daughter but never suggested that he and Ms. Araniva go out together.





[56] There is no dispute that Mr. Yule was a season ticket holder to the Canucks and, as such, had access to hockey tickets. Given my overall



assessment that Ms. Araniva was a more credible witness, I accept her testimony on this point.


F. Reduction in Hours

[57] Ms. Araniva says that it was during this period — after the events of September 29 and her refusal to go to the hockey game with Mr. Yule — that Mr. Yule first told her that he would be cutting her hours. She testified that he left her a short, informal, note which said simply that he was going to cut her hours to two days per week — down from four. She felt surprised by this news and understood that it was because Mr. Yule was mad that she was rejecting his advances. She felt that it was unfair and was worried about the sudden drop in her income. 

[58] On October 6, Ms. Araniva texted Mr. Yule: 

... I just wanted to ask if you could at least give me 3 days per week until I find something — I was not expecting this so soon. Do you mind — it would help me lots. Thx


He responded, "Yes ok, this has been a difficult week we can talk tomorrow or Monday".

[59] Mr. Yule testified that he had made the decision to reduce Ms. Araniva's hours much earlier for reasons related to her performance and financial struggles facing the company. He says that he gave her a handwritten note, likely in early September. He submitted the note, which was undated, in evidence. It read: 


Meyvis

We will be reducing your hours and days down to 1 or 2 days a week starting in Oct. I thought I would give you a month's notice to make arrangements. I'm thinking 8 hours a week would be beneficial to us at this time. Any questions please give me a call. Thx.

Robert


[60] Ms. Araniva denies ever receiving this note, and I prefer her evidence on this point. First, there is no evidence that Ms. Araniva ever responded to this note. Given that she relied on her income from Mr. Yule to pay her rent and support her daughter, I find that the reduction in hours would have had a significant impact on her and she would have immediately taken steps to ensure that she did not lose the work. Second, it is inconsistent with her text message on October 6 which says that she was not "expecting this so soon". Ms. Araniva explained in her testimony that what she meant by "so soon" was so abruptly, and that the two of them had not previously discussed a reduction in her hours. Third, the note itself does not appear consistent with the parties' regular means of communication, which was either through text messages, frequent phone 

calls, or informal notes left for each other at the condo. Indeed, one of the lessons that Mr. Yule says he learned through his experience with Ms. Araniva was to document important issues more formally. Given his inexperience and attitude at the time, it seems to me out of character for Mr. Yule to take this relatively formal tone with Ms. Araniva and to have preserved this note over time.


[61] Mr. Yule also submitted a second note which he says that he gave to Ms. Araniva in relation to her hours. This one was dated September 22, 2016. In it, he wrote: 


Good morning Meyvis


We are going to be reducing your weekly hours moving forward. This should give you enough time to take care of some things or pick up more projects. Any questions please call. Thx Rob


[62] Again, Ms. Araniva denies receiving this note and again I prefer her evidence on this subject for largely the same reasons as I have identified above. I do not believe that Ms. Araniva would have waited two weeks to respond to this news, in circumstances where her only source of income was at stake. Its tone is more formal than Mr. Yule's other communications. Further, it does not appear that Mr. Yule in fact took any further steps in relation to Ms. Araniva's hours until he agreed on October 3 to delay cutting them to two days per week. 

G. October 24: Last Day of Work


[63] October 24 was Ms. Araniva's last day working for Mr. Yule. The following account of the events of the day is taken from Ms. Araniva's testimony. Mr. Yule denies almost everything in this account but, for reasons that I will explain, I have preferred Ms. Araniva's evidence. 


[64] Ms. Araniva was on her way to work when Mr. Yule called her to ask where she was. She found this strange and asked whether he was ok. He said that he was fine and was just wondering where she was. Ms. Araniva stopped to buy Mr. Yule some coffee and then arrived at his condo. 


[65] Inside, Ms. Araniva found Mr. Yule sitting at her desk and talking on the phone. She handed him the coffee and then, when he was off the phone, asked if she could have her chair back. Mr. Yule agreed, but said that first he needed her to listen to "Thunderstruck" by AC/DC. He then played that song at an extremely high volume. 


[66] Ms. Araniva began to develop concerns because Mr. Yule's odd behaviour was reminding her of the previous incident on September 29. He was very talkative and animated, which was out of character. She grew annoyed, asking him "what's your problem? Don't you have work to do? I don't know what your deal is — I'm here to work but you're preventing me". She said that if he was going to have "one of those days", meaning a day when she thought he was on drugs, then she was going to 


leave. She described her approach to Mr. Yule that day as very blunt.


[67] Ms. Araniva turned down the music and then Mr. Yule began again to make sexual advances towards her. He called her beautiful, and said that, from the first time he had seen her, he had thought she was "hot". Ms. Araniva told him she was uncomfortable and did not appreciate those comments. Mr. Yule asked her how she saw him, and she said, "as my boss". Mr. Yule said that they should have a "love affair" and sleep together, to which Ms. Araniva repeated that she was not interested. Ms. Araniva says that he was switching subjects quickly, and, at the same time as he was making these advances, he was talking about her future with the company. He said that she would be managing the company, that he would send her to school to support her progress and that she would be part of taking his company to the next level. 

[68] Mr. Yule's phone rang and he answered it. He spoke briefly to someone about a truck that he was buying. After he hung up, he said to Ms. Araniva: "I'm taking you out to dinner tonight". When she declined, he insisted that he was even buying a truck to take her out for dinner and said that made her special. 

[69] Mr. Yule then told Ms. Araniva that his girlfriend had asked him to fire her, but he refused because of how special she was. Ms. Nokleby denies ever telling Mr. Yule this. I accept her testimony on this point but find that it does not bear on my determination that Mr. Yule communicated to Ms. Araniva that he was keeping her on as an employee over the objections of his girlfriend. The innuendo behind that comment was that there was some reason for his girlfriend to feel jealous about Mr. Yule's relationship with Ms. Araniva. I find it probable that Mr. Yule said this even if it was not true. 


[70] At this point, Ms. Araniva did not feel safe and said that she was going home. Mr. Yule tried to dissuade her, so she changed tacks and told him that she had a boyfriend. Mr. Yule responded by saying that he was better than Ms. Araniva's boyfriend and that if Ms. Araniva could see his body, she would probably "jump" him. She told him not to take off his clothes. He told her they should date. Ms. Araniva then said words to the effect of: "This is not reciprocated. I do not feel the same about you. This is sexual harassment". On hearing the term "sexual harassment", Mr. Yule replied "you're gonna pull Donald Trump sexual harassment on me?". 


[71] Ms. Araniva testified that it was at this point that Mr. Yule's attitude appeared to change. He walked toward her and told her that he was cutting her hours to one day per week. When she asked why, he told her that he needed an assistant who would do the things he asked them to. He said that Ms. Araniva was too "mouthy" and not doing what he asked her to. Ms. Araniva pointed out that Mr. Yule was asking her to have sex with him. The conversation grew heated, and Ms. Araniva resolved to leave. 


[72] At some point while this was happening, she texted her sister in Spanish: "Pray for me now, this man is drunk" and "I feel uncomfortable". 


[73] Mr. Yule's phone rang, and Ms. Araniva took advantage of the 


opportunity to use the washroom quickly before she left. She says that, while she was in there, she could hear Mr. Yule say, "I'm going to call you back" and then approach the washroom door. He then stood just outside the door and asked what she was doing in there. She replied that it was none of his business. He asked if she was "doing #2", which she found demeaning and inappropriate. When she came out of the washroom, she says that she was shaking. Mr. Yule moved towards her and tried to hug her, touching her in the process. She grabbed her bag and jacket and left. She estimates that this entire encounter lasted about 45 minutes.


[74] After Ms. Araniva left, she texted her daughter, sister and best friend. She recounted Mr. Yule proposing that they have a love affair, saying that he had bought a new truck to take her to dinner, saying that Ms. Nokleby had told him to fire her, and following her to the washroom. She said she was scared and speculated that Mr. Yule had been drunk or on drugs. To her daughter, she texted "I'm so sick I want to throw up" and "I want to cry but I'm on the bus". By 2:00 p.m. that day, she had contacted a lawyer. 

[75] Mr. Yule denies that any of this occurred. He testified that he had made plans with Ms. Nokleby for her to come over that day and so it does not make sense that he would be hitting on Ms. Araniva just before his girlfriend arrived. Rather, he says that Ms. Araniva simply left that day without explanation. I find this account to be implausible and, as I have said, prefer Ms. Araniva's evidence about the events of this day. 

[76] First, the hearing was the first time that Mr. Yule ever mentioned that he and Ms. Nokleby had made plans to spend October 24 together. By that point, he had sworn an affidavit and made a written statement in the WorkSafe proceedings and submitted an affidavit and argument to this Tribunal in support of an early application to dismiss this complaint. At no point did he mention that he had plans with Ms. Nokleby on that day, notwithstanding that would appear to be a very relevant detail to include. Likewise, in her affidavit sworn on July 28, 2017, Ms. Nokleby makes no mention of plans to spend October 24 with Mr. Yule. 

[77] Second, I do not accept that Ms. Araniva arrived for work that day and then simply left with no explanation, and that Mr. Yule would have allowed her to do so without asking any questions. The two worked within a small space and it is not plausible that, as Mr. Yule testified, at some point Ms. Araniva "was just gone". This is particularly true given his testimony and communications from later in the day, in which he suggests that there was urgent work for Ms. Araniva to do that day. 

[78] Third, the text messages that the parties exchanged after this incident corroborate Ms. Araniva's version of events. 

[79] Shortly after Ms. Araniva left, Mr. Yule texted her asking her to call him, then asking whether she was coming into work the next day. He wrote: "I'm a little upset". In response, Ms. Araniva explained that she had left her keys and documents with the concierge and said "I'm not coming there again I don't feel safe or comfortable. Please stop calling me". In response Mr. Yule texted: "It's been a bad month." 

[80] A few hours later, Mr. Yule texted Ms. Araniva again. This time he said:



Hey my father and I think that 1 day a week would be great if you can accommodate a Tuesday or Wednesday. It's good for you and us ... I think you should teach business in your other days!

[81] This message was followed shortly by another text, in which Mr. Yule expressed frustration that an invoice issue was overlooked. Ms. Araniva responded to this text:



the message was overlooked Robert because #1 — you had the music so loud and when I asked you to turn it down so I could do my job you told me no.

#2 — you were making me uncomfortable with all the sexual talk and advances that it was hard for me to do my job

#3 — Robert you followed me to the washroom for crying out loud and expected me to focus on my job?

Give me a break.

[82] Once again, Mr. Yule ignored the reference to sexual advances and inappropriate behaviour and said simply "OK I'll explain the invoice now". Ms. Araniva said: "You know what Robert forget the tiny invoice mistake I think an apology is more appropriate at this point". Mr. Yule attempted to call Ms. Araniva throughout the afternoon and into the next day but she did not answer her phone.




[83] Throughout these exchanges, I find it significant that at no point did Mr. Yule question or otherwise address Ms. Araniva's comments that she did not feel safe, that he had engaged in sexual talk, or that he had followed her to the washroom. In my view, if — as he says — nothing untoward had happened that morning, he would have, at a minimum, asked Ms. Araniva what she was talking about. This would be particularly true in circumstances where he says that he had no idea why she left. If nothing had happened, surely Ms. Araniva's texts would have come as a surprise and would cause any employer to feel concerned about serious allegations being made against them. Instead, Mr. Yule's response appears to accept what she was saying and attempt to blame the situation on a "bad month" before quickly getting back to business.





[84] Within the next couple of days, Ms. Araniva contacted both the police and WorkSafeBC to file complaints. In her statement to the police, dated October 26, she recounted the incidents which have since given rise to this human rights complaint. She concluded her statement by saying that she was scared that Mr. Yule might show up at her house, and that she was "not really sure of what he's capable of doing". The police did not ever lay any criminal charges.



[85] Ms. Araniva never returned to Mr. Yule's home. She had left some personal effects behind but never made any attempt to collect them. 

H. Aftermath


[86] After she left Mr. Yule's employment, Ms. Araniva experienced high levels of anxiety. She had very little savings and no job. She was very fearful that Mr. Yule would find her and was hyper vigilant about her surroundings. She felt so unsafe that she asked her friend, Mr. Cook, to come and stay with her in her apartment. He agreed to do so and ended up staying for about two weeks. In his testimony, Mr. Cook corroborated that Ms. Araniva was unusually vigilant and acting fearful at the prospect of Mr. Yule coming to her home. He said that when he first spoke to her after the incidents of October 24, she was crying and very upset. This was out of character for her and marked the beginning of a dramatic change in her personality as she coped with the effects of her encounters with Mr. Yule. For reasons I will explain below, those effects were exacerbated by the fact that Ms. Araniva had previously experienced trauma in her life. In her expert testimony, Dr. Lindberg diagnosed Ms. Araniva with "other specified trauma and stressor-related disorder", the symptoms of which developed after she left Mr. Yule's employment. 

[87] I will return to Dr. Lindberg and Mr. Cook's evidence in respect of the appropriate remedy in this case. For present purposes, the evidence of Ms. Araniva's mental state after October 24 supports that she experienced something traumatic at this time, and I have found it corroborates her version of events about this last encounter with Mr. Yule. While Mr. Yule attempted to argue that the cause of Ms. Araniva's suffering was that an art gallery she was involved with was losing money, the evidence was clear that Ms. Araniva had not been involved with that art gallery since August 16. Aside from that theory, which did not align with the timeline or the significance of Ms. Araniva's symptoms, there was no other evidence to support an alternate cause for the rapid and dramatic decline in Ms. Araniva's mental and physical health. 


IV. ANALYSIS


[88] There are two main issues in this complaint: 

- a. Did Mr. Yule sexually harass Ms. Araniva in her employment?
- b. Did Mr. Yule cut Ms. Araniva's hours of work in part because she refused his sexual advances?

[89] For the reasons that follow, I have concluded that the answer to both of these questions is yes and, as a result, I am satisfied that the respondents have violated [s. 13](#) of the [Code](#). Before deciding these issues, however, I must briefly address an issue that the parties alluded to, but did not strongly press, during the hearing: namely, whether they were in an employment relationship for the purposes of the *Code*. The answer to that question is also yes. 


A. Employment Relationship


[90] At various points in this proceeding, and before WorkSafeBC, Mr. Yule has argued that he and Ms. Araniva were not in an employment relationship but rather that she was an independent contractor. Both parties asked questions during the hearing that would seem to relate to this issue. However, ultimately Mr. Yule did not press this argument at the hearing. 


[91] For the sake of completeness, I confirm that Ms. Araniva was in an employment relationship with the respondents. The test for an employment relationship under human rights law is one of control and dependency: 

Deciding who is in an employment relationship for purposes of the [Code](#) means, in essence, examining how two synergetic aspects function in an employment relationship: control exercised by an employer over working conditions and remuneration, and corresponding dependency on the part of a worker. In other words, the test is who is responsible for determining working conditions and financial benefits and to what extent does a worker have an influential say in those determinations? The more the work life of individuals is controlled, the greater their dependency and, consequently, their economic, social and psychological vulnerability in the workplace ...


McCormick v. Fasken Martineau DuMoulin LLP, [2014 SCC 39](#) [79 C.H.R.R. D/178] at para. 23.


[92] In this case, the evidence is overwhelming that Mr. Yule was responsible for determining working conditions and financial benefits. He directed Ms. Araniva with respect to the tasks that she performed and the hours that she worked. While Ms. Araniva would occasionally work from home, she mostly worked out of an office that Mr. Yule provided in his home. Mr. Yule had the power to fire her. With the exception of a very brief period in June, Mr. Yule was Ms. Araniva's only employer. She was dependent on him for work and was ultimately accountable to him for all aspects of her performance. While she did provide Mr. Yule with invoices, those invoices were essentially nothing more than a record of the hours that she worked and, rarely, any expenses that she incurred for the office. I cannot find that they established anything more fundamental about the nature of their relationship. 


[93] Finally, it is significant that the respondents have the exclusive ability to remedy the discrimination in this case. The conduct which I have found constituted sexual harassment happened in Mr. Yule's workplace, by him. Ms. Araniva was at his mercy during the time that she was working in his home. Only the respondents can now remedy the effects of that harassment on Ms. Araniva. 


[94] In short, the evidence overwhelmingly supports that the parties in this complaint were in an employment relationship and, as such, fall within the scope of [s. 13](#) of the [Code](#). 


B. Sexual Harassment

[95] Sexual harassment is discrimination on the basis of sex: *Janzen v. Platy Enterprises Ltd.*, [1989 CanLII 97 \(SCC\)](#), [1989] 1 S.C.R. 1252 [10 C.H.R.R. D/6205]. It encompasses "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": Arjun P. Aggarwal, *Sexual Harassment in the Workplace* (1987), cited in *Janzen* at para. 49. It may be blatant, such as with leering, grabbing, or sexual assault, or it may be more subtle, such as with sexual innuendos or propositions: *Janzen* at para. 49. Its effect is to import sexual behaviour into the workplace in a manner that harms the victim's working environment and attacks their dignity. At its root, sexual harassment is about an abuse of power: *Al-Musawi v. One Globe Education Services Ltd.*, [2018 BCHRT 94](#) [CHRR Doc. 18-0094] at para. 30; *British Columbia (Human Rights Tribunal) v. Schrenk*, [2017 SCC 62](#) [88 C.H.R.R. D/283] at para. 43. 

[96] I find that Mr. Yule's conduct towards Ms. Araniva on September 29 and October 24 constituted sexual harassment. On each occasion, Mr. Yule complimented Ms. Araniva's appearance, describing her as "beautiful" and "hot", and asked her to have sex with him. He asked her for a hug. On September 29, he made Ms. Araniva watch a music video depicting a sexual relationship between a man and a woman, in which the woman is topless. On October 24, Mr. Yule asked Ms. Araniva to go on a date with him and suggested that her employment was making his girlfriend jealous. He followed her to the washroom and made her feel physically vulnerable while she was in that private space. There is no question that this behaviour imported sexuality into Ms. Araniva's workplace in a manner that negatively affected her employment and undermined her dignity. Its effect was so significant that, on both occasions, Ms. Araniva left work as soon as she felt that she could and ultimately never returned. 

[97] Throughout both encounters, Ms. Araniva clearly communicated to Mr. Yule that his conduct was unwelcome, that she was not attracted to him, and that his behaviour was not appropriate in the workplace. Ms. Araniva was especially vulnerable to this conduct because it was occurring when the two of them were alone in Mr. Yule's home. The context of their relationship was one marked by an inherent power imbalance: Mr. Yule was her boss. 

[98] Ms. Araniva has speculated that Mr. Yule's conduct on these occasions was related to drug use. She says it was out of character and describes it as bizarre. Nothing ultimately turns on the reasons that Mr. Yule was behaving in this way, and I specifically cannot conclude that Mr. Yule was on drugs. However, I do find it significant that Ms. Araniva perceived his behaviour to be unpredictable and unusual and, for that reason, more dangerous. It is not behaviour that an employee should be expected to endure during their work. 

[99] Viewed in the context of these two occasions where Mr. Yule made express sexual advances, I also conclude that two other incidents had the effect of importing unwanted sexual dynamics into Ms. Araniva's work. The first was on September 19, when Mr. Yule inadvertently left 

underwear, a bra and a wig in Ms. Araniva's work space. It is significant, in my view, that when Ms. Araniva complained about the issue, Mr. Yule did not take her complaints seriously but rather treated it as a joke. He even suggested that the bra was hers. He mocked her concern, accusing her of being uptight, and failing utterly to understand that the situation was inappropriate in the workplace.

[100] The second incident was when Mr. Yule asked Ms. Araniva to go to a hockey game with him. This invitation was clearly social and made Ms. Araniva feel uncomfortable. He persisted in asking her several times. In the context of the other events, her understanding that he was proposing a date was reasonable.

[101] While each of these further incidents, on their own, may not be enough to establish a violation of the [Code](#), I am satisfied that they form part of a larger pattern in this very short-lived relationship whereby Ms. Araniva was forced to contend with Mr. Yule's sexual desires as a condition of her employment.


[102] In addition to his broad denial of all of Ms. Araniva's allegations, Mr. Yule argued that it was in fact Ms. Araniva who brought her sexuality into the workplace. First, he alleged that Ms. Araniva would shower in the workplace — which she categorically denied. I find no support for this allegation. There was no need for Ms. Araniva to shower in Mr. Yule's home, and it runs counter to her efforts at creating a professional working environment. Further, in Mr. Yule's early submission to WorkSafeBC, he listed a number of Ms. Araniva's behaviours which he said were inappropriate and neglected to mention the showers. While Mr. Yule argues that this submission was rushed, I find that this omission undermines his claim.


[103] Second, Mr. Yule accuses Ms. Araniva of attempting to seduce him. He says that on one occasion, Ms. Araniva was wearing a skirt and leaned against a wall to do yoga. He says that he found this inappropriate. Ms. Araniva describes the incident much differently. She says that she was leaning against a wall to do some stretches for her back. She stopped when Mr. Yule attempted to take a picture of her because he was making her uncomfortable. I prefer Ms. Araniva's account of this incident and find that Mr. Yule's conclusion that this stretching was somehow sexual says more about how he was viewing Ms. Araniva than vice versa.


[104] Similarly, Mr. Yule says that Ms. Araniva showed him pictures of herself in a bikini, lamenting the loss of her younger body. She denies this, and I find this to be inconsistent with how the entirety of the evidence indicated that she behaved in the workplace. However, again I find that Mr. Yule's assertion that Ms. Araniva did this to seduce him reveals more about him than about her. Specifically, it supports Ms. Araniva's complaint that Mr. Yule perceived and, on some occasions treated, her based on her sexuality in circumstances where that undermined her dignity in the workplace.


[105] In sum, I am satisfied, on a balance of probabilities, that Mr. Yule sexually harassed Ms. Araniva in her employment. This constitutes a violation of [s. 13](#) of the [Code](#).


C. Reduction in Hours

[106] Ms. Araniva also alleges that Mr. Yule reduced her hours of work because she refused to accept or tolerate his sexual advances. Mr. Yule agrees that he reduced Ms. Araniva's hours but denies that it was connected at all with her sex. Rather, he says that he gave Ms. Araniva notice of his intention before she alleges that he sexually harassed her, and his decision was made because of her poor performance and the company's financial struggles. 

[107] I am satisfied, on a balance of probabilities, that Ms. Araniva's sex was a factor in Mr. Yule's decision to reduce her hours. 

[108] The strongest factor supporting this conclusion is the inference that may be drawn from the timing of the decision. For reasons I have set out above, I reject Mr. Yule's evidence that he gave Ms. Araniva notice in early September. I prefer Ms. Araniva's evidence, supported by her text message of October 6, that she was surprised when Mr. Yule told her that he was reducing her hours to two days per week. She quickly took steps to try to mitigate the financial impact. The timing of this text message supports her account that Mr. Yule delivered this news shortly after she rejected him on September 29 and declined his invitation to the hockey game. After Ms. Araniva asked for more time, Mr. Yule agreed to cut her hours to three days per week for the time being until she could supplement her income. At that point, her hours dropped from 32 hours per week to 24 hours per week. 

[109] The next time this issue was raised was on October 24, when Mr. Yule expressly tied Ms. Araniva's hours of work to his attempts to persuade her to have a sexual relationship with him. After she accused Mr. Yule of sexual harassment, his mood changed and he told Ms. Araniva he would be cutting her hours. When she asked why, he said that Ms. Araniva was too "mouthy" and not doing what he asked her to — which was to have sex with him. Throughout this encounter, Ms. Araniva consistently rejected him and eventually left, later texting him to say that he had made her feel uncomfortable and not safe. Only hours later, Mr. Yule responded to this text with a message that he was cutting her hours. On this day, the timing corresponds so closely with the sexual harassment that I find the inference of a connection to be overwhelming. 

[110] Further, I find that Mr. Yule's explanation for his decision to be unpersuasive. First, and most significantly, I find that his complaints about Ms. Araniva's performance are unfair and overblown. He blamed her for issues that were his fault — such as not understanding a client's cost breakdown or failing to provide a client with a particular document in the form they wanted. He spent a significant amount of time in the hearing pointing out flaws in an office manual that Ms. Araniva had created while ignoring the clear evidence that the manual was a draft and the flaws were consistent with a work in progress. He faulted Ms. Araniva for asking questions of him that were reasonable given that she was new to the company. He accused Ms. Araniva of going through his personal items without permission notwithstanding that he had asked her to unpack certain boxes to set up the office and never raised any issue with her directly. He went so far in his testimony as to say that Ms. Araniva was 

incapable of performing simple tasks and had misrepresenteded her qualifications to him. There was no support for this and the claim undermined Mr. Yule's credibility.

[111] Similarly, I find no support for Mr. Yule's allegations that Ms. Araniva acted inappropriately in the workplace. Those allegations included those which I have addressed above — about showering, stretching seductively and showing Mr. Yule pictures of herself in a bikini. Mr. Yule also accused Ms. Araniva of regularly inviting her friends over to his condo without permission. She denies doing this and Mr. Yule never raised the issue with her. I do not accept that this happened, given Ms. Araniva's attitude to her work and the fact that, in my view, if it had truly been an issue then Mr. Yule would have raised a concern about it — which he did not. Finally, Mr. Yule argued that Ms. Araniva acted inappropriately by pressuring him to buy her art. In fact, Mr. Yule had mentioned to Ms. Araniva that he was interested in buying some art and she offered to bring a sample piece over for him to see, which he agreed to. She brought it over, he did not buy it, and she brought it home. This is hardly unprofessional. Again, Mr. Yule's attempts to exaggerate or, in my view, fabricate issues that would cast Ms. Araniva in a negative light undermine his credibility.

[112] I accept that Mr. Yule was stressed. I further accept that he may have been disappointed that Ms. Araniva was not able to immediately alleviate as much of that stress as he had hoped. Finally, I accept that Mr. Yule was concerned about the company's finances and was constantly evaluating Ms. Araniva's value to the company in the context of those finances. In the summer of 2016, that context included a major job that had generated a loss for the company. It is likely that all of these factors played into his decision to reduce Ms. Araniva's hours.

[113] Critically for the purposes of this decision, however, I am also persuaded that part of Mr. Yule's dissatisfaction with Ms. Araniva related to her resistance to his sexual advances. This is sufficient to establish a violation of [s. 13](#) of the [Code](#).


D. Conclusion on Liability

[114] I have found that the respondents discriminated against Ms. Araniva in employment on the basis of sex when Mr. Yule sexually harassed her and reduced her hours of work. This is a violation of [s. 13](#) of the [Code](#). The next issue is the appropriate remedy.


V. REMEDY


[115] I have found Ms. Araniva's complaint to be justified. I declare that the respondents' conduct was discrimination contrary to the [Code](#) and order them to cease the contravention and refrain from committing the same or a similar contravention: [Code](#), ss. 37(2)(a) and (b).


[116] In addition to these orders, Ms. Araniva seeks compensation for wage loss and expenses incurred because of the discrimination, and damages for injury to her dignity, feelings and self-respect. I will address each of these remedies in turn.


[117] Before doing so, however, I acknowledge that Ms. Araniva's counsel also suggested, in passing during his closing submissions, that a costs award may be appropriate in this case: [Code](#), s. 37(4). He said that Mr. Yule had behaved improperly by giving untruthful testimony and insulting Ms. Araniva and her counsel during the hearing. I do not agree that there is any basis for such an award. Mr. Yule represented himself and his company as best he could under difficult circumstances. While I agree that aspects of the hearing were heated, I did not find that Mr. Yule crossed any line. Ms. Araniva did not pursue this application strongly and I do not find the circumstances warrant the punitive sanction of costs. I will not address this issue further. 


A. Lost Wages


[118] Section s. 37(2(d))(ii) gives the Tribunal discretion to compensate the person discriminated against for wages lost by the contravention. The purpose of such an award is to put the person in the position they would have been in had the discrimination not occurred. 


[119] In this case, there are two periods where Ms. Araniva experienced wage loss: (1) between October 11–24, when her hours were reduced from 32 per week to 24; and (2) after October 24 when she was unemployed for 12 weeks. 

[120] I have found above that one of the reasons that Mr. Yule cut Ms. Araniva's hours in early October was because she resisted his advances. As such, I find she is entitled to the wage differential for the two-week period between October 11 and 24. This amounts to a loss of eight hours per week at \$20 per hour. The total is \$320. 

[121] On October 24, Ms. Araniva left her job suddenly because of Mr. Yule's sexual harassment. I find that this was an appropriate reaction in the circumstances, and as a result Ms. Araniva lost wages because of the discrimination. 


[122] Ms. Araniva immediately began looking for other employment. She applied for a number of jobs and reached out to friends and contacts for support in her search. I am satisfied that the evidence established that Ms. Araniva took all reasonable steps to mitigate her wage loss. Indeed, it was urgent that she do so given that she had limited savings and needed to earn money to pay rent and support herself and her daughter. 

[123] That said, Ms. Araniva's options for employment were more limited than they had been before her work for Mr. Yule. She became more selective about the type of work that she would accept. She was no longer willing to work in a person's home. She was also not comfortable working for a man. She interviewed for one job but ultimately did not accept it because it was too close to Mr. Yule's home and she feared she would run into him. Given the expert evidence about Ms. Araniva's mental health, I find that all of these restrictions were reasonable and did not undermine her mitigation. 

[124] Ultimately, Ms. Araniva found part-time work after 12 weeks. I find that it is appropriate to award her wage loss for this period. I calculate 


those wages based on a 32-hour work week, and a wage of \$20 per hour. The total is \$7,680.


B. Expenses


[125] [Section 37\(2\)](#)(d)(ii) of the [Code](#) also grants the Tribunal discretion to order compensation for expenses incurred by the discrimination. Again, the object is to place the person in the position they would have been in but for the discrimination. 

[126] Ms. Araniva seeks compensation for the following expenses: 

- a. Between \$480–\$640 for counselling
- b. \$56 for parking during the hearing
- c. \$3,800 for Dr. Lindberg's expert report
- d. The cost of Dr. Lindberg testifying in person, which has yet to be determined

[127] As I will explain, the psychological impact of the discrimination on Ms. Araniva was significant. She eventually sought counselling to help her cope. Given Dr. Lindberg's diagnosis that Ms. Araniva had suffered a trauma which had effectively re-activated the effects of her past trauma, this was a reasonable response. Ms. Araniva obtained counselling from a nun who specialized in counselling victims of sexual assault. She was permitted to pay by donation, which she said was about \$40 per session. She testified that she attended about 12–16 sessions with this nun. I am satisfied that this counselling was necessitated by the significant impact of the discrimination on her and it is reasonable to award her compensation for it. I order compensation for 12 sessions at \$40 per session. The total is \$480. 

[128] Ms. Araniva had to pay \$14 per day to park during the four days of this hearing. That is an expense incurred because of the discrimination and is compensable. The total is \$56. 

[129] Finally, I find it is appropriate to order the respondents to compensate Ms. Araniva for the cost of Dr. Lindberg's expert evidence. In *Gichuru v. Law Society of British Columbia (No. 11)*, [2011 BCHRT 185](#) [73 C.H.R.R. D/54], upheld in [2014 BCCA 396](#) [CHRR Doc. 14-3131], the Tribunal explained: 

The Tribunal, and its predecessors, has long ordered compensation for the expense of expert reports, where such expert evidence is necessary to establish a contravention of the [Code](#). The basic rationale is that, if an expert report is necessary to establish the contravention, then it is compensable as an expense incurred by the contravention. Compensation is necessary to make the successful complainant whole. ... (para. 389; see also *Cassidy v. Emergency and Health Services Commission*, [2009 BCHRT 110](#) [67 C.H.R.R. D/37] at paras.

122–24)

[130] In this case, I have found that Dr. Lindberg's evidence was necessary to support Ms. Araniva's claim for damages for injury to her dignity and was also helpful to my conclusion about liability. In short, it was an expense that Ms. Araniva reasonably incurred as a result of the discrimination and, as such, it is compensable.



[131] The total of this amount is \$3,800 plus the cost of Dr. Lindberg attending the hearing. I understand that she will invoice Ms. Araniva for this cost. Ms. Araniva's counsel should provide the respondents with a copy of that invoice. If there is any dispute about the amount, I retain jurisdiction to address it.



C. Injury to Dignity

[132] This Tribunal has discretion to award a complainant an amount to compensate them for injury to their dignity, feelings, and self-respect: [Code](#), s. 37(2)(d)(iii). The purpose of these awards is compensatory, and not punitive. In exercising this discretion, the Tribunal generally considers three broad factors: the nature of the discrimination, the complainant's vulnerability, and the effect on the complainant: *Torres v. Royalty Kitchenware Ltd.* (1982), [1982 CanLII 4886 \(ON HRT\)](#), 3 C.H.R.R. D/858 (Ont. Bd.Inq); *Gichuru* at para. 260. The quantum is "highly contextual and fact-specific", and the Tribunal has considerable discretion to award an amount it deems necessary to compensate a person who has been discriminated against: *Gichuru* at para. 256; *University of British Columbia v. Kelly*, [2016 BCCA 271](#) [84 C.H.R.R. D/128] ("*Kelly*") at paras. 59–64.



[133] I begin with the nature of the discrimination. The sexual harassment took place over the course of just over one month. It was almost entirely verbal. The one exception is at the end of the October 24 encounter, when Mr. Yule touched Ms. Araniva while he was trying to hug her. At the same time, the harassment was direct and explicit. Mr. Yule's conduct on September 29 and October 24 was out of character and erratic, leading Ms. Araniva to fear that he was unpredictable. When Ms. Araniva resisted, she endured work-related consequences by having her hours of work reduced. She eventually lost the job altogether, and with it the opportunity she had hoped for of a long-term future growing with the company and taking on increasing responsibility.




[134] Next I consider Ms. Araniva's vulnerability. In my view, she was vulnerable. The harassment took place in Mr. Yule's home, while the two of them were alone. Mr. Yule is physically much larger than she is. Ms. Araniva was vulnerable as Mr. Yule's employee and, in particular, relied on Mr. Yule for her income, which she was using to support herself and her daughter.





[135] Although unknown to Mr. Yule, Ms. Araniva was also particularly vulnerable to this type of harassment because of a history of trauma. That history relates to events in Ms. Araniva's childhood and early 20s. I do not need to relate the details of those events for the purpose of this decision, except to say that on each occasion Ms. Araniva was the victim of harm at





the hands of a significant man in her life. Dr. Lindberg testified that a trauma such as those which Ms. Araniva has experienced can impact a person's psychological functioning for the rest of their lives. In particular, it can make the person vulnerable to decreased functioning if they are exposed to similar events later. In her expert report, Dr. Lindberg explained that Ms. Araniva's history represents "a risk factor for increased susceptibility to reduced emotional functioning when experiencing significant trauma and stress". Her previous experiences "may have reasonably made her more sensitive to perception of such risk in interactions with men and contributed to her interpretation of Mr. Yule's alleged actions as posing an imminent threat of harm". This vulnerability helps to explain the severity of Ms. Araniva's reaction to circumstances which may not have caused another person to suffer as greatly.

[136] This brings me to the factor I find most significant in this case: the effect of the discrimination on Ms. Araniva. It was extreme. 

[137] Immediately after she left Mr. Yule's home on October 24, Ms. Araniva texted her daughter to say that she was "so sick I want to throw up" and that "I want to cry but I'm on the bus". Her first concern was that she had just lost her only source of income and so her immediate worry was related to the need to quickly find new employment. However, at the same time, she was extremely fearful and anxious, at a level which Dr. Lindberg described as "disruptive to her functioning". Dr. Lindberg explains that one impact of this discrimination was to cause Ms. Araniva's old fears, related to past trauma, to re-emerge. Ms. Araniva developed physical symptoms that her doctor ultimately diagnosed to be caused by stress. Those symptoms were so severe that, on one occasion, Ms. Araniva fainted from pain. 

[138] Ms. Araniva became hyper-vigilant of her surroundings and worried constantly about encountering Mr. Yule. She avoided anything connected to Mr. Yule. She did not respond to his calls or texts and avoided any area where she might run into him. She could not sleep and, when she did sleep, suffered from nightmares. She says that she felt "scared for my life" and for her daughter's safety. She asked her long-time friend Mr. Cook to come and stay with her to make her feel safe. She had not done that before. Mr. Cook testified that, during this period, Ms. Araniva was scared to see Mr. Yule's truck, and mostly stayed at home. While she was out searching for work, she would take certain precautions, such as leaving Mr. Cook with the information about the interview so that he could check on her if necessary. 

[139] Ms. Araniva sought counselling to deal with the effects of the harassment. She first saw her counsellor when she felt her symptoms were getting worse and no longer manageable — this was in about February 2017, approximately four months after she left Mr. Yule's employment. This attests to the severity of Ms. Araniva's symptoms, and the length of time that they persisted. 

[140] Ms. Araniva is still recovering from the effects of these events. According to Mr. Cook, she is a different person than the one he knew before the discrimination took place. Whereas before, she was outgoing, trusting, and a 'free spirit', now Mr. Cook says that Ms. Araniva does not 

socialize as often, and is constantly fearful. Mr. Cook says that, to this day, Ms. Araniva tries to have a trusted man with her to feel safe. Ms. Araniva agrees that the events have changed her in these ways.

[141] Dr. Lindberg diagnosed Ms. Araniva with "other specified trauma and stress-related disorder". This diagnosis encompasses all but one of the criteria for post-traumatic stress disorder, which criteria was no longer present when Dr. Lindberg evaluated Ms. Araniva about a year after the events.

[142] Ms. Araniva says that, in all of the circumstances, an award of \$40,000 for injury to dignity, feelings and self-respect is appropriate. She relies on three cases: *Pardy v. Earl* (No. 4), [2011 BCHRT 101](#) [72 C.H.R.R. D/87], upheld in [2013 BCSC 1079](#) [77 C.H.R.R. D/197]; *Ratzlaff v. Marpaal Construction Ltd.*, [2010 BCHRT 13](#) [CHRR Doc. 10-0074]; *P.N. v. F.R.* (No. 2), [2015 BCHRT 60](#) [81 C.H.R.R. D/71].

[143] I disagree with Ms. Araniva's counsel that the discrimination in this case is like the circumstances in *Ratzlaff* or *P.N.* In *Ratzlaff*, in addition to sexual propositions like the ones in this case, the respondent forced his way into the complainant's hotel room, grabbed her throat, kissed her, grabbed her breasts and tried to rape her. The Tribunal awarded \$25,000 for injury to dignity. In *P.N.*, the respondent repeatedly sexually assaulted the complainant and treated her like an indentured servant. The Tribunal awarded \$50,000 for injury to dignity. In each of these cases, the impact of the discrimination on the complainant was severe. The discrimination in these cases was, in my view, of a more serious nature than what occurred here.

[144] I do find some similarities with *Pardy*. In that case, the complainant was vulnerable because of a pre-existing anxiety disorder. She developed post-traumatic stress disorder as a result of the harassment, which was mostly verbal and took place over the course of a single evening. The Tribunal awarded \$22,500 for injury to dignity.

[145] Ultimately, however, I do not find that the comparison with these cases undermines Ms. Araniva's claim. Those cases are now several years old. Since they were decided, the BC Court of Appeal has upheld an award of \$75,000: *Kelly*. The trend for these damages is upward: *Biggings v. Pink*, [2018 BCHRT 174](#) [92 C.H.R.R. D/1] at para. 163; *A.B. v. Joe Singer Shoes Ltd.* (No. 6), [2018 HRTO 107](#) [88 C.H.R.R. D/262]; *G.M. v. X Tattoo Parlour* (No. 2), [2018 HRTO 201](#) [90 C.H.R.R. D/114].

[146] The purpose of this award is to compensate Ms. Araniva for harm that she has suffered because of discrimination and, in this case, the harm was significant. I order the respondents to pay Ms. Araniva \$40,000 for injury to her dignity, feelings, and self-respect.

VI. CONCLUSION

[147] I have found that the respondents discriminated against Ms. Araniva in her employment on the basis of her sex, in violation of [s. 13](#) of the [Code](#). I order as follows:

- a. Pursuant to [ss. 37\(2\)](#)(a) and (b) of the [Code](#), I declare that the respondents' conduct was discrimination contrary to the [Code](#), and I order them to cease the contravention and refrain from committing the same or a similar contravention.
- b. Pursuant to s. 37(2)(d)(ii), I order the respondents to pay Ms. Araniva \$8,000 as compensation for wages lost as a result of the contravention.
- c. Pursuant to s. 37(2)(d)(ii), I order the respondents to pay Ms. Araniva \$4,336 plus the cost of Dr. Lindberg's in-person testimony as compensation for expenses incurred as a result of the contravention. I retain jurisdiction over any disputes that may arise about the amount of Dr. Lindberg's final invoice. The parties should resolve that issue within three months of this decision.
- d. Pursuant to s. 37(2)(d)(iii), I order the respondents to pay Ms. Araniva \$40,000 as compensation for injury to her dignity, feelings, and self-respect.
- e. I order the respondents to pay Ms. Araniva pre-judgment interest on the wage loss award until paid in full, based on the rates set out in the [Court Order Interest Act](#) [R.S.B.C. 1996, c. 79].
- f. I order the respondents to pay Ms. Araniva post-judgment interest on all amounts awarded until paid in full, based on the rates set out in the [Court Order Interest Act](#).

NOTES

1. Mr. Yule and Ms. Nokleby testified that aspects of this affidavit were inaccurate due to the fault of the lawyer representing them at the time. I have accepted that explanation and, in this decision, only rely on statements made in the version of the affidavit which they say is accurate.

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