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

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

B E T W E E N:

PN

**COMPLAINANT**

A N D:

FR and MR

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member:	Catherine McCreary
Counsel for the Complainant:	Devyn Cousineau
For the Respondents:	FR
Dates of Hearing:	March 16-19, 2015
Location of Hearing:	Vancouver

## I INTRODUCTION

[1] PN has complained that both of the respondents, FR and MR, have discriminated against her on the basis of her sex, family status, age, race, ancestry, colour and place of origin, contrary to section 13 of the *BC Human Rights Code*.

[2] PN is a mother from the Philippines. She was hired through an agency to work in the respondents' home in Hong Kong as a housekeeper and caregiver to the respondents' two children. She worked for the respondents in Hong Kong for about one year. She came with the respondents when they moved to Canada and worked for them here. She was here for about six weeks when she fled their home, which was a two-bedroom suite in a hotel. She says that, for much of her employment, she was the victim of ongoing sexual assault by FR and harassment, including assault, by MR.

[3] Once she left the respondents' hotel, PN stayed at a secure women's shelter for victims of human trafficking. PN was without resources as she had no visa for work in Canada and she could not qualify for income assistance. FR made a number of efforts to have her returned either to Hong Kong or to the Philippines.

[4] The respondents say in their response that they did not discriminate against PN on any of the alleged grounds. The respondents sought to dismiss the complaint under s. 27(1) of the *Code*. The application was only partially successful. See: *PN v. FR and another*, 2015 BCHRT 4. Those aspects of the complaint that occurred outside of Canada are outside the jurisdiction of the Tribunal and are not part of the complaint. In addition, the parties' names have been anonymized.

[5] The original complaint was joined with a complaint under s. 43 of the *Code* that the respondents had retaliated against PN for filing the complaint by sending a letter threatening legal action in Hong Kong and demanding payment of damages. Copies of the letter were sent to a number of other recipients.

[6] I earlier ruled that, at the outset of the hearing, the respondents could make an application to dismiss the retaliation complaint. No oral submissions were made but there was a written submission claiming that the Tribunal is without jurisdiction to decide the retaliation complaint.

## II HEARING LOGISTICS

[7] The hearing was held in Vancouver. FR provided a doctor's note that he was medically unable to fly from his residence in Hong Kong to Vancouver. The complainant had time pressures and sought an early hearing. After mid-April, she may not have been able to appear for a significant time, or at all. Accordingly, taking the competing positions into account, the hearing was ordered to occur in March 2015. At his request, the respondents, particularly FR, would access the hearing by videoconference. I ordered it to take place in the afternoons to account for the time difference between Vancouver and Hong Kong.

[8] At the opening of the hearing, the respondents had not accessed the videoconference. The hearing commenced in their absence. During the hearing, it became known that FR sought to attend the hearing via conference call. Arrangements were soon made for that to occur and FR attended the rest of the day's hearing by phoning in and listening to the evidence.

[9] For the remaining days of the hearing, FR appeared by videoconference. MR did not appear at any time in the hearing; she was represented by FR. With the exception of FR himself, all of the respondents' witnesses physically attended the hearing in Vancouver.

[10] Cantonese interpretation was provided for the respondents and Tagalog interpretation was provided for the complainant.

## III THE EVIDENCE

[11] I heard from a number of witnesses in the hearing. I have not catalogued the evidence of each witness. The following are my findings of fact from the evidence led at the hearing. I am entitled to accept some, none or all of a witness' testimony. Where there was a disagreement in the evidence, my findings and reasons therefore are set out. In resolving conflicts in the evidence, and determining whether to accept the evidence of any witness, in whole or in part, I have adopted and applied the tests set out in *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186 (citations excluded):

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 assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his [or her] memory, the ability to resist the influence of interest to modify his [or her] recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his [or her] 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.

[12] As noted above, FR was not present for some of PN's evidence. However, her evidence while he was absent was not that different from that contained in her affidavit filed regarding the application to dismiss. FR was present for PN's evidence concerning the events that she said occurred in Richmond. When given the opportunity, FR was not very extensive in his cross-examination of PN, confining it to only three questions.

[13] MR did not testify, thus did not deny or give contrary evidence to that given by PN. FR testified but did not deny much of what is contained in the complaint or what PN said in her testimony. The exception was a general comment he made that the respondents did not abuse PN.

## **HONG KONG**

[14] As was ruled in the earlier decision, the events that are said to have occurred in Hong Kong do not form part of the complaint because the Tribunal does not have jurisdiction over employment outside of BC. However, evidence of events in Hong Kong was tendered for the purposes of background.

[15] PN was born in, and lived in, the Philippines. She has two children there. At the time of these events, she was age 28. In order to be able to provide for her children, PN underwent training in the Philippines. She was associated with an employment agency but she had to pay for the training. She borrowed the money to pay for the training. She commuted from her village to Manila. PN's father and sisters care for her children while she is away.

[16] The employment agency obtained information, including a promise by PN to be hardworking. They also had her photograph, her physical description and whether she would agree to certain matters. Many were listed. Some of the areas are:

- Are you willing to care and sleep with babies/children during midnight?
- Are you willing to accept your day-off on weekdays or assigned by your employer?
- Are you willing to return home before 9:00 p. m. during your day off?
- Can you promise not to use telephone without permission from your employer?
- Are you willing to cut your hair short if your employer required?
- Are you willing to go with your employer if they travel to another country?

[17] The agency secured PN employment with the respondents. She had to borrow money to pay for her travel from the Philippines to Hong Kong. Once in Hong Kong, she had a contract of employment with the respondents, signed by MR. PN was to live with the respondents in their residence and they were to provide her with food. PN was required to give one month's notice if she sought to leave. PN's contract said she would get the sum of 3,740 Hong Kong Dollars per month. At the time of the hearing, this amounted to about \$600 Canadian.

[18] The respondents have two children and PN was involved with their care as well as household duties. PN would start her duties at about 5:30 am and work until after 11:00 pm. She was given no time for a break. She said she had to eat her food while standing. If MR saw PN sitting down she would deduct some of her wages as a penalty. Her paycheques reflect this. She was also charged for breakage, when she broke something belonging to MR.

[19] The respondents employed another Filipino woman. PN witnessed MR complain to the employment agency when another domestic helper ate the family's food. PN said that when this woman left their employment she told PN to watch out for FR.

[20] After she left, the respondents hired another Filipino woman who worked with PN. PN shared a room with the other domestic worker in the respondents' residence. They became friends.

[21] PN testified that MR would often speak to her in a very demeaning way. She would accuse her of being evil. She would yell at her and constantly told PN to carry out various chores. PN complained to the agency about her treatment at the hands of MR but the agency took no action and told her it would be OK.

[22] PN said that MR would claim that the family had a dispute with an individual and the family would hire someone to kill that person. She says that it made her afraid; especially when the respondents knew where her children lived.

[23] PN said that, after the first woman left the respondents' employ, FR started to sexually harass her. She said that there was CCTV in the residence and that FR would disconnect it when MR was out of the residence. She said that FR would put lotion on her hand and make her stroke his penis. FR told PN not to speak of this to MR or to the other worker. PN had to repeat this 2-3 times per week.

[24] FR would remind PN that she needed to keep her job so she could send money home to her children. He would remind her that she had debts to repay. PN obeyed FR. PN was intimidated. She did not complain to MR about FR. She did what FR ordered her to do. She felt that she had no choice. She did not think that the employment agency would do anything if she reported it to them.

[25] When the respondents decided that they wanted to come to Canada to allow their children to go to school here, they allowed the children to decide which of the women working for the respondents they would like to bring with them to Canada. The children chose PN. FR said it was because her English was better.

[26] When PN at first did not agree to come to Canada, FR pressured her to join them in Canada. He told her that it would be good for her as there was much opportunity and she would be able to benefit her own children. He took her to the Canadian consulate in Hong Kong and he arranged for her to have a visa to accompany them. MR then had her sign an agreement that said:

This is a letter to confirm our schedule to Canada in July of this year. To under our working contract between you and me, the salary and working condition are based in Hong Kong. But it will be extended to Canada and was agreed by both of us. The conditions are as follows:

- 1) Salary is Hong Kong \$3740.00 in monthly.
- 2) Have one day off for weekly and public holidays by follow Hong Kong calendar.
- 3) Will have medical insurance coverage.
- 4) Have whole day meals provided.
- 5) Working time may be same as Hong Kong or shorter depends on Canada condition.

The round trip air tickets for Hong Kong and Canada are provided by us.

To protect our benefit, I also expect you to promise us you should pay back our money for visa fee, tickets money just in case you suddenly to say don't go to Canada with our family or break the contract.

(The visa fee is Hong Kong \$600 and tickets fee is Hong Kong \$13,000.)

If you break the contract, please you follow Hong Kong law by give us one month notice or give one month salary if you leave hurry.

To under the labour law in Hong Kong, any helper do criminal action or make serious trouble, the employer no need pay any money to terminate the helper, so please pay attention and keep good manner in this family.

Actually, we are nice to helpers and want to keep good relationship to all, but if we find anyone against my family, I should let her out and don't give any money.

Of course, I hope everything fine for us and we can enjoy the Canada life and don't want to see any unhappy things happen.

Please sign the below and return for me. Thanks very much for your help our family and wishing you all the best in the future.

(as written)

[27] Thus, PN could not change her mind after signing this agreement without becoming responsible to pay a staggering amount of money; almost four months' wages.

In addition, PN says that the respondents confiscated her passport. FR says that it was held for safekeeping.

[28] As it turned out, the visa secured for PN was for 3 months and was a visitor's visa. It is notable that FR testified that the visit was limited to three months but nothing in the documentation with PN shows that. PN did not speak as if she knew the engagement was limited.

[29] MR told PN she did not need to bring all of her belongings, as she would get new ones purchased in Canada. The family arrived in Richmond on July 7, 2013.

### **RICHMOND**

[30] It was the respondents' intention to buy a house in Richmond. They moved in to a suite in a hotel near the airport while their house was being purchased and made ready for them to occupy it. The hotel suite had two bedrooms and a small kitchen area. The hotel provided a complimentary breakfast buffet.

[31] FR stayed in the master bedroom with his son. There was a bathroom as part of the master bedroom. MR stayed in the other bedroom with her daughter. PN had to sleep on the couch in the living area. Her clothes were kept in a dresser drawer in MR's room. MR had to pass PN to get from her room to the suite's other bathroom. The couch that PN slept on was easily seen from both bedrooms. There was no room to open the couch into a bed. PN had no private space. PN had nowhere she could retreat to be at rest and alone.

[32] FR was asked in cross-examination why he did not provide another hotel room for PN. He replied with a rhetorical question of "she was the domestic helper; if she didn't stay with us, why would we bring her?"

[33] PN testified that she followed much the same schedule in Canada that she had in Hong Kong. She would rise around 5:30; FR would rise around 6:00 am. The rest of the family rose around 7:30 to 8:00. She said she would groom herself and then start working. She would iron clothes, prepare milk for the children and pack their backpacks for the day. She would help them with their morning grooming and either take them to the restaurant or go get food from there to bring back to the hotel room.



[34] Even though the hotel provided cleaning service, it was only once per week. PN said she had a lot to do and that, whenever she was idle, MR would assign her more work. MR said she would deduct wages if she saw PN sitting down.

[35] PN was only allowed to eat food with the permission of MR. She was not allowed to eat the food in the fridge without permission. She was not allowed to go downstairs without permission. MR would threaten to report PN to the employment agency if she ate too much. PN said she was usually hungry.

[36] PN said that her usual day was to go out with the respondents and look for furniture for the new home. The family travelled together. They would usually eat lunch at a restaurant. PN would not order food for herself. She had to feed the respondents' daughter before she could eat. Her food was apportioned to her by MR.

[37] Sometimes the family went out for dinner at a restaurant or to the home of a relative of MR. MR apportioned PN's food at these times as well. PN could only eat after the daughter ate. Two witnesses called by the respondents confirmed that, at such occasions, the conversation took place in Cantonese. PN does not understand Cantonese. The witnesses were called to show that the respondents treated PN like family. None of the witnesses knew her name. They knew her only as the maid.

[38] I note that much of the evidence of these witnesses was not helpful to the respondents. They knew only of a limited number of interactions. They were not aware of the relationship or the dynamics between the parties. In some respects, their evidence supports that of PN, where they agreed that MR controlled the food that PN ate, that she was quiet and that she helped with the work, even when the family was out for dinner.

[39] On their arrival in Canada, MR took PN to a bank to obtain Canadian money for her wages already earned in June. She received \$454.76, Canadian. That was the only money that PN received in Canada from the respondents. FR claims that PN's July wages were directly deposited in a bank account in the Philippines but PN has not been able to access the money despite concerted effort. There is no proof that the wages were deposited or that PN can access them.

[40] PN was provided with a cell phone because she went with the children everywhere and was not familiar with the area. She had a phone card that needed to be filled up for her to use it. Her phone had no data capability so she could not use programs to keep in touch with her friends and family overseas.

[41] PN was not allowed to befriend anyone from the Philippines who worked at the hotel. If anyone spoke to her, she would explain that she couldn't talk to them. She did not know anyone in Canada. She was to have her day off, on Friday or Tuesday but not on Saturday or Sunday, which were days she might be able to meet up with other Filipinos. PN said that she had to finish her work before she could leave on her day off and she had to be back at the hotel by 9:00 pm.

[42] In Canada, at times when MR was away, FR resumed his sexual assaults on PN by again forcing her to stroke his penis with lotion on her hand. This occurred about two times a week. She said one time the daughter was in the suite but FR locked himself and PN in the master bathroom and PN had to comply until she managed to leave when the daughter called out to her. She said FR would often look at her while she was on the sofa, readying for sleep. He would leave the door open so that he could be silent in the night if he came into the room where PN was.

[43] One time, when PN was sleeping, she awoke early in the morning to find FR showing her his penis. PN said she covered herself in her blanket and asked him to leave, which he did. He warned her that she would be sent home if she told anyone and that she should be worried about her children. He said that if she told MR, there would be big trouble for her.

[44] PN's interaction with MR worsened in Canada. MR was always yelling at PN. She called her names like "garbage," "stupid," "evil." She was mad at PN every day. MR would laugh at PN because of how she looked. Once, in front of her friends, MR said that PN looked like a witch. MR would make fun of PN in front of people, causing embarrassment and humiliation. PN said it made her cry.

[45] PN said that MR would laugh when the daughter treated PN physically by kicking or punching her. The daughter then would not listen to PN because her mother was laughing.

[46] PN said she became more and more depressed by her treatment by the respondents in Canada. She began to think that if she didn't get away she would fade away or die.

[47] Once, PN said she accidentally hit the daughter in the leg while closing a door in the bathroom. The daughter reported the incident to MR who threatened PN that she would lie to the authorities and claim that the daughter was hurt by PN.

[48] There was another incident when the family was at a mall. There were a number of packages that they had purchased and they were waiting for FR to come with the car. MR got angry with PN and grabbed her arm so hard it caused a significant bruise.

[49] When PN got in the car, she couldn't hold back her tears. FR testified he knew she was crying but did not ask her what was wrong or what happened. Later, having lunch in a restaurant, MR said that PN should call the police to complain about the assault but that, if she did, MR would claim that PN had injured the daughter. PN said she would never hurt the daughter, who was the same age as her own daughter.

[50] The next day, FR again tried to have PN rub his penis with lotion. PN was feeling very depressed. She said she didn't know what to do. If she stayed longer, she was afraid that they would accuse her of things she didn't do. If she left, she wouldn't be able to continue to send money back to her children or repay her debts.

[51] She decided to walk away from the hotel.

### **THE ESCAPE**

[52] The afternoon of August 18, 2013, PN had a chance to empty the garbage. She grabbed some things and walked away from the hotel. She had no money, no passport, no extra clothing, no toiletries, and no eyeglasses – nothing. She knew no one. This experience of escaping would become one of the most traumatic aspects of her relationship with the respondents.

[53] She came across a hotel employee that she knew was Filipino. She asked directions to the Philippine Consulate and she went on the skytrain to the location. Upon arriving, she was told that it was not open because it was Sunday. She got some help from

a Filipino working in a store. PN called the police from the store and talked to them. She said they told her that the jurisdiction for solving her problem was in Hong Kong, not in Canada.

[54] That evening, she went to stay with the woman from the store. She turned her phone off because she was afraid the authorities could find her and she did not want to involve the woman. PN was very conflicted. Her host told her that she should go back to her employer and that, if she was deported, she could never work abroad again. She thought her picture would be posted everywhere.

[55] PN thought that she had no choice and should go back. She turned on her phone and sent a message to FR. FR had earlier reported to the police that PN was missing.

[56] Soon after she sent the message to FR, PN received a phone call from Cst. Chan from the RCMP. He told her not to worry and that he wanted to hear her side. They arranged for her to meet him.

[57] There was a mix-up and she began to send and receive text messages with FR when she thought she was communicating with Cst. Chan. When she said she would meet him at a Richmond mall, she thought she was communicating with Cst. Chan, not FR.

[58] When she met with Cst. Chan she told him some of what happened while living with the respondents. She was not immediately forthcoming about the sexual assaults. Cst. Chan said he wouldn't make her go back. She told him that the respondents still had her passport, her eyeglasses and other possessions. Later, Cst. Chan gave her the passport and a jacket. He gave her a voucher for a shelter but she didn't know where it was so she stayed at the mall.

[59] A Filipino employee at the hotel where the respondents stayed telephoned her. He told her that she should return to FR. He said that FR had asked him to call her. He told her not to make any trouble. She said she didn't want to hear from him again.

[60] She also had text messages from the friend with whom she worked at the respondents' in Hong Kong. Later, she learned that her friend's new employer was in contact with MR and said that MR would give PN everything that she needs if she decided to come back. Weeks later, they messaged each other about what MR had been

saying about PN; suggesting that PN was not doing her job well. They made comments about how PN was no longer supporting her children. That friend frequently asked the status of PN's visa.

[61] At the mall, PN began speaking with some church people and told them some of her situation. They were very kind and arranged to have her go to Surrey and stay at a small house in the compound of their church. She was given food. Later, they took her to a house in Burnaby where she stayed for a further few days. They also recommended that she go to Deborah's Gate.

[62] Deborah's Gate is a specialized program of care that serves international and domestic women who have been trafficked into situations of sexual exploitation or labour and who are in need of protective and restorative housing and healing. There is a confidential and secure location of Deborah's Gate which grants victims of human trafficking safety and refuge with access to staff support 24 hours a day. Deborah's Gate has capacity to house ten survivors of human trafficking for varying time periods. It offers a variety of in-house and community programs that teach basic life and living skills, coping mechanisms and trauma care, and goal development. It takes referrals from all over Canada.

[63] In her initial assessment, PN referred to the sexual assaults by FR and the physical assault by MR plus she described the conditions in which she was kept and the treatment she received. Deborah's Gate immediately provided PN with some clothing and toiletries. They gave her a safe place to stay and heal. She accessed a counselor, once she was there for a while. She also met with people to help with her immigration status and met a lawyer who helped her file this complaint. She lived at Deborah's Gate for almost one and a half years.

[64] When she first came to Deborah's Gate, the staff found that she was malnourished and sleep deprived. She would not make eye contact with staff or other residents. She often cried in her room. She would ask for permission to do the most mundane things. It was clear to the staff person who testified that PN had been traumatized.

[65] PN was able to access counseling at Deborah's Gate. Her counseling sessions were with an expert in trauma recovery who testified about her condition. PN suffered

from nightmares and flashbacks. She still has problems when she smells the lotion FR used in her sexual assaults. She can't go to the Richmond mall without it bringing back terrible memories.

[66] FR cross-examined the counselor and asked how she knew whether PN was telling the truth. The counselor said that the signs and symptoms were all there and it would be nearly impossible to feign them. I am satisfied that the counselor made an accurate assessment of the condition that PN was in after staying with the respondents.

[67] I asked her how to differentiate the harm PN suffered in Hong Kong and that in Canada. The counselor said that PN's condition was more fragile because of what she endured in Hong Kong. She said that the terror arising from the escape was a serious factor that added to the trauma inflicted while she was living with the respondents.

[68] The counselor spoke of the indicators of power and control that can exist. Her written opinion contained a "Power & Control" diagram that she said it is a particularly helpful tool to understand the overall pattern of abusive and violent behaviours that are used by someone to establish and maintain control over someone else. Very often one or more violent incidents are accompanied by an array of other types of abuse. These other types may be less easily identified yet firmly establish a pattern of intimidation and control in the relationship. Those factors are set out below along with the evidence from the hearing of where those factors may be present here:

Type of Control	Types of Associated Behaviour	Evidence of PN's Experience
COERCION AND THREATS:	<ul style="list-style-type: none"> <li>• Making and/or carrying out threats to do something to hurt her.</li> <li>• Threatening to leave her, commit suicide or report her to welfare.</li> <li>• Making her drop charges.</li> <li>• Making her do illegal things.</li> </ul>	Through their counsel, after she left, the respondents have made threats towards PN. They used others to try to talk to her; telling her not to cause trouble. They also used Canadian authorities at the RCMP and Canada Border Services to impact PN's future, after it was of no impact to them, whether or not she stayed in Canada.

Type of Control	Types of Associated Behaviour	Evidence of PN's Experience
INTIMIDATION:	<ul style="list-style-type: none"> <li>• Making her afraid by using looks, actions, and gestures.</li> <li>• Smashing things.</li> <li>• Destroying her property.</li> <li>• Abusing pets.</li> <li>• Displaying weapons.</li> </ul>	<p>MR would use these tactics when dealing with PN; there was at least one physical assault.</p> <p>MR limited the amount of food that PN could consume.</p>
EMOTIONAL ABUSE:	<ul style="list-style-type: none"> <li>• Putting her down.</li> <li>• Making her feel bad about herself.</li> <li>• Calling her names.</li> <li>• Making her think she's crazy.</li> <li>• Playing mind games.</li> <li>• Humiliating her.</li> <li>• Making her feel guilty.</li> </ul>	<p>MR used these tactics when dealing with PN. She was regularly belittled and humiliated by MR.</p> <p>FR made PN feel guilty about leaving her children behind. Both put her in fear of her job.</p>
ISOLATION:	<ul style="list-style-type: none"> <li>• Controlling what she does; <ul style="list-style-type: none"> <li>- who she sees and talks to,</li> <li>- what she reads,</li> <li>- where she goes.</li> </ul> </li> <li>• Limiting her outside involvement.</li> <li>• Using jealousy to justify actions,</li> </ul>	<p>PN had to ask permission to leave the hotel suite. While she could leave to go fetch breakfast from the buffet, she was expected to immediately return.</p> <p>When the family traveled they did so together.</p> <p>PN could not use her phone while at work. The only people she contacted lived outside Canada.</p> <p>She was told not to speak with any Filipino who worked at the hotel.</p> <p>When the respondents were visiting people or having dinner at a relative's house, everyone spoke in Cantonese; a language unknown to PN.</p>

Type of Control	Types of Associated Behaviour	Evidence of PN's Experience
MINIMIZING, DENYING AND BLAMING:	<ul style="list-style-type: none"> <li>• Making light of the abuse and not taking her concerns about it seriously.</li> <li>• Saying the abuse didn't happen.</li> <li>• Shifting responsibility for abusive behaviour. Saying she caused it.</li> </ul>	<p>Those associates and relatives did not know her name; she was merely the maid.</p> <p>While their denial may be understandable from the point of view of the legal process at the Tribunal, I note that the respondents deny the behaviour occurred.</p>
USING CHILDREN:	<ul style="list-style-type: none"> <li>• Making her feel guilty about the children. Using the children to relay messages.</li> <li>• Using visitation to harass her.</li> <li>• Threatening to take the children away.</li> </ul>	<p>The respondents used both their own children and PN's children to make her feel guilty.</p> <p>PN was worried about her children from the Hong Kong conversations she had with MR where MR claimed that they arranged to kill their enemies.</p>
ECONOMIC ABUSE:	<ul style="list-style-type: none"> <li>• Preventing her from getting or keeping a job.</li> <li>• Making her ask for money.</li> <li>• Giving her an allowance.</li> <li>• Taking her money.</li> <li>• Not letting her know about or have access to family income.</li> </ul>	<p>The respondents excelled at this way of exerting their power.</p> <p>Her contract contains a huge penalty if she does not comply.</p> <p>PN was never paid for her work in Canada. Her passport was confiscated in the name of safekeeping.</p> <p>In addition, the working conditions and the amount of wages in the contract are in contravention of the law in BC.</p>
MALE PRIVILEGE	<ul style="list-style-type: none"> <li>• Treating her like a servant.</li> </ul>	<p>PN was a servant in every way.</p> <p>FR used her for sexual pleasure as he wished and he threatened</p>



Type of Control	Types of Associated Behaviour	Evidence of PN's Experience
	<ul style="list-style-type: none"> <li>• Making all the big decisions. Acting like the "master of the castle".</li> <li>• Being the one to define men's and women's roles.</li> </ul>	her to keep it quiet.

[69] While at Deborah's Gate, PN slowly took back her personal agency and showed signs of recovery. She began to look at people in the eye and her English started to improve. She took a training course for cooking, even though she could not be employed.

[70] PN cannot work in Canada, nor does she qualify for Social Assistance. She still has to rely on the charity of others and still cannot support her children. She is still very ashamed of what happened which was described as a common reaction to abuse.

### **STEREOTYPES AND PREJUDICES OF FILIPINO WORKERS, ESPECIALLY IN HONG KONG**

[71] Dr. Anna Guevarra is the Director, Asian American Studies, at the University of Illinois at Chicago. She is an expert in immigrant labour; global carework (specifically domestic work); gender and migration; Filipino and Philippine studies; race and ethnicity. An expert's report from her was submitted into evidence. There was no objection from the respondents.

[72] Dr. Guevarra's report says that the stereotypes or prejudices that apply to Filipino domestic workers revolve around characteristics that mark them as "docile" workers. That is, Filipino domestic workers are often marketed as obedient, hardworking, God-fearing, loyal, honest, cooperative, and compliant. At the same time, she says that they are also promoted as highly educated, skilled, and exhibiting a high tolerance for stressful conditions.

[73] Dr. Guevarra says that, in general, Hong Kong employers typically stereotype foreign domestic workers, and especially Filipino women, as carrying a particular kind of "modernized" sensibility that makes them morally suspect. Hong Kong employers are said to perceive Filipino domestic workers' sense of independence and readiness to leave

their families in the Philippines not as a sign of filial piety, but instead, as a sign of financial desperation that could lead to acts of transgression. She notes that these perceived transgressions are often of sexual nature, such as seducing a male member of the household or engaging in sideline sex work for the purposes of permanent residence and financial security. Thus, the Filipino workers are often seen as a threat to the female employer of the household. As a result, Filipino domestic workers' physical appearance or attractiveness, such as their clothing, hairstyle, and physical adornments have all become routinely subject to scrutiny and discipline.

[74] The stereotypes or prejudices relate to factors like sex, race, place of origin, and age especially when it comes to domestic work. In terms of their gender, or sex, the stereotypes and prejudices that govern how Filipino domestic workers are perceived often relate to them being women. As Filipino women, they are perceived to be “naturally inclined” to perform this kind of domestic care work, even as they are “naturally” or “culturally” inclined to exhibit morally suspect behaviours.

[75] These views of Hong Kong employers, makes Filipino domestic workers “ideal,” highly sought-after, or employable workers, even as they are simultaneously perceived as a threat to the Hong Kong moral order and social hierarchy.

[76] Race and place of origin also have bearing on how these stereotypes play out in the lives of domestic workers. Filipino women are perceived to come from a poor nation that is unable to provide any viable employment and has created a class of workers who are desperately trying to leave their country. Relatedly, the preference for Filipinos as care workers/domestic workers is often guided by the perception that workers from the Philippines possess a work ethic and values related to family, loyalty, and authority that translate to their docility in the workplace. These characteristics are pitched as cultural (if not biological), and therefore, unique to the racial make-up of Filipinos. This is in addition to the racialization of Filipino workers as coming from a country with the linguistic advantage of English language proficiency.

[77] Age also impacts the racialization and gendering of the stereotypes that construct Filipino women as ideal domestic workers. Foreign employers often correlate age to be a reflection of strength, health, docility, and efficiency and therefore prefer to hire domestic

workers under the age of 35, with a preference for workers in their 20s. Live-in domestic workers typically work anywhere from 14-18 hour work days and get one day off. The daily work schedule is fairly regimented with specific tasks and deadlines that require a certain kind of efficiency. Domestic workers' résumés, in the form of so-called "biodata" that is collected at the time of their recruitment, includes questions about age, height, and weight and is accompanied by a full body photograph. PN's application form contained much of this information.

[78] Dr. Guevarra says that it is widely documented, in the literature, that the stereotypes and prejudices contribute to or exacerbate the exploitation or abuse of Filipino domestic workers. For example, labour brokers who essentially manage the recruitment and employment process for domestic workers, act upon these stereotypes by specifically outlining the job requirements and by asking workers to agree to a range of behaviours that demonstrate their explicit submission to their employer's authority.

[79] These include those pertaining to time management, curfew hours on their days off, household regulations about phone usage or visitors, food consumption, physical appearance with respect to clothing, hair, and make-up, personal hygiene, and willingness to move with their employers – all of which operate to structure a relationship based on rendering workers vulnerable to abusive employers as it creates a perception that they serve at the whim of their employers, and do not have any recourse against them. That is, these regulations are fundamentally aimed not only at meeting employers' expectations of their maids, but more importantly, protecting them from any potential complaints and challenges from workers. The employment agency sought similar answers from PN.

[80] Dr. Guevarra says that these stereotypes and prejudices also empower employers to exercise their authority over their workers in ways that contribute to the workers' exploitation. Her report states:

- First, employers do not expect Filipino domestic workers to complain or protest about any aspect of their job. Instead, employers expect them to submit to their authority unquestioningly, as gratitude for their employment.
- Second, employers often contain or isolate their employees in their household, largely because of their own fears that commingling with other workers will promote an awareness or consciousness about domestic labor

rules and rights, and allow workers to organize to improve their wages and living conditions.

[81] As a result, she says that employers create conditions that seek to assert their authority and the subordinate position of the domestic workers by developing and enforcing regimented work schedules and enacting household rules that aim to control their employees' behaviours, bodies, and lives.

[82] In answering why Filipino domestic workers are likely to endure poor working conditions, Dr. Guevarra says that the first likely reason is that they are in debt after paying for the exorbitant placement fees recruitment agencies in the Philippines charge, in addition to the cost of training and travel. Also, most domestic workers take out multiple loans, often from lending agencies that charge inflated interest rates. Therefore, workers end up accruing a huge financial debt, which often takes years to repay. Therefore, most workers cannot afford to lose their job and be rendered unable to repay their debt.

[83] Second, she says that most Filipino domestic workers pursue overseas employment in order to support their families' livelihood, including education for their siblings and/or children. A large proportion (often half) of the monthly earnings of domestic workers are remitted to their families every month, directly supporting their families; often sustaining the daily living requirements of a multi-generational household, enabling the purchase of homes and cars, subsidizing college or private school education of their siblings and children, or providing the capital for starting a new business.

[84] From 1985 onward, these remittances have contributed a greater share of the Philippines' Gross Domestic Product. Today, she says, these remittances represent at least 10% of the country's GDP. Thus, some workers more aptly refer to themselves as "heroes" to their families. And as such, these families depend heavily, and sometimes solely, on the income derived from the overseas work of Filipino domestic workers who must often endure poor working conditions in order to fulfill this familial obligation.

[85] Additionally, she says that a domestic worker's familial status such as that of being a mother plays an important role in exacerbating the workers' dependence on her income due to the cost attached to raising a child - basic living requirements such as food,

clothing, and housing are quite high. Many of them desire to put their children through private schools, which they believe will provide a better education and therefore a greater likelihood of a good job.

[86] Finally, she says that most domestic workers pursue overseas employment and endure their poor working conditions because there are simply no viable jobs in the Philippines that would provide the kind of earnings that are remotely comparable to what they would earn as domestic workers abroad. A typical monthly wage of a domestic worker in the Philippines ranges anywhere between 2,000-5,000 Philippine pesos a month (\$45-\$113 US Dollars) in a country with a steady unemployment rate of 6% and an underemployment of 18.7% according to the 2014 census figures.

#### **IV ANALYSIS AND DECISION**

##### **Positions of the Parties**

[87] PN claims that she was discriminated against on the basis of the number of protected characteristics making up the stereotypes and prejudices of Filipino workers. She says that she was sexually harassed and exploited because of this and she has been harmed.

[88] FR said that they hired PN and treated her like a member of the family and they didn't discriminate against her. FR submitted that what PN said did not happen but he did not point to any evidence that contradicted her. He said they had no choice about the small space in which they lived and concluded that her real purpose in coming to Canada was to run away. He reiterated that she has breached her contract.

##### **DISCRIMINATION**

[89] The requirements of a *prima facie* case of discrimination were affirmed by the Supreme Court of Canada in *Moore v. British Columbia*, 2012 SCC 61. To demonstrate *prima facie* discrimination, complainants must show that they have a characteristic protected from discrimination; that they have 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 disprove or justify the conduct or practice.

### **Protected Characteristics**

[90] In *Radek v. Henderson Development (Canada) Ltd.*, 2005 BCHRT 302, the Tribunal looked at the effect of multiple protected grounds intersecting. In that case, as here, the allegation of discrimination included race, colour, and ancestry. Here, the grounds of family status, sex and age are added. In *Radek* (at para 463) the Tribunal held that the grounds cannot be separated out and parsed on an individual basis. The complainant is an integrated person, with a number of characteristics, some of them protected under the *Code*, all of which are alleged to have been factors in how she was treated. That is also the case here. As can be seen from the opinion of Dr. Guevarra, the combination is what the labour brokers promote to their clients.

[91] The Tribunal, in *Radek*, noted that the interrelationship between intersecting grounds of discrimination is sometimes described as “intersectionality”, and showed how that concept had been discussed in a number of decisions, including: *Morrison v. Motsewetshe* (2003), 48 C. H. R. R. D/51 (H. R. T. of Ont.); *Comeau v. Cote*, [2003] BCHRT 32; and *Baylis-Flannery v. DeWilde (No. 2)* (2003), 48 C. H. R. R. D/197 (Ont. H. R. T. ). As described in *Baylis-Flannery*, “[a]n intersectional analysis of discrimination is a fact-driven exercise that assesses the disparate relevancy and impact of the possibility of compound discrimination. “ (at para. 143. )

[92] Applying this analysis, I conclude that PN has many characteristics protected by the *Code*. She is a young mother from the Philippines and these protected characteristics are age, sex, family status, colour, ancestry and place of origin. Discrimination under any of these characteristics could amount to a violation of s. 13 of the *Code*, as is claimed here.

### **Adverse Impact - Sexual Harassment**

[93] PN must establish that she has suffered an adverse impact from the discrimination. One aspect of the adverse impact claimed is the sexual assaults on her by

FR that amount to sexual harassment of her by her employer. The law surrounding an allegation of sexual harassment was first set out by the Supreme Court of Canada in *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S. C. R. 1252, where it found that sexual harassment amounted to discrimination on the basis of sex. Sexual harassment is defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment.

[94] When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim, both as an employee and as a human being. (at para 56)

[95] PN testified in a clear and straightforward way, not unmoved by the emotional toll involved in repeating her description of the events. In cross-examination, FR asked PN why she didn't yell out in their small suite and have him caught. She testified that he had told her to keep it quiet and she obeyed. In addition, I note that, as discussed below, her relationship with MR was one where MR was humiliating and degrading her so she could not expect any help from MR if she were to overtly complain about FR's actions.

[96] Additionally, FR asked PN why she agreed to come to Canada, if he was sexually harassing her. PN said that, before she followed them, they convinced her that she would have a good future. They said it would help PN's daughters. An added consideration for PN was that the respondents' children chose her to come to Canada.

[97] I do not question the veracity of PN's evidence that the sexual assaults occurred. This is particularly so after noting that FR did not cross-examine PN on her evidence about the sexual assaults and considering that, in FR's testimony, he did not deny that he engaged in the sexual assaults.

[98] I thus have no difficulty finding that FR repeatedly sexually harassed PN. This harassment amounted to a significant affront to PN's dignity and feelings of self-worth. It underscored her general powerlessness in the relationship. The harassment was regular and she was unable to avoid it.

### **Adverse Impact - Exploitation**

[99] The other type of adverse impact that PN claims concerns her exploitation by the respondents in her employment. She points to Canadian regulations for the employment of in-home caregivers which set out the following requirements:

Employers must not under any circumstance require a caregiver (either lower-skilled or higher-skilled) to live in their home.

However, if an employer and foreign care-giver decide that a live-in arrangement is the most suitable, for the needs of the person requiring care or to assist the TFW, there are certain criteria that must be met. Specifically, employers must ensure the:

- accommodation is being provided in the home of the person receiving care;
- accommodation is a private and furnished bedroom;
- bedroom door has a lock and safety bolt on the inside;
- bedroom meets the municipal building requirements and the provincial/territorial health standards; and
- foreign caregiver is NOT charged room and board for the accommodations, as per the policy, under the TFWP.

[100] PN argues, and I accept, that the respondents did not follow these requirements and that itself amounts to an adverse impact. PN had no privacy or space in which to be alone plus her space was invaded by FR. In fact, it appears as if the respondents may not have been forthright with the Canadian authorities when arranging for PN to travel with them to Canada as what was issued to her was a visitor's visa. I do not know what, if anything, that FR told Canadian authorities about the pay that PN would receive, but it did not meet British Columbia standards.

[101] PN was a virtual slave. She could not go anywhere or do anything without permission. She could not go out on her own or speak to people in her own language, even though there were people around the hotel with whom she could have struck up such a friendship. While she was allowed to sleep, it was in between the respondents' bedrooms so she was virtually on call 24/7. She was frequently humiliated and demeaned



by MR who threatened her, called her names and threatened to deduct wages were she to sit down while at work.

### **Nexus**

[102] Based both on the evidence of FR and the opinion of Dr. Guevarra, I find that the protected characteristics of PN were factors in her treatment by the respondents. Certainly, the repeated sexual assaults were because PN is a woman. The threats that worked to keep her quiet were due to her family status.

[103] Many of the conditions PN was forced to endure in Canada amount to adverse impact based on the protected characteristics identified in the complaint. These characteristics were a key factor in many aspects of her employment, as described in the expert report of Dr. Guevarra.

[104] PN is a young mother from the Philippines without supports in Canada. This gave rise to a situation where it was possible to take unfair advantage of her. The way that MR treated her and the expectations of PN working all the time at the beck and call of the respondents have their roots in her hiring from the Philippines and the factors emphasized of youth, hard work and unlikeliness to complain, which are characteristics attributed to Filipino workers by stereotype and prejudice.

[105] I also saw that FR was dismissive of PN's claims. He was arrogant and presented an attitude of entitlement in virtually every aspect of his conduct respecting the complaint, from the pre-hearing conferences to his conduct in the hearing itself. He seemed to demonstrate anger that PN dared to leave his employment.

[106] I specifically asked FR why he cared what happened to PN, now that she had left him. The only answer that he gave was that what PN did was illegal. When I asked again why he cared about that when he didn't even live in Canada, he repeated that it was illegal and that he cared about disadvantaged people. His responses are without credibility. After consideration, it seems to me that PN's conduct and testimony was most consistent with FR holding a view of PN as his property that had been stolen.

## Conclusion

[107] I find that the respondents breached s. 13 of the *Code* with their treatment of PN for the almost six weeks that she was in Canada as their employee. Virtually every aspect of her employment, including the contract, was exploitation that amounts to discrimination.

## RETALIATION

### Law

[108] Section 43 of the *Code* provides:

A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on, deny a right or benefit to or otherwise discriminate against a person because that person complains or is named in a complaint, gives evidence or otherwise assists in a complaint or other proceeding under this Code.

[109] The elements which a complaint alleging retaliation must establish are set out in *Bissonnette v. School District No. 62 and Frizzell*, 2006 BCHRT 447 at para. 19:

In order to establish a complaint under s. 43 of the *Code*, a complainant must establish:

- That a previous complaint has been made under the *Code* and that the respondent was aware of the complaint: *Cariboo Chevrolet Pontiac Buick GMC Ltd. v. Becker*, 2006 BCSC 43, at paras. 47-55;
- That the respondent engaged in or threatened to engage in retaliatory conduct; and
- That the respondent intended to engage in that conduct or can reasonably have been perceived to have engaged in that conduct in retaliation, with the element of reasonable perception being assessed from the point of view of a reasonable complainant: *Talkkari v. City of Burnaby and others*, 2005 BCHRT 68, at paras. 42-49; *Mathison v. Musqueam Indian Band and Easton (No. 3)*, 2006 BCHRT 429, (at para. 22. )

[110] Concerning whether threat of a lawsuit amounts to retaliation, in *Steele v. Aishwarya Investments Ltd.*, 2014 BCHRT 192, the Tribunal concluded that:

My finding is not intended to preclude all civil actions or proceedings undertaken before other administrative tribunals to enforce rights against a person who has made a human rights complaint. People, including respondents, are entitled to enforce their rights against human rights complainants as long as they are acting in good faith and in a *bona fide* manner: see *Gichuru [v. Pallai]*, 2012 BCHRT 327]. It is actions allegedly motivated by malice or arising out of a desire to punish that must not be obscured from Tribunal scrutiny by absolute privilege. (para. 295)

### **Facts**

[111] Writing to PN's counsel in the human rights complaint, FR's lawyers in Hong Kong said that the respondents were making a demand that PN repay the 13,600 Hong Kong Dollars that was set out in her agreement with them concerning her accompanying them to Canada. The letter commences with a statement linking it directly to the complaint at the Tribunal and claiming that she has produced "various unsustainable allegations without any proper evidence. "

[112] The lawyers referred to the contract and affirmed that, pursuant to it, PN is obligated to provide the agreed service of the domestic helper to their clients as prescribed. She was also warned that they would take legal action in Hong Kong to recover the airfare and visa fee. The respondents say simply that this matter should be judged by the law of Hong Kong and should not constitute as a threat or retaliation.

[113] However, the letter was widely circulated. The reason was not explained but, when one looks at the recipients, I can only conclude that it is an attempt to undermine PN with those recipients. The letter claims that PN made misrepresentations in the complaint seemingly trying to suggest that the complaint is not valid and influence the copied parties. In the response to the retaliation complaint, the respondents say only that: "The action of providing a copy to third parties is our rights and freedoms. "

[114] In the application to dismiss the retaliation complaint that was filed, but never argued, the respondents say that the Tribunal does not have jurisdiction because the complaint is about conduct outside of BC. However, while the letter was written outside of BC about an action that could be filed in Hong Kong, it was sent to PN's counsel in BC and four of the seven parties copied were Canadian; three in BC. I find that this is a sufficient connection to BC to provide the Tribunal jurisdiction over these allegations.

### Findings Regarding Retaliation

[115] At the time of the respondents' counsel's letter, the Human Rights complaint had been filed. It was known to and mentioned by the respondents' counsel in their letter. The letter threatened to take action against PN in the Hong Kong courts, both for breach of contract and for defamation. The threats contained in the letter were intentional and repeated in the course of these proceedings.

[116] The provision of copies of the letter to entities with nothing at stake in the human rights complaint amounts to what I find is an attempt to undermine PN in Canada because she filed the human rights complaint. Thus, while respondents are entitled to enforce their rights against human rights complainants as long as they are acting in good faith and in a *bona fide* manner, I do not find that the respondents were acting so here.

[117] I conclude that the letter amounted to retaliation for filing her complaint.

### V REMEDY

[118] Section 37 of the *Code* gives the Tribunal jurisdiction to award damages after a finding of a breach of the *Code*. Section 37(2) provides:

- (2) If the member or panel determines that the complaint is justified, the member or panel
  - (a) must order the person that contravened this Code to cease the contravention and to refrain from committing the same or a similar contravention,
  - (b) may make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to this Code,
  - ...
  - (d) if the person discriminated against is a party to the complaint, or is an identifiable member of a group or class on behalf of which a complaint is filed, may order the person that contravened this Code to do one or more of the following:
    - (i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code;

- (ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;
- (iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.

[119] I find that the conduct of the respondents complained of by PN is discrimination and contrary to s. 13 of the *Code*. I order that the respondents cease the contravention of the *Code* and refrain from committing the same or a similar contravention.

### **DAMAGES FOR WAGES**

[120] PN claims damages for wages she earned while she was working for the respondents in Canada as well as prospective wages that she would have earned had the discriminatory treatment not caused her to flee from the respondents' hotel room.

[121] Given my conclusion that the contract itself was exploitation amounting to discrimination, I cannot construe this part of my decision as enforcing the contract of employment. However, as the respondents received the benefit of work from PN while they were exploiting her, I am persuaded that it is appropriate to award her compensation for wages that would have been paid absent discrimination, that is, meeting minimum standards. The time frame for this compensation is from July 11 to August 17 for the hours of 6:00 am to 10:00 pm every day except her days off on Friday, when she is entitled to be paid for 6:00 am to 10:00 am and from 8:00 pm to 10:00 pm. On August 18, she is entitled to be paid for the hours of 6:00 am to 2:00 pm.

[122] The employment contract under which the parties conducted themselves in Hong Kong does not meet the minimum requirement set out in the *Employment Standards Act*. Section 4 of the *Employment Standards Act* provides that, except with a collective agreement, parties cannot contract out of the minimum standards set in the legislation.

[123] Accordingly, I shall calculate the wages owed by reference to BC requirements. Minimum wage for the first eight hours worked is \$10. 25. For the next four hours the

pay is at 1.5 times the wage rate or \$15.38. For hours more than twelve, the rate is two times the base rate, or \$20.50 per hour.

No. of days 8 hours @ \$10.25/hour	No. of days 4 hours @ \$15.38/hour	No. of days 4 hours @ \$20.50/hour	No. of days off 5.5 hours @ \$10.25
33	32	32	6
\$2,706.00	\$1,968.64	\$2,624.00	\$338.25
<b>Total</b>			<b>\$5,866.89</b>

[124] With respect to any possible set-off for room and board, I decline to do so, given that PN had to sleep on a couch with no privacy and given that I accept that the amount of food she received was inadequate, resulting in her appearing malnourished when she arrived at Deborah's Gate and for a time thereafter until her food consumption more appropriately matched her body weight. Applying the foregoing formula, I conclude that PN is entitled to \$ \$5,866.89 for wages she should have earned while the respondents were treating her discriminatorily.

[125] PN also seeks prospective wages that she would have earned had she not been forced to flee the respondents. Again, such a calculation is generally based on the amount that a complainant would have earned had the discrimination not occurred. This figure is reduced by any mitigation that a complainant earns or should have earned.

[126] The difficulty in the circumstances of this case is that any on-going working relationship absent the discrimination would be a complete fiction. The contract and relationship of employment was exploitative and discriminatory. Absent those aspects of the employment contract and relationship, I do not believe the respondents would have continued to employ PN. Compensation in these circumstances would either, in effect, enforce a discriminatory contract, or be based on an impossible scenario.

[127] I also cannot overcome the fact that PN is not entitled to work in Canada. She had a visitor's visa that expired six weeks after she fled. I find that PN has not established a basis for compensation for wage loss after she fled the hotel and I decline to award them. I do, however, take into account PN's lack of income and lack of ability to earn an

income in assessing the impact of the discrimination on her dignity, feelings and self-respect.

#### **A. COMPENSATION FOR INJURY TO DIGNITY**

[128] PN claims compensation for injury to dignity, feelings and self-respect for the discrimination and the retaliation. As the complaints of discrimination and retaliation have been joined, I will award compensation for injury to dignity feelings and self-respect in a global amount for both complaints.

[129] The quantum of such an award requires an assessment of the impact of the discriminatory conduct on the complainant. In *Torres v. Royalty Kitchenware Ltd.* (1982), 3 C. H. R. R. D/858 at D/873 para. 7758 (Ont. Bd. Inq. ), following factors were identified to be considered in determining the appropriate quantum of damages in sexual harassment cases:

- (i) the nature of the harassment; that is, was it simply verbal or was it physical as well;
- (ii) the degree of aggressiveness and physical contact in the harassment;
- (iii) the ongoing nature; that is, the time period of harassment;
- (iv) the frequency of the harassment;
- (v) the age of the victim;
- (vi) the vulnerability of the victim;
- (vii) the psychological impact of the harassment upon the victim.

[130] I note that *Torres* has frequently been cited and followed by the Tribunal. See, for example: *Behm v. 6-4-1 Holdings and others*, 2008 BCHRT 286; *Soroka v. Dave's Custom Metal Works Ltd.*, 2010 BCHRT 239; *Young v. Petres*, 2011 BCHRT 38.

[131] In *Harrison v. Nixon Safety Consulting and others (No. 3)*, 2008 BCHRT 462, the Tribunal awarded \$15,000 for sexual harassment. In another harassment case, the Tribunal awarded \$25,000: *Ratzlaff v. Marpaul Construction Ltd.*, 2010 BCHRT 13. In *Senyk v. WFG Agency Network (No. 2)*, 2008 BCHRT 376, the Tribunal awarded \$35,000 for injury to dignity, feelings and self-respect for the termination of employment. The

Tribunal's highest award to date is \$75,000, See: *Kelly v. University of British Columbia*, 2013 BCHRT 302.

[132] In this case, the impact of the discriminatory conduct can be seen to be severe. Although it took place over six weeks, the impact was long-lasting and impacts the complainant until now.

[133] While working for the respondents, PN was exploited. She had to perform sexual acts at the whim and insistence of her employer, she was humiliated and degraded by her other employer, and she was even made fun of by the children who were in her care. She was isolated, underfed and treated like she was sub-human; all because she was a young Filipino mother who needed the job to take care of her own children. I would like to think that this behaviour does not occur in BC. However, where it comes to the attention of the Tribunal, damages will be awarded to attempt to put the complainant in a position that she would have been in without the discrimination.

[134] PN's counsellor testified that she suffered symptoms consistent with post-traumatic stress disorder. She has nightmares and flashbacks still. She had to flee with nothing; not clothes, not money, not friends. She had to fend for herself and was lucky enough to find refuge in an institution for victims of human trafficking. It is hard to imagine the bravery and determination that she required to overcome her treatment at the hands of the respondents.

[135] PN had to rely on the generosity of strangers to feed and clothe herself. She cannot work in Canada, she cannot get benefits from the government, and she was threatened with a lawsuit. Her untenable situation was longstanding (from August 2013 to today) and is still fraught with uncertainty. All because she, understandably, couldn't take, any longer, the discrimination by the respondents.

[136] There are many other actions by FR that served as a constant reminder of FR's effort to assert control over PN. This served to make her time after she left their residence even more difficult. These actions by FR impacted PN and were:

- seeking to have others notify PN that she should not cause trouble,



- having others tell PN that she should take money from him and return to Asia, and
- lobbying to have her deported from Canada.

[137] This case presents the factors that should result in an award at a high level. I am satisfied that the award in this case should be higher because, like in *Ratzlaff*, there was significant physical harassment and the fact that it occurred when she was isolated and intimidated. The damages must also be increased because of the severe stress and the acutely vulnerable situation PN was in due to, and following, the discrimination. I am satisfied that, in all the circumstances of this case, an award for both of her complaints of \$50,000 for injury to dignity, feelings and self-respect is appropriate.

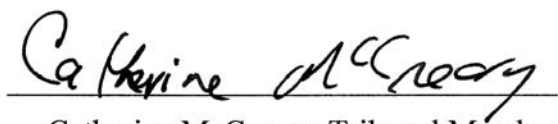
## B. INTEREST

[138] PN is also entitled to receive interest on the lost wages from August 18, 2013 until the time they are paid and on the damages for injury to dignity from the date of this decision until they are paid.

## VI SUMMARY

[139] I find that the conduct of the respondents complained of by PN is discrimination and contrary to s. 13 of the *Code*. I order that the respondents:

- cease the contravention of the *Code* and refrain from committing the same or a similar contravention;
- pay to PN \$5,866.89 for lost wages;
- pay to PN \$50,000.00 as damages for injury to dignity, feelings and self-respect arising out of both complaints;
- pay to PN interest on the lost wages from August 18, 2013 until the time they are paid and on the damages for injury to dignity from the date of this decision until paid.

  
Catherine McCreary, Tribunal Member