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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:

Anna-Leigh Tyler (Beddington)

**COMPLAINANT**

A N D:

Ralph Robnik and Mobility World Wireless Specialists Inc.

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member:

Barbara Humphreys

On her own behalf:

Anna-Leigh Tyler (Bedddington)

On behalf of Ralph Robnik:

Timothy Perrin

On behalf of Mobility World Wireless Specialists Inc:

No appearance

Dates of Hearing:

April 13 and 14, 2010

## 1. Introduction

[1] In 2008, Mobility World Wireless Specialists Inc. (“Mobility”), owned by Trevor Tremblay and Trent Butcher, operated six stores selling cellular phones, accessories, and telephone plans. Mobility’s head office was in Kelowna.

[2] In June 2007, Mobility hired Ralph Robnik as a consultant at its head office. In March 2008, he was promoted to the position of district manager of Mobility’s stores.

[3] In February 2008, Anna-Leigh Tyler (Beddington) was hired as manager at Mobility’s Williams Lake store (“the Store”). Mr. Robnik was her direct supervisor.

[4] As a result of a series of circumstances, Ms. Tyler had a friend hand in her keys to the Store in June 2008, which Mobility viewed as a resignation.

[5] Mr. Butcher died before the hearing.

[6] As amended, Ms. Tyler’s complaint alleges that Mr. Robnik and Mobility (together the “Respondents”) discriminated against her regarding employment because of her sex, contrary to s. 13 of the *Human Rights Code*. The complaint is one of sexual harassment.

[7] Mr. Robnik denies the allegations.

[8] In addition to the testimony of Ms. Tyler and Mr. Robnik, who were present at the hearing, Mr. Tremblay gave evidence over the telephone.

## 2. The Complainant’s Case

[9] Ms. Tyler gave evidence about several incidents involving Mr. Robnik, as set out below.

[10] Before meeting Mr. Robnik at the Store, Ms. Tyler spoke to him on the telephone. On one occasion, when she told him she would have to call him back, he responded: “I hope so, I enjoy hearing your voice.” Five minutes later, when she called him, he said: “Oh Anna, you took too long.”

[11] In mid-March, 2008, Mr. Robnik went to the Store to provide training. It was the first time he and Ms. Tyler met. She testified that, on the second day he was at the Store,

he told her where he was staying and offered her his hotel room card. She felt sick. She told Mr. Robnik that she was in a serious relationship with someone.

[12] That same day, several hours later, Mr. Robnik asked Ms. Tyler if she was sure she was not interested in his hotel card. Ms. Tyler was very upset.

[13] One evening, Mr. Robnik telephoned Ms. Tyler's home. He asked what she was doing and if she would like to come to his hotel, saying that he was bored. She told him that she was going to bed. Mr. Robnik responded that he would be up until midnight if she changed her mind.

[14] Ms. Tyler testified about another incident that occurred at the Store. Mr. Robnik, while asking if she was wearing pantyhose because her legs looked so smooth, touched her leg. She asked to go home early, saying she felt ill.

[15] On one occasion, while she was at the Store, after discussing business related matters with Mr. Robnik on the telephone, he asked if she was wearing something "hot".

[16] On another occasion, at the Store, Mr. Robnik came up behind Ms. Tyler and bumped into her so hard that she lost her footing. He put both hands on either side of her waist, and pulled her back towards him. She told him that he had to stop what he was doing. Ms. Tyler felt sick to her stomach, and tried to avoid Mr. Robnik for the rest of the day.

[17] Ms. Robnik testified that, at the end of March or beginning of April, she telephoned Mr. Butcher and told him she wanted to speak to him about Mr. Robnik. He asked her to come to Salmon Arm to speak to him in person, which she did, telling him about what had been happening with Mr. Robnik. Ms. Tyler testified that Mr. Butcher told her he would speak to Mr. Tremblay about Mr. Robnik.

[18] At the end of May, Ms. Tyler, Mr. Butcher and Mr. Tremblay participated in a conference call. Ms. Tyler's evidence was that Mr. Butcher told her that there were theft allegations against her from some of her co-workers. According to Ms. Tyler, Mr. Butcher then asked Mr. Tremblay if he thought the allegations had anything to do with the concerns Ms. Tyler had raised about Mr. Robnik; Mr. Tremblay responded that he had no opinion at that time.

[19] Ms. Tyler stated that, on June 7, Mr. Tremblay told her that she needed to leave the Store while the investigation took place, that she should not call the Store or speak to anyone there, and that she would be on paid leave until the conclusion of the investigation. Ms. Tyler said that she had a friend hand in her key to the Store as she did not think she should have it in her possession under the circumstances. By doing so, she did not intend to resign.

[20] Mobility's view was that Ms. Tyler had resigned. As a result, Mobility did not contact Ms. Tyler to hear her side of the story or to inform her of its conclusion.

[21] Ms. Tyler testified that, the night before the hearing began, Mr. Tremblay telephoned her. He told her that there was no benefit for her to proceed against Mobility as it had been dissolved. He asked her to drop her complaint against Mobility, saying that, if she did not, he would contact the police and hand over documents relating to the theft allegations against her. When Ms. Tyler inquired why she had not been paid while she was on leave, Mr. Tremblay asked why he should pay someone who was stealing. When she denied stealing from the Store, Mr. Tremblay said that he was relying on what Mr. Robnik had told him.

[22] In her complaint, Ms. Tyler ascribed dates to her allegations. In Section E, she alleged that Mr. Robnik's invitation to his hotel room, including his call to her home, and his comment about her legs, occurred on specific dates in March 2008. In cross-examination, after looking at Mr. Robnik's monthly credit card statements (which indicated that he was in Westbank and Chilliwack on March 13, and in Williams Lake from March 17-21), Ms. Tyler acknowledged that her dates were incorrect. Also, in her complaint, Ms. Tyler indicated that certain incidents had occurred on dates in April and May. Again, in cross-examination, she agreed that these dates were incorrect.

[23] Ms. Tyler's evidence was that, while she tried to remember the exact dates, she was upset when she filed her complaint. She denied fabricating her allegations, saying the fact that she was incorrect on the dates did not mean that the incidents did not take place.

[24] When asked whether Mr. Robnik showed her his hotel room card in response to a query from her about where he was staying, Ms. Tyler responded: "Absolutely not."

[25] Ms. Tyler was questioned about her evidence regarding Mr. Robnik's evening call to her home, which she testified had occurred in March. She was shown his hotel bill from March 17-22, which showed no telephone charges, and his cell phone charges from February 21 to March 20, which showed no telephone call to her home number in the evening.

[26] Ms. Tyler responded that, while she may have had the wrong date, she was certain of the time of day because she was putting her son to bed. She stated that Mr. Robnik's telephone records after March 20 had not been disclosed. Further, she testified that she had telephoned the hotel where he had stayed, and been told that there was no charge for local calls, so they would not appear on the statement of account.

### **3. Mr. Robnik's Case**

[27] Mr. Robnik testified that he was in Williams Lake for three periods of time during Ms. Tyler's employment: March 17-21, when he assisted her in organizing the Store; April 8-11, when he assisted her in training a new employee; and June 5-11, when he was investigating inconsistencies in deposit amounts, phone accounts, and sales transactions.

[28] Mr. Robnik denied all allegations of sexual harassment. He testified that he never said anything inappropriate to Ms. Tyler, invited her to his hotel room, called her at home, or touched her leg. He gave evidence that, in response to Ms. Tyler asking him where he was staying, he pulled out his hotel room card to refresh his memory. He also said that, while he may have accidentally bumped into her at the Store as the area where the tills were located was very cramped, he never pulled her towards his body.

[29] In his written response, Mr. Robnik wrote:

Ms. Tyler indicated that I rubbed her leg while at work. I recall that specific contact with Ms. Tyler's leg. It was completely accidental. The work environment in the store is cramped at best and when you are in 'work mode' it is easy for anyone to make contact with one another in that store. Other employees will confirm that.

Ms. Tyler said that I commented that 'she had the sexiest legs and rubbed his hand on mine and asked if was wearing pantyhose because they were smooth.' I never made those comments.

...

I did arrive at the Store to help with training. I remember bumping into Ms. Tyler because of the cramped space at the store and I did apologize as it was totally unintentional. I never grabbed her and pulled her back against me.

[30] Mr. Robnik's evidence regarding these written statements was that he remembered some bumping contact in the Store with Ms. Tyler because of the cramped work space, but not any specific incidences.

[31] Mr. Robnik stated that he was very familiar with Mobility's sexual harassment policy, which he had assisted putting together from examples he found on the internet.

[32] Mr. Robnik's evidence was that he never noticed any change in Ms. Tyler's demeanour or any indication that she was uncomfortable in his presence.

[33] Mr. Robnik testified that, after his investigation at the Store in June, he could not come to a conclusion. He took the information he had gathered back to Mobility's head office in Kelowna, where he and Mr. Tremblay reviewed it. Mr. Robnik stated that they identified some outages and inconsistencies in deposit statements.

[34] Mr. Robnik stated that, before March 2008, when he was promoted to district manager, he and Ms. Tyler were on the "same level", and she had often confided in him regarding non-work-related topics. They spoke "on a friend level" about everything. They often text-messed each other back and forth about what they were doing in the evening.

[35] In cross-examination, Ms. Tyler asked several times about Mr. Robnik's questions regarding her personal life. He agreed that he had asked her about her personal life because he noticed a change in her mood; she seemed "down and unhappy". He testified that asking Ms. Tyler about her personal relationship was his approach to determining what was bothering her because an employee's personal problems can affect their work performance. He agreed that Ms. Tyler had not requested his help regarding her personal life.

[36] In his response to Ms. Tyler's allegation that he offered her his hotel room key, Mr. Robnik wrote:

... one particular day, as a result of several back and forth jokes in which she actively participated, I did laughingly offered [sic] Ms. Tyler my hotel room key. However, at no time was I serious.

[37] When Ms. Tyler questioned Mr. Robnik about this statement, he repeatedly denied that he had offered her his room card, stating that he only showed her his room card when she asked where he was staying.

[38] Mr. Tremblay testified that he was unaware of Ms. Tyler's sexual harassment allegations against Mr. Robnik until he received the human rights complaint. His evidence was that he did not recall any reference to such allegations during the conference call between himself, Mr. Butcher and Ms. Tyler. He testified that Mobility was dissolved on February 19, 2009, and its last day of business was August 31 of that year.

#### **4. Decision**

[39] For the following reasons, I find the complaint justified.

#### **5. Reasons**

[40] Section 13 of the *Code* prohibits discrimination against a person regarding employment because of the sex of that person.

[41] It is well-settled that sexual harassment is sex discrimination: *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252. The Court provided a non-exhaustive definition of sexual harassment:

... sexual harassment in the workplace may be broadly 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.... 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. (p. 26)

[42] At page 23, the Court quoted Arjun P. Aggrawal, *Sexual Harassment in the Workplace* (Toronto: Butterworths, 1987) as follows:

Sexual harassment is any sexually-oriented practice that endangers an individual's continued employment, negatively affects his/her work performance, or undermines his/her sense of personal dignity. Harassment behaviour may manifest itself blatantly in forms such as leering, grabbing, and even sexual assault. More subtle forms of sexual harassment may include sexual innuendoes and propositions for dates or sexual favours.

[43] The standard of proof for a complaint of sexual harassment is the balance of probabilities.

[44] The test for determining whether conduct is unwelcome is an objective one: taking into account all the circumstances, would a reasonable person know that the conduct in question was not welcomed by the complainant? A complainant is not required to expressly object to the conduct unless the respondent would reasonably have no reason to suspect that it was unwelcome: *Mahmoodi v. University of British Columbia and Dutton* (No. 4) (1999), 36 C.H.R.R. D/8 (B.C.H.R.T.), para. 140.

[45] Credibility is often a key issue in sexual harassment complaints. In assessing the credibility of the witnesses and deciding what weight to give to their evidence, I am mindful not only of such factors as a witness' demeanour, powers of observation, opportunity for knowledge, relationship to the parties, judgment, memory, and ability to describe clearly what was seen and heard, but also whether the evidence of the witness is in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) at p. 357.

[46] Ms. Tyler was emotional at the hearing, crying at times when testifying and also when asking questions in cross-examination. She was self-represented. While she had prepared questions for cross-examination, most of them were premised on obtaining a particular answer from Mr. Robnik. As she did not obtain many of the answers she had anticipated, the questions had to be reframed. Ms. Tyler found this difficult, and she became upset. Mr. Robnik's agent's obvious amusement at her difficulty only worsened the situation.

[47] The evidence of both Ms. Tyler and Mr. Robnik was at odds with their written statements to the Tribunal. As mentioned above, Ms. Tyler acknowledged that the dates in her complaint were incorrect. I do not, however, agree with Mr. Robnik's suggestion



that, because the dates were incorrect, it follows that she “made up” both the dates and the allegations. The fact that her dates were incorrect is not determinative of the reliability of the substance of her allegations. I do not accept the argument that she fabricated them.

[48] In contrast, the variance between Mr. Robnik’s oral evidence and his written response to the Tribunal was substantive and, therefore, more troubling. As set out above, he wrote in his response that he laughingly offered Ms. Tyler his hotel room key. However, when asked about his written statement during cross-examination, he did not address it, saying repeatedly only that he did not offer Ms. Tyler his room key, and that he only showed it to her when she asked where he was staying. He provided no further evidence about the nature of the back-and-forth joking to which he referred in his response, and Ms. Tyler was not asked any questions in cross-examination about any joking between her and Mr. Robnik.

[49] After considering the evidence on this point, I find that Ms. Tyler’s testimony is more in harmony with the preponderance of probabilities. Mr. Robnik has presented two contradictory versions of the exchange regarding his hotel room card, and offered no explanation. I prefer Ms. Tyler’s evidence that Mr. Robnik offered her his hotel room key and that it was not a joke. In my view, a reasonable person in Mr. Robnik’s position ought to have known that the conduct in question would not be welcomed by Ms. Tyler. It is difficult to imagine how Mr. Robnik, Mobility’s district manager, offering his hotel room key to a subordinate female employee could be viewed as simply a joke.

[50] Despite the fact that Mr. Robnik’s cell phone bill and hotel charges for March did not indicate any evening telephone call to her, Ms. Tyler did not waiver in her evidence that he telephoned her at home and asked her to come to his hotel room. She was certain that the call was about 9:00 p.m. because she was putting her son to bed.

[51] Mr. Robnik denied making such a call to Ms. Tyler. He relied on his hotel bill and a printout of his cell phone charges, neither of which showed a call to her number. However, in his final submissions, Mr. Robnik conceded that a local telephone call from his hotel room would not appear on his hotel statement. I also note that the cell phone

printouts which Mr. Robnik provided cover the time period from February 21-March 20. His hotel bill, however, indicates that he did not check out until March 22.

[52] On this point, I also prefer the evidence of Ms. Tyler. I find that Mr. Robnik did telephone Ms. Tyler and ask her to come to his hotel room.

[53] In his oral evidence, Mr. Tyler denied touching Ms. Tyler's leg. He said that he may have bumped into her accidentally because of the cramped work space. He provided a picture of the behind-the-counter space, which does show a small work area.

[54] Regarding his written statements in his response, Mr. Robnik's oral evidence was that he remembered some bumping because of the cramped work space, but not any specific incidences. I did not find this evidence convincing. It is at odds with his written response, in which he clearly states that he remembers bumping into Ms. Tyler when he came to the Store for training, and his statement: "Ms. Tyler indicated that I rubbed her leg while at work. I recall that specific contact with Ms. Tyler's leg. It was completely accidental." (my emphasis)

[55] Unlike Ms. Tyler's complaint, in which she erred with respect to the dates on which certain events occurred, it is the substance of Mr. Robnik's written response which is problematic.

[56] Mr. Robnik filed his response on January 9, 2009, almost ten months after his attendance at the Store in mid-March 2008. If indeed the work space was so cramped that individuals bumping into each other was not out of the ordinary, it does not seem to me to be in harmony with the preponderance of probabilities that Mr. Robnik would specifically remember these two incidents.

[57] I find, on the balance of probabilities, that these were not simply two incidences of accidental contact.

[58] I have found that Mr. Robnik offered his hotel room key to Ms. Tyler, invited her to his hotel room, and non-accidentally made physical contact with her in the Store. As these incidents are sufficient for me to conclude that the complaint is justified, and that Mr. Robnik sexually harassed Ms. Tyler regarding her employment, contrary to s. 13(1)(b) of the *Code*, I need not consider the remaining allegations.

[59] While not argued during closing arguments, Ms. Tyler suggested, through her questions, that Mr. Robnik raised the financial concerns because she had spoken to Mr. Butcher about the sexual harassment. She did not, however, lead any evidence to support her belief.

[60] It is not necessary for me to decide whether Ms. Tyler resigned or was dismissed as I find no nexus between the sexual harassment and the end of her employment. Therefore, I make no award for lost wages.

## **6. Remedy**

[61] Section 37(1) requires that, when a member determines that a complaint is justified, the member must order the person who contravened the *Code* to cease the contravention and to refrain from committing the same or a similar contravention. I so order.

[62] Section 37(2)(d)(iii) authorizes a Tribunal member to compensate an individual discriminated against an amount the member considers appropriate for injury to dignity, feelings and self-respect.

[63] While Ms. Tyler testified that the incidences with Mr. Robnik were upsetting to her, she did not provide much evidence on this point.

[64] It was clear that the manner in which her employment ended had a large emotional impact on her. She felt that she was treated unfairly by Mobility because she was not contacted about its concerns regarding financial irregularities, or given the opportunity to speak to them. She testified that she handed in her key because, after what she was told about not going into the Store, and not contacting anyone at the Store, she felt she should not keep the keys, which were the Store's property. She was extremely upset that Mobility decided that she had resigned her employment.

[65] It is difficult to determine with any exactness how much of Ms. Tyler's upset was the result of her sexual harassment and how much flowed from the circumstances surrounding the end of her employment. However, after considering her evidence, I conclude that, while Mr. Robnik's inappropriate behaviour was upsetting to her, the situation at the end of her employment had a greater impact on her.

[66] In these circumstances, I find that an award of \$6500 is appropriate.

## **7. Conclusion**

[67] I order the Respondents to cease the contravention and to refrain from committing the same or a similar contravention.

[68] I order the Respondents to pay Ms. Tyler \$6500 as compensation for injury to her dignity, feelings and self-respect. The Respondents are jointly and severally liable for this amount.

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Barbara Humphreys, Tribunal Member