

IN THE MATTER OF THE YUKON HUMAN RIGHTS BOARD OF ADJUDICATION
and the matter of
TYLER RETI v. SANDRA GIBBS AND 13458 YUKON INC.

DECISION OF THE BOARD
- SUMMARY -

1. Discrimination as a result of harassment on the basis of First Nation Ancestry

The Board has found that there has been discrimination as a result of harassment on the basis of First Nation Ancestry. The Complainant has shown that he was subject to a "poisoned work environment" while employed at Gibbs Group Homes.

2. Discrimination in employment on the basis of First Nation Ancestry in Failure to Promote the Complainant to Supervisor position

The Board has found that there has been no discrimination in employment in the Respondent's failure to promote the Complainant to a Supervisor position. The Complainant has failed to prove on a prima facie basis that the Respondent did not promote the Complainant on the basis of First Nation Ancestry.

3. Discrimination in employment on the basis of First Nation Ancestry in Failure to Rehire.

The Board finds that the Complainant's employment was not terminated on the basis of First Nation Ancestry. The Board finds that the Complainant's employment was terminated for reasons other than on the basis of First Nation Ancestry.

4. Damages / Mitigation

Injury to dignity, feelings or self-respect (section 23(d))

As a result of the discrimination on the basis of harassment, the Board orders the Respondent to pay to the Complainant the sum of \$3,000.00 for injury to dignity, feelings or self-respect.

Damages for Financial Loss (section 23(c))

As the Board has found no discrimination in the failure to promote or rehire the Complainant, the Respondent is not liable for damages for financial loss.

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5. Rectify any condition that causes the discrimination

Apology

The Board finds that an apology is not appropriate in this case. The Board trusts that this decision will be reported and will provide a suitable alternative to a formal apology by the Respondent.

Posting Decision

The Board orders the Respondent to post a copy of this Outline of Decision at a visible location within each facility operated by the Respondent.

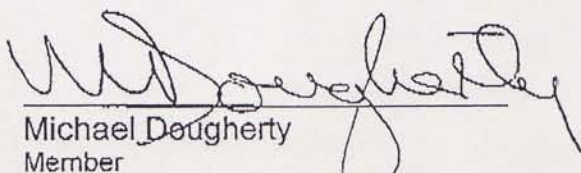
Cultural Sensitivity Workshop

The Board orders the Respondent to require each employee to attend a one day Cultural Sensitivity Workshop.

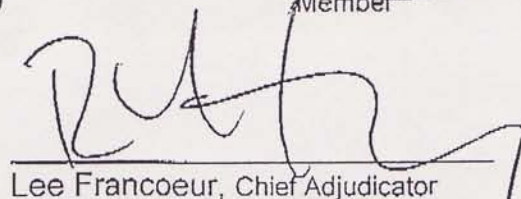
6. Retaliation

The Board found, based on the testimony, that a significant reason for the Respondent terminating the Complainant's employment was "when he filed his Human Rights complaint, the Respondent felt that the relationship of trust between her and the complainant had broken down." The Board finds that the termination constitutes a retaliation in contravention of section 28 of the Act. The Board orders the Respondent to pay a fine of \$1,500 pursuant to section 29 of the Act.

Dated this 16th day of July, 1999 at the City of Whitehorse in the Yukon Territory.


Michael Deugherty
Member


Renzo Ordonez
Member


Lee Francoeur, Chief Adjudicator

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INTRODUCTION

- [1] On July 16, 1999, the Board of Adjudication gave an Outline of Decision with reasons to follow. The following are the written reasons for the Board's Decision. The Board notes that the time limit for Appeal of this Decision will commence on the July 28, 1999, the date these written Reasons for Decision were issued. Where there is a discrepancy between the Outline of Decision issued on July 16, 1999 and this Decision, this Decision shall be interpreted as correct.

THE COMPLAINT

- [2] Tyler Reti, (the Complainant) was hired by Sandra Gibbs (the Respondent, in conjunction with 13458 Yukon Inc.) initially in October, 1991. The Complainant alleges that following an incident in December 1995, he was subjected to a "poisoned work environment". This harassment, he attests, was focused on his First Nations ancestry. He alleges this resulted in his being denied a promised supervisory position. As well, he further alleges that following a resulting stress leave in April 1997, he was not re-employed. He filed a Human Rights Complaint with the Yukon Human Rights Commission on October 22, 1997.
- [3] The Respondent denies that the Complainant was harassed, denied advancement or re-employment on the basis of his First Nation ancestry. The Respondent submits that there was no 'poisoned work environment', that he was never promised a supervisory position and that his re-employment was in question only until he dealt through proper social service and judicial channels with outstanding criminal charges. Sandra Gibbs states that he was only dismissed following his filing of the October 22, 1997 Yukon Human Rights Complaint at which time she felt there has been a 'betrayal' by the Complainant.
- [4] Lee Francoeur, Chief Adjudicator, along with Renzo Ordonez and Michael Dougherty, constituted the Board of Adjudication under Section 21 (2) of the Yukon Human Rights Act.

EVIDENCE:

- [5] Many of the elements surrounding the events which form the factual background for Mr. Reti's complaints are in dispute.

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- [6] The proceedings lasted all or part of eight (8) sitting days. They were, at times, emotionally charged. Sixteen witnesses were called. Their testimony, together with that of the Complainant, the Respondent and legal counsels for the Respondent and the Yukon Human Rights Commission constitute the basis for our Decision.
- [7] The Complainant was born in 1970 in Kingston, Ontario. He is a status Indian emanating from his mother's parentage.
- [8] The Complainant was first hired as a youth worker for Gibbs Group Homes in October 1991.
- [9] After one year of employment he left to begin the First Nation Tribal Justice Institute, Police Constable Training Programme in British Columbia.
- [10] The Complainant was rehired by Gibbs Group Homes in September 1993. Prior to December 1995, no testimony was received from any party of any discriminatory behaviour directed towards the Complainant while in the employ of Gibbs Group Homes.
- [11] There was a physical restraint of a youth in care at 16 Klondike on the late evening of December 21, 1995 by the Complainant. A Gibbs Group Home Log Book entry was received into evidence. An entry was made by the Complainant regarding the restraint.
- [12] Words were exchanged between Gordon Gibbs Sr., an off duty employee of Gibbs Group Home, and the Complainant about the necessity and physicality of the restraint after the episode, around the time of shift change. Gordon Gibbs Sr. was at the 16 Klondike Group Home to pick up his wife who was coming off shift.
- [13] On December 26, 1995 around the time of the 8:00 a.m. shift change, the Complainant, Tom Gibbs and Gordon Gibbs Sr., were involved in a confrontation over statements that the Complainant had made about Gordon Gibbs Sr. incompetence following the December 21st restraint incident.
- [14] The Testimony varies widely as to the intensity, physicality and derogatory statements made during this incident. The Complainant reported this incident to the R.C.M.P. However, charges were not laid.
- [15] The Respondent, recognizing the seriousness of staff fighting with staff, attempted to mediate the dispute. She asked Darcy Kasper, a youth worker at 16 Klondike to accompany the Complainant to balance the process. Following the mediation, Gordon Gibbs Sr. apologized to the Complainant but the apology was not reciprocated.

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- [16] The Complainant alleges that shortly after the December 21st and December 26th, 1995 incidents that some co-workers began to harass him.
- [17] Gordon Gibbs Sr. testified that he and his wife considered themselves outsiders without support. He felt that the incidents following December 21st triggered a marked (negative) change in atmosphere towards him. His contract with Gibbs Group Home ended in early January of 1996. He left the Yukon at that time. Gordon Gibbs Sr. returned to the Yukon in January, 1997 and he resumed working for Gibbs Group Home at that time.
- [18] The Respondent, Sandra Gibbs received, in a February 12th, 1996 letter from the Acting Director of Family and Social Services of the Yukon's Department of Social Services, an invitation for Proposals for a specialized four bed group home facility. The deadline for receipt of proposals was February 23rd. The Gibbs Group Home proposal was successful.
- [19] The Complainant alleges that the Respondent offered him the Supervisor's position at the new group home (Mountain Ridge) 'because of my experience'. In February he further stated, that she asked him to keep this in confidence.
- [20] Darcy Kaspar states that he was asked to be the new Mountain Ridge Supervisor by the Respondent approximately a month before it opened in April, 1996. The public confirmation of his appointment came during the staff training sessions for the new facility held from April 1 - 12th, 1996.
- [21] An incident at Kopper King Tavern and in the Complainant's trailer in that vicinity, involved directly or indirectly the Complainant, Tanya MacKenzie, Mr. Kaspar and Dolly Gilbert on the evening of April 24th, 1996 and the morning of April 25th, 1996. The testimony varies greatly as to the details of this incident. Alcohol clearly factors into this event and its subsequent retelling. What is clear, though, is that previously amicable relationships between these co-workers and the Complainant were severed. The Complainant's First Nation heritage was not a factor.
- [22] A meeting with the Complainant, the Complainant's former solicitor, Rod Garson, and the Respondent was held on May 6, 1996. Mr. Garson had been retained by the Complainant because of his belief that he had been denied the promised Mountain Ridge Supervisory position.
- [23] The Respondent stated that this meeting that she had listened to hearsay about the Complainant's non-work related behaviour. None of the participants in this meeting report any suggestion that the Supervisor's position was denied on the basis of the Complainant's ancestry.

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- [24] Tara Wardle began work at Mountain Ridge in September 1996. She resigned her job at Mountain Ridge on February 5, 1997. During that time she reported observing three incidents involving the Complainant and Randy Dekuysscher. All occurred at shift change and all she characterized as racial. "Did you get laid by any Old Crow squaws?", being one of them attributed to Mr. Dekuysscher. Ryan Hannah reports a similar comment directed at the Complainant by Mr. Dekuysscher at an unspecified earlier time during their employment at 16 Klondike.
- [25] Neither Ms. Wardle nor Mr. Hannah did anything further about these comments. Gary Rusnak, treatment supervisor at Mountain Ridge from June 1996 to June 1997 testified though he did not hear any comments of a racist nature directed at the complainant that he did bring concerns about statements of a racial nature made by David Rodriguez and Mr. Dekuysscher to the attention of the Respondent during his tenure. Mr. Rusnak believed that comments of a racial nature made by these staff, were overheard by the young residents of Mountain Ridge most of whom are of native ancestry.
- [26] Mr. Dekuysscher acknowledged that lots of people called him a 'redneck'. He took it to mean someone that was 'upfront, straight forward.' He stated that there was banter about 'chub' and 'girls from Old Crow' with 'no offense given or taken.' Mr. Dekuysscher spoke to the Complainant about his drinking and of his fear that the complainant would 'end up like people you see around the liquor store.'
- [27] Mr. Rusnak supports testimony of the Complaint, that the Complainant was 'isolating himself, not participating in meetings' beginning in the Fall of 1996.
- [28] On the recommendation of the Respondent, the Complainant was approved for the Northern Network of Services Home Care Giver Programme (NNS). A youth moved into his home in January 1997. The Complainant attended regular meetings of the NNS Caregivers. At one of these meetings in early February 1997 the Respondent Gibbs dealt with inappropriate racial comments from another caregiver. The Respondent was temporarily filling in for Jim Bentley, the director of NNS, while he was on leave..
- [29] Gordon Gibbs Sr. returned to work at the 16 Klondike Gibbs Group Home in January 1997. He testified that he had contact only 'four to six times' with the Complainant. The Complainant charges that Gordon Gibbs Sr.'s return 're-victimized' him.
- [30] In February 1997 the Complainant injured his knee while with two of his Mountain Ridge charges at the Whitehorse Boxing Club. He was on Workers' Compensation for approximately the next month.
- [31] The Mountain Ridge team leader's position was posted during late winter of 1997. The Complainant does not apply for it.

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- [32] The Complainant receives a second impaired driving charge in March 1997 [his first conviction was in September 1994].
- [33] In spring 1997, the Complainant met a nineteen year old female who was a former 16 Klondike resident in a downtown Whitehorse bar. The Complainant admits to 'drinking quite heavily' at this time. Assault charges were filed against the complainant by the young woman sometime during this period. Although the assault charge was later stayed, the charge was still pending in the fall of 1997, along with the impaired driving charge.
- [34] At the beginning of April 1997, the Complainant asks to take a leave from work. He gives varied reasons for taking leave, dependent upon to whom he is speaking. Dale Emery, the accountant for Gibbs Group Homes gives stress as the reason for the Leave.
- [35] Mr. Rusnak testified that his understanding was that the Complainant's Leave was for three months with a possible extension to six months. The Respondent originally thought the Complainant's Leave was to be for three months.
- [36] The Complainant traveled to Alberta, the N.W.T. and Ottawa. Outstanding charges limit work possibilities. He drew on Social Assistance and Employment Insurance (E.I.) He had a knee operation, enrolled for classes in Ottawa, but then decided to return to Whitehorse in September, 1997.
- [37] The Complainant met the Respondent Gibbs while dining at a Chinese restaurant in Riverdale during mid September 1997. The Respondent asked the Complainant when he was coming back to work.
- [38] At a late September meeting, a week later, the Complainant informed the Respondent of the outstanding charges against him. Though there is some discrepancy on the Respondent's advice on how to deal with this concern, the Complainant went to Charles Pugh, Director of Residential Services, to seek clearance to work.
- [39] The Complainant met with Mr. Pugh before Thanksgiving in October 1997. At that meeting the Complainant reportedly raised concerns about his alleged harassment and discrimination at Mountain Ridge. Charles Pugh raises this latter concern with Anne Sheffield, Director of Family and Children's Services. He testifies that she is strongly supportive of an investigation of these allegations. Mr. Pugh met with the Complainant twice more.
- [40] The Complainant signs his initial Human Rights Complaint on October 14, 1997. It is filed in its final form on October 22, 1997.

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- [41] The Complainant met with the Respondent on October 21, 1997. He informed her that his court matters had been pushed to November. He asks for another month extension of his Leave.
- [42] Letters of concern dated November 7, 1997 from the Complainant, Mr. Rusnak, Ms. Wardle and Mr. Hannah, along with the Complainant's formal Human Rights Complaint are sent to the Council for Yukon First Nations. The Council for Yukon First Nations requested and was granted an investigation into various allegations against Gibbs Group Homes.
- [43] The Respondent Gibbs states in a December 1, 1997 letter to the Complainant that she is 'not in a position to employ your services'. The Respondent testified that she made her decision not to rehire the Complainant "after the Human Rights complaint was made.

ISSUES

- [44] The three main issues before the Board are:
1. Was the Complainant harassed on the basis of First Nation ancestry in contravention of section 13 of the Yukon *Human Rights Act*?
 2. Was the Complainant discriminated against on the basis of First Nation ancestry in respect of employment by failing to promote the Complainant to a Supervisor position in contravention of section 8(b) of the Act?
 3. Was the Complainant discriminated against on the basis of First Nation ancestry in respect of employment by failing to rehire the Complainant in contravention of section 8(b) of the Act?

Discrimination as a result of harassment on the basis of First Nation Ancestry

- [45] The Board has found that there has been discrimination as a result of harassment on the basis of First Nation Ancestry. The Complainant has shown that he was subject to a "poisoned work environment" while employed at Gibbs Group Homes.
- [46] After hearing the evidence given by the many witnesses and assessing the credibility of each witness, the Board finds that the poisoned work environment resulted from several examples of direct discriminatory comments made to the complainant, a general acceptance of inappropriate comments by staff and management, and a reluctance by management to address the issue.

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- [47] The Board finds that at least one co-workers, Mr. Dekuysscher, made direct derogatory comments to the Complainant respecting the Complainant's First Nation ancestry.
- [48] Mr. Dekuysscher's comment were likely made as jokes, since he testified that he considered the Complainant to be a friend. However, in the workplace, the Board finds that comments such as "How's the Chug" or references to "Old Crow Squaws" are inappropriate as topics for antics. As stated in *Naraine v. Ford Motor Company*, (1996), 27 C.H.R.R. D/230, at para. 44:
- The harm which comes from name-calling and racial jokes occurs because the class group which is targeted is one which is seriously disadvantaged compared to the dominant group. The jokes and epithets combine insidiously with patterns of economic and social discrimination to isolate and subordinate the individuals identified.
- [49] The Board finds that Mr. Dekuysscher's comments were made as part of a pattern with such frequency to create a poisoned work environment.
- [50] The Board also finds that the general acceptance of inappropriate comments by staff and management also contributed to a poisoned work environment. Even though these comments were not made directly to the Complainant, the Board finds that derogatory comments against First Nation ancestry contributes to a poisoned work environment for the Complainant.
- [51] The Board finds that indirect comments contributed to the poisoned work environment both in terms of comments made about the Complainant in his absence and comments made about First Nations generally. Sometimes these comments were made about clients of Gibbs Group Home.
- [52] The Board rejects the Respondent's submission that comments must be directed to the Complainant before a claim of harassment can be made. When the Board finds that comments such as those made by Mr. Dekuysscher created a poisoned work environment, it is appropriate for the Board to also consider indirect comments. An employee has a right to work in an environment free of harassment discrimination, and indirect comments made against the very fabric of self-identity should not have to be tolerated. To hold otherwise would be condone derogatory remarks, as long as they are not directed to a complainant.
- [53] This approach is consistent with other decisions that set out that in the case of harassment the complainant need not show a direct pecuniary loss, as the burden or disadvantage that must be proved in harassment cases consists in the harassment itself: *Dhanjal v. Air Canada*, [1996] C.H.R.D. No. 4 at para. 200.

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- [54] The Board acknowledges that indirect comments alone will usually fall within the "less severe" end of the spectrum: *Dhanjal*, Supra, at para. 209:

In short, the more serious the conduct the less need there is for it to be repeated, and, conversely, the less serious it is, the greater the need to demonstrate its persistence in order to create a hostile work environment and constitute racial harassment.

- [55] *Dhanjal*, Supra, at para 218, goes on to point out that it is important to assess the perception of the harassment from "perspective of a reasonable person belonging to a racial minority, putting aside stereotypes entertained in good faith by the majority."
- [56] The Board accepts the Complainant's submission that there was at least some indirect comments that contributed to a poisoned work environment. The allegation was confirmed by Ms. Wardle, Mr. Hannah, and Mr. Rusnak. On assessing the whole of the evidence, the Board concludes that it is more likely than not, that some members of the staff and management, including Sandra Gibbs made certain inappropriate comments about the Complainant in his absence and about First Nations peoples generally.
- [57] The Board finds the acceptance of such comments to be aggravating since Gibbs Group Home is a child care facility that deals with a large First Nation population. The Board accepts the evidence of the Complainant and Mr. Rusnak that it is likely that the children attending the facility were exposed to such derogatory comments.
- [58] → The Board finds that the Respondent's efforts were not adequate in this case to address the harassment in the workplace. The Board accepts the evidence that Sandra Gibbs was often unwilling to adequately and finally deal with issues of conflict.
- [59] For example, when receiving a Human Rights Complaint alleging harassment and discrimination, the Respondent chooses not to rehire the Complainant. As we set out below, rather than attempting to address and deal with the issue of harassment, the Respondent instead further victimizes the Complainant by terminating his employment.
- [60] An employer has a duty to take positive, meaningful steps to resolve issues of harassment, as stated in *Dhanjal*, supra, at para. 225 [quoting in approval from *Hinds v. Canada* (1989), 10 C.H.R.R. D/5683]:

To avoid liability, the employee is obliged to take reasonable steps to alleviate, as best it can, the distress arising within the work environment and to reassure those concerned that it is committed to the maintenance of a workplace free of racial harassment. A response that

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is both timely and corrective is called for and its degree must turn upon the circumstances of the harassment of each case.

[61] The Board acknowledges that Gibbs Group Home has now developed a new harassment policy to deal with these issues. Hopefully, the revised policies will go far in addressing similar issues in the future.

[62] In closing on this issue of harassment, the Board wishes to reemphasize the concern that management would not take a much more severe stance against harassment on the basis of First Nation ancestry since most of the clients of Gibbs Groups Home are of First Nation descent.

Discrimination in employment on the basis of First Nation Ancestry in Failure to Promote the Complainant to Supervisor position.

[63] The Board has found that there has been no discrimination in employment in the Respondent's failure to promote the Complainant to a Supervisor position. The Complainant has failed to prove on a *prima facie* basis that the Respondent did not promote the Complainant on the basis of First Nation ancestry.

[64] The Board prefers the evidence of the Respondent that the Supervisor position at Mountain Ridge was not given to Complainant mainly on the basis of education and experience rather than on the basis of First Nation ancestry.

[65] The Board finds that the Complainant's abuse of alcohol and personal problems may have also been factors in the decision not to promote the Complainant. However, the Board finds that the decision not to promote on the basis of alcohol and personal problems does not necessarily infer that the Respondent thought that the Complainant was a "drunken Indian".

[66] The evidence in this case actually supported the Respondent's concern that the Complainant had alcohol and personal problems. The Board rejects making the huge leaps as submitted by the Commission that the Respondent felt that First Nation individuals are more prone to alcohol related problems than non-First Nation individuals.

[67] In fact, Sandra Gibbs presented herself very well at the hearing and displayed a genuine interest in the Complainant. Gibbs appeared to be willing to go out of her way to assist the Complainant in his career opportunities.

[68] The evidence suggested that Gibbs' interest in assisting the Complainant may have been a significant factor in the misunderstanding regarding the Supervisory position. It may be the case that Gibbs either suggested or actually promised the Supervisory position to the

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Complainant, but then retracted the offer when it became clear that her personal feelings may not be in the best interest of her professional development. Even if this is the case, the Board can make no connection between what is at worst, poor management skills, and discrimination on the basis of racial ancestry.

- [69] In conclusion on this issue, the Complainant has failed to prove the Respondent failed to promote the Complainant on the basis of racial ancestry. The Board finds the main reasons for not promoting the Complainant were education and experience. Although there may have been other factors involved, the Board can not conclude that the other factors were in relation to racial ancestry.

Discrimination in employment on the basis of First Nation Ancestry in Failure to Rehire.

- [70] The Board finds that the Complainant's employment was not terminated on the basis of First Nation Ancestry. The Board Finds that the Complainant's employment was terminated for reasons other than on the basis of First Nation Ancestry.
- [71] As mentioned above, the Board is unable to make the inference that the real reason that the Complainant was not rehired was because the Respondent felt that the Complainant was a "drunken Indian". In fact, the evidence supports the opposite conclusion. Gibbs was initially very prepared to rehire the Complainant when they first met after the Complainant's return to the Yukon.
- [72] It is not plausible that Gibbs suddenly changed her attitude from accepting the Complainant back to work to acting upon the very serious stereotyping that all Indians are drunks, in such a short period of time. Furthermore, there is no evidence or submissions that would explain how such a drastic attitudinal shift would occur.
- [73] The Board accepts the submissions of the Respondent and finds that the Complainant's employment was terminated in part because of the outstanding criminal charges and in part because the Respondent felt that the relationship of trust between her and the Complainant had broken down. At the relevant time, the Complainant had an outstanding impaired charge and an outstanding assault charge against a former client of Gibbs Group Home.
- [74] The Board notes in passing that the Act provides that discrimination on the basis of criminal charges or criminal record is a prohibited ground in its own right: section 6(i). However, the position was not presented to the Board in either the Human Rights Complaint or in submissions by the Complainant or Commission.

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- [75] The Board notes further that the position was likely not advanced since the Act also provides that treatment is not discriminatory if a criminal record or criminal charge is relevant to the employment: section 9(b). In this case, the Complainant acknowledged that criminal records checks were always required, although not always determinative, of employment in a group home.
- [76] With respect to the Respondent's submission that the Complainant was rehired because Gibbs felt that the relationship of trust between her and the Complainant had broken down, the Board finds that this action is a retaliation in contravention of section 28 of the Act.
- [77] The Board discourages any employer from taking such drastic action in the wake of receiving a Human Rights Complaint. A Complainant has every legal right to make a Complaint, and employers should attempt a co-operative approach to attempt to resolve the dispute.
- [78] Even in cases where an employer feels that a Complaint has no merit, it is still not excusable to retaliate or threaten to retaliate against a Complainant. In fact, even if the Board finds that there was no discrimination or harassment, the Board may have still found that there was a retaliation. However, in this case, the Board has found that in fact there was a harassment and therefore the Respondent would have been better off investigating the Complaint further before attempting to terminate the employment relationship.
- [79] In conclusion on this issue, although the Complainant was not terminated on the basis of racial ancestry, the Respondent's action amounted to a retaliation and will be subject to a fine as set out below.

DAMAGES

- [80] This Board will remain seized of the issue of damages for a period of three months to allow the Respondent time to make all payments and perform all Orders of the board within the three month time period.

Injury to dignity, feelings or self-respect (section 23(d))

- [81] As a result of the discrimination on the basis of harassment, the Board orders the Respondent to pay to the Complainant the sum of \$3,000 for injury to dignity, feelings or self-respect.

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- [82] Accepting that the range in Canada for injury to dignity, feelings or self-respect appears to range from approximately \$1,000 to \$10,000 for "worst case" scenarios, the Board finds that the injury in this case is within the low to mid range.
- [83] Applying the factors set out in *Torres v. Royalty Kitchenware Ltd.* (1982), 3 C.H.R.R. D/858, the Board finds in particular that nature, degree, time period and frequency of the harassment supports our conclusion. The Board accepts in particular the Commission's submission that the impact of the harassment had a very serious and detrimental effect on a person who appears to be otherwise a very useful and productive member of society.
- [84] The Board reserves the mid to high range of the scale for clear cases of "malicious" harassment.

Damages for Financial Loss (section 23(c))

- [85] As the Board has found no discrimination in the failure to promote or rehire the Complainant, the Respondent is not liable for damages for financial loss.
- [86] Although the Complainant established harassment, there is no pecuniary damage for financial loss in such cases.

Rectify any condition that causes the discrimination (section 23(b))

Apology

- [87] The Board finds that an apology is not appropriate in this case. The Board trusts that this decision will be reported and will provide a suitable alternative to a formal apology by the Respondent.
- [88] In addition, the Board has found that there was no discrimination against the Complainant from the Respondent or their employees. Although there was harassment, an apology would not be appropriate since the poisoned work environment was inspired mainly from co-workers rather than by the Respondent.

Posting Decision

- [89] The Board orders the Respondent to post a copy of the Outline of Decision at a visible location within each facility operated by the Respondent. The Outline of Decision is the summary of this decision that was issued on July 16, 1999.

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- [90] The Board hopes that the Outline of Decision will be presented and discussed at the Cultural Sensitivity Workshop as well as at future employee orientations. This is particularly the case where employees are working directly with First Nation clients.

Cultural Sensitivity Workshop

- [91] The Board orders the Respondent to require each employee to attend a one day Cultural Sensitivity Workshop. This order will apply to every employee of Gibbs Group Home that has not attended a one day Cultural Sensitivity Workshop in the last six months.
- [92] Only by educating the employees and implementing appropriate Policies and Procedures can we eliminate the possibility of derogatory statements becoming acceptable in the workplace.

Retaliation (section 28 & 29)

- [93] Based on the testimony, the Board finds a significant reason that the Respondent terminated the Complainant's employment is because, "when he filed his Human Rights complaint, the Respondent felt that the relationship of trust between her and the complainant had broken down."
- [94] The Board finds that the termination constitutes a retaliation in contravention of section 28 of the Act. The Board therefore orders the Respondent to pay a fine of \$1,500 pursuant to section 29 of the Act.