



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

A.B.

Applicant

-and-

Joe Singer Shoes Limited, Paul Singer and Buy-A-Hammer Investments Inc.

Respondents

DECISION

Adjudicator: Dawn J. Kershaw
Date: January 24, 2018
File Number: 2009-01184-I
Citation: 2018 HRTO 107
Indexed as: **A.B. v. Joe Singer Shoes Limited**

APPEARANCES

A.B., Applicant)	Emily Shepard and Kimberly
)	Srivastava, Counsel
)	
)	
)	
Joe Singer Shoes Limited, Paul Singer and)	Arnold Zweig, Counsel
Buy-A-Hammer Investments Inc.,)	
Respondents)	
)	

INTRODUCTION

[1] This Application, filed January 19, 2009, alleges reprisal and discrimination with respect to employment and housing because of race, colour, place of origin, ethnic origin, disability, sex, sexual solicitation or advances and family and marital status contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”).

[2] This hearing took place over six days, following which the parties provided written closing arguments. For the reasons set out in my Interim Decision prior to the hearing, 2016 HRTO 1105, I ordered accommodation for the applicant who testified via video link from a separate room. The personal respondent could see the applicant, but the applicant could not see the personal respondent.

[3] I commend counsel for the respect and sensitivity they showed throughout the hearing.

[4] Many of the allegations raised in this proceeding are extremely personal and sensitive in nature. The issue of a publication ban or an anonymization order to protect the identity of the applicant was not raised during the course of the proceeding. Nonetheless, during the preparation of these reasons I considered whether it might be appropriate to issue such an order on my own initiative. In my view there is, on the face of the evidence before me, a significant risk of harm to and re-victimization of the applicant through publication of her identity. For that reason, I have exercised my discretion under Tribunal Rule 3.11 to anonymize the applicant’s name.

ALLEGATIONS

[5] The applicant was born in Thailand and came to Canada in 1979. Her first job in Canada was working for Joe Singer, since deceased, at the respondent shoe store, Joe Singer Shoes Limited (“the store”). Joe Singer was the father of the personal respondent, Paul Singer (“Mr. Singer”).

[6] Sometime after the applicant and her husband separated in 1989, the applicant moved into an apartment above the store. Her landlord was the respondent Buy-A-Hammer Investments Inc. (“landlord”), a company owned by Mr. Singer. The applicant could not recall if she asked Mr. Singer or his father about the apartment.

[7] The applicant alleges Mr. Singer, who became the applicant’s boss, sexually harassed and assaulted her for many years, not only in the store but in her apartment. She further alleges he discriminated against her by making fun of her body, accent and English language skills, and by making derogatory comments about her place of origin.

[8] In January 2007, the applicant experienced a workplace injury. In January 2008, she reported Mr. Singer’s alleged sexual harassment and assaults to the police. The applicant alleges the respondents reprimanded her by applying to the Landlord and Tenant Board (“LTB”) to evict her for non-payment of rent, and by issuing parking tickets to her for parking on private property, even though, as a tenant, she was parking in the same spot she always had.

[9] The applicant also alleges the respondents reprimanded her for going to the police by failing to return her to work after her injury and ultimately terminating her employment. However, she gave no evidence about this and therefore I have not considered this allegation.

LEGAL PRINCIPLES

[10] The relevant provisions of the *Code* are as follows:

2(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

5(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation,

gender identity, gender expression, age, record of offences, marital status, family status or disability.

5(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability

7(1) Every person who occupies accommodation has a right to freedom from harassment because of sex, sexual orientation, gender identity or gender expression by the landlord or agent of the landlord or by an occupant of the same building

7(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee.

7(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

CONCLUSION

[11] For the reasons below I find in favour of the applicant with respect to her discrimination claims, but dismiss the applicant's claim of reprisal.

EVIDENCE

[12] At the time of the hearing, the applicant was 59 years of age. She worked at the store for approximately 28 or 29 years, beginning in approximately 1983. Her son was born in 1988, and testified he was diagnosed with epilepsy when he was 5. She testified that Mr. Singer's father gave her her first job in Canada. She is Thai but was raised in

Laos. She testified that there was no physical touch in her family except they held hands when they went somewhere. She testified that her view on physical intimacy is that she was married before she had sexual intercourse with her husband. She testified it was not easy at first, but was normal and what people were supposed to do because they were married. The applicant and her husband separated and then divorced in about 1992.

[13] The applicant alleged Mr. Singer took advantage of her as a single woman with a son who had a disability. She alleged he sexually harassed her through comments, inappropriate touching and assault, including both oral sex and sexual intercourse, in the store and in her apartment. She alleged that when she told him not to do so, he laughed at her, and when she told him she would report him, he told her no one would believe her.

[14] She further alleged Mr. Singer created a poisoned work environment for her by making fun of her accent and her English language skills, and by making comments about her place of origin, the colour of her skin and the shape of her body.

[15] Mr. Singer testified the applicant was employed by the store and was a tenant of the landlord. He testified he interviewed the applicant before she was hired. He testified she talked mainly about how her husband asked her to walk behind him, which he thought was cute. He also testified when the applicant was hired, there were also "girls" from China and Estonia, as well as an Italian and a Nigerian working at the store.

[16] The applicant testified Mr. Singer's sexual comments to her began prior to her divorce in 1992. She testified that Mr. Singer's sexual harassment and comments to her had an adverse effect on her marriage, and she could not let her husband touch her because of what was happening to her at work.

[17] The applicant testified Mr. Singer tried to kiss her first and ultimately sexually assaulted her. She testified the attacks continued from sometime before 1990 up until January 2008 when she went to the police.

[18] The applicant said Mr. Singer took advantage of the fact that she was alone in Canada with no family around. She testified he first touched her inappropriately when he called her upstairs to his office purportedly to try on sample shoes for him. He told her to sit on the arm of his chair so she could see the computer and then tried to kiss her but was interrupted by a call on the store's intercom.

[19] After that, she testified he often came up behind her in the stockroom and rubbed his penis against her, grabbed her breast from behind her or licked her neck, which Mr. Singer denied. The applicant testified most of the incidents did not last long because a customer or another staff member would come in. She testified she wore jeans to work 80 to 90% of the time and tacked her belt to prevent Mr. Singer from trying to pull her pants down.

[20] The applicant's son testified that on one occasion when he was 12 or 13 years old he heard a kissing noise and saw his mother and Mr. Singer standing close together. He testified his mother was not happy after that, did not want to talk to him and told him to never mind it.

[21] The applicant testified that as a mother, it was the worst, dirty thing that her son had to see someone grab her and that she could not protect herself, that she pushed Mr. Singer away and it did not work, and that her son had to witness her doing something she was not willing to do. She testified he was not her husband and she was not his girlfriend, and this was the boss she worked for who should have understood that she was a hard worker and did not have to sleep with him to get paid. She testified she worked for money and did not have to be his sex slave.

[22] The applicant testified Mr. Singer's assaults included forcing her to perform oral sex on him about twice a month for years. She testified most of the attacks in which he forced her to perform oral sex on him or forced her to have sexual intercourse with him happened in his office after hours after everyone else had gone home.

[23] The applicant testified that the shoes were on the main floor of the store and boots were in the basement. She testified Mr. Singer at times would call her down to the basement or up to his office. She testified that she refused to go up to his office many times. She also testified that if she was in the basement and heard him coming down the steps, she would flee to the crawl space that was connected to the basement to try and avoid him.

[24] She testified in detail about an incident in the basement when Mr. Singer pushed her down on her knees, put his penis in her mouth and ejaculated on her face. She recalled how her knees felt on the cement floor, and testified she had semen on her hands and face. She testified she cleaned herself up and vomited. She testified to a vivid recollection of Mr. Singer's smell that still makes her nauseous when she smells a similar body or cologne odour. She testified that Mr. Singer forced her to perform oral sex on him in the basement many times. She testified he smelled like he came from the washroom without washing what she called his body fluid. She testified that Mr. Singer had cameras in his office on which he could watch the store, and if she was not busy, he would come down from his office. She testified that she cannot forget his smell even though she forgets lots of things. She testified that she prays very hard that she will not remember the smell of him. She testified she would rather walk from Toronto to Niagara Falls than smell that smell again.

[25] The applicant testified that Mr. Singer's office was connected by a door to his secretary's office. On some occasions Mr. Singer called her up to his office after customers left the store, and he was playing pornography on the television. The applicant's son also testified to recalling seeing adult movies playing in Mr. Singer's office. The applicant testified when she went upstairs the door to Mr. Singer's secretary's office would be closed and locked. She testified she saw on the television, for example, someone kissing another's private parts, which she said made her feel sick. She testified Mr. Singer told her to watch and learn from it so she could do the same things to him. The applicant's son also testified he saw adult movies playing on

the office television. Mr. Singer did not deny watching pornography but denied he ever did so in the store or the office.

[26] The applicant testified when she went upstairs to Mr. Singer's office when he called, he already had his penis out, grabbed her and forced her to perform oral sex on him. He told her she was supposed to do it and that she liked it. She testified that after he forced her to perform oral sex on him, she would run downstairs. She testified she could not quit her job and felt she had no way out. She testified Mr. Singer reminded her that no one would believe her.

[27] Mr. Singer admitted he called the applicant to his office at times and they were alone together, but testified it was solely for the purpose of having her try on shoes because she had a perfect sample size foot and nothing else happened.

[28] The applicant testified she told Mr. Singer's secretary at some point what was happening to her, but she told the applicant it happened to her as well, and it was better than having Mr. Singer pick on her. Neither the applicant nor Mr. Singer called the secretary to testify. The applicant also testified that she told Joe Bruda, a co-worker, about what was happening and he told her it happened with every girl so what could she do.

[29] The applicant further testified that another co-worker, M.V., complained to her about Mr. Singer touching her inappropriately as well, and she quit the job as did other young women. The applicant advised the Tribunal and the respondents in advance of the hearing that she intended to call M.V. as a witness, and the parties made submissions about similar fact evidence, but before that issue was decided, the applicant advised that M.V. could not be located.

[30] The applicant also testified Mr. Singer once took a photo of her and told her he was going to use it for advertising, but later showed it to her on his computer and it had a superimposed penis on it to make it look like it was in her mouth. She testified she felt she had no pride, felt dirty and wondered if she was a bad person, and could not

describe how badly it hurt her. She testified if she could turn back the clock she would rather have her and her son sleep on the street than endure what she endured at Mr. Singer's hands.

[31] Mr. Singer for his part denied ever taking photos of the applicant when she was helping someone try on shoes and denied she was ever involved in advertisements for the store, but also testified he probably took photos of applicant at some time. He denied displaying a photo of the applicant on his computer or altering it like the applicant alleged. He also testified he did not have a photo of his penis.

[32] The applicant testified that Mr. Singer's actions did not stop with oral sex. She testified that two or three times a month he forced her to have sexual intercourse with him on the couch in his office and in her apartment. She testified that sex in her apartment did not happen right away. She testified that most of the attacks happened in his office after hours when the other workers were gone. He told her they had work to do, and then he forced himself on her. At times she had bruises on her arms. She also testified she was cut, and gestured to her genital area. She testified she had a lot of pain there because she was small and Mr. Singer was a big man. The applicant described how it felt to be an 89 pound woman with a 6 foot, 4 inch man on top of her who weighed almost 300 pounds. She testified she felt she could not move or breathe, and as if her bones were breaking. She testified that it was force, pushing her, strong so she could not breathe, with his sweat on top of her until he was finished. She testified that after forced sex, she felt she died inside. She pretended she did not have feelings.

[33] She stated she repeatedly told Mr. Singer no but he did not stop until he was done. She said he always wanted his penis in her mouth and his semen on her skin, and he told her his semen was good for her skin. She testified she felt numb and must have been stupid or scared.

[34] The applicant testified that she has nightmares about someone choking her or being on top of her and she cannot breathe. She tries to run but cannot. She testified that when she does not sleep well, she has high anxiety, depression takes over, her

body shakes and she sweats like she is in the shower. She testified this happens almost every night, although medication helps. She testified that when someone who is not your husband is making you do things you do not want to do, you are afraid and get confused. She testified the thoughts keep going at night and you cannot sleep, and you feel guilt and anxiety and have nightmares because you know you will face same thing again and again and you hope it will skip for a month or two. She testified she wanted to feel clean, but even though she can take a shower a hundred times, she still feels dirty up to now. She testified she still showers a lot. She also testified that if she smells something bad, she feels sick and as if she will pass out.

[35] The applicant's son testified the applicant is afraid to go outside and always feels afraid. She feels she is being watched. He testified she wants to give him advice, but does not trust her own advice.

[36] The applicant testified she moved into the apartment above the store in about 1989 when she and her husband separated. She testified she can understand why someone would ask why she would do that given her allegations against Mr. Singer, but stated that as a single parent with a son who had epilepsy, living above the store meant she could work full-time and still care for her son.

[37] She testified Mr. Singer came into her apartment without knocking when her son was not there and assaulted her. She testified he knew when her son was not there. She does not know how he got in but pointed out he owned the place and said everyone was scared of him.

[38] Mr. Singer for his part denied having a key to the apartment, and testified he was only ever in the apartment at the applicant's invitation. He testified sometimes his children slept over at the applicant's apartment and he would pick them up. He also testified he never went up to the applicant's apartment between 1995 and 2004. The applicant's son testified he recalled seeing Mr. Singer in the apartment one time near the front door. He also testified that Mr. Singer's son slept over at his apartment, and also that he was at Mr. Singer's house a lot. He testified he did not see it as being at his

mother's boss's house but saw it as being at his friend's house. Mr. Singer for his part testified that the applicant's son quite often slept over at his house from a Saturday night to a Sunday.

[39] Mr. Singer denied he ever touched the applicant sexually. He denied that he forced her to have oral sex or ejaculated on her. He agreed on cross-examination that up to 2004 the applicant would have had difficulty getting away from him but testified that from 2004 on he was not as strong as he had been and she likely would have been able to get away.

[40] The applicant further testified that in addition to the graver sexual touching, Mr. Singer routinely slapped her and other female employees on the buttocks. Mr. Singer denied he touched any of his employees except perhaps to kiss them happy birthday. He testified he did at times make sexual jokes because it is in his nature to have fun and try and relieve stress in the workplace. He testified none of his employees told him why they quit, but he asserted none of them quit because he makes sex jokes or because he touched them in a sexual way.

[41] The applicant could not estimate how many times Mr. Singer sexually assaulted her. She testified she tried to forget because she had to go back to work every day. She testified she can understand why someone would ask why she stayed, but she explained she was scared to be homeless and to leave her job because Mr. Singer told her that without him she would have nothing.

[42] Mr. Singer testified that he was not in the store that often, and he arrived there usually between 1 and 3 p.m. because he was out buying before that, and finished at the store between 4 and 5 p.m. He testified that some days he was not in the store at all. He said he did not know the applicant's routine because he was not there, but assumed she was at work.

[43] Mr. Singer testified he has health problems that began in 2004 and had not changed up to 2017. He hurt his spine in a jet-skiing accident, and a series of spinal

problems prevented him from walking, sitting or standing. He had limited mobility in his arms. If he climbed the stairs to his office he then had to lie down for half an hour before he could begin work.

[44] Between 2005 and 2007 his pain went from the top of his spine into his hands. He also had lower spine pain that radiated from his hip to his toes, as well as burning pain and muscle cramping. He testified at the end of the day he had to go home and go to bed for a while before he had dinner with his family, or had dinner in bed if he was unable to have dinner with his family.

[45] Mr. Singer did not call any medical evidence with respect to his medical issues. He provided a note from his family doctor, Dr. Wengle, dated August 25, 2016, which set out his medical conditions chronologically as follows:

- a. given medication for high cholesterol in 2001;
- b. treatment initiated for diabetes in 2004;
- c. pain medication for osteoarthritis of the knees and multilevel degenerative disc disease around 2004;
- d. hypertension treated in 2005; and
- e. by 2007, neck and leg pain over and above the knee diagnosed as multilevel degenerative disc disease and broad-based disc herniation with narrowing of the spinal canal.

[46] Dr. Wengle wrote that the applicant's conditions have deteriorated in the ensuing years and he has difficulty standing, sitting and lying in bed, and requires analgesics and anti-inflammatories to maintain a sedentary lifestyle. Mr. Singer testified he gets steroid injections and takes 100 Percocets and 150 Tylenol 4's per month. He has tried other pain medications that were not effective. He has not worked since 2009 and received WSIB disability.

[47] Mr. Singer testified that the diabetes medications he has taken since 2004 make it more difficult to get and maintain an erection. He admitted at times he takes drugs to get an erection and they take about an hour to work.

[48] The applicant testified she knew Mr. Singer had diabetes but did not know of any back problem while she was there, nor did she ever see him in pain.

[49] On cross-examination it was put to the applicant that her medical records from 1995 to 2006 show no report of any injury or attack by Mr. Singer. She testified she did not remember that, but testified she never told the doctor because she thought it might be going away. In addition, she stated that we do not talk a lot and that this was a very bad thing. She was embarrassed and ashamed and kept it to herself. She did not tell the doctor despite Mr. Singer's attacks being painful and nasty and leaving her very uncomfortable. She felt low because she could not protect herself and yet still had to protect her son. She testified she still needed a job in this country and Mr. Singer had control of her whole life. She testified she felt she could not get a job or home if she did not do what he said and felt stuck.

[50] The applicant admitted she told her doctor she had anxiety and was feeling depressed, but told her she did not know why. She testified she needed a pill to help her sleep and calm down and get her to the next day, and testified she took anti-depressants when she worked at the store. She testified she became so anxious she did not want to go to work.

[51] The applicant testified she has not slept well for many years now. She was asked on cross-examination about the May 2008 psychological assessment in which it stated she told the assessors she had no trouble falling asleep and sleeping 8 to 10 hours a night before her workplace accident. She testified that did not sound like her, that perhaps the assessors did not understand her English and that she could not sleep more than 5 or 6 hours a night and sometimes not at all. On further cross-examination she agreed the assessors said she had good English skills and that she does, but stated that because of the issues in her head some things do not come out the way she wants them to.

[52] The applicant did not deny she and Mr. Singer's family had somewhat of a social relationship. She testified her son and Mr. Singer's son were best friends and used to

spend time at each other's homes, and Mr. Singer's family included the applicant in some of its social events.

[53] Mr. Singer produced photos that showed the two families in social situations together. The applicant agreed more than one of the photos showed her son with, or holding hands with, Mr. Singer's son during the time she alleges Mr. Singer was attacking her. She explained the two boys liked each other and Mrs. Singer often invited the applicant's son to spend the night because he was calm and that calmed Mr. Singer's son down. The applicant testified she wished Mr. Singer did not make jokes about her and sexually abuse her because she loved his children and they could have been good friends.

[54] The applicant testified that in addition to Mr. Singer's sexual touching and assaults, he made comments about her body. She testified one time she came back from a holiday and was so dark because of the sun, and Mr. Singer asked who she was and where she was from, and told her to go back where she came from and that she was not welcome there. He also told her once he could only see her teeth and she was black, not brown. She testified he thought he was joking, but to her it was not joking. She testified Mr. Singer made fun of her more than anyone else because she was stuck there while others quit. She estimated he made comments about her two to three times a week.

[55] The applicant testified Mr. Singer also made comments about not knowing her back from her front. The applicant testified these comments stopped after she had breast implants, which she did partly because after breastfeeding, she no longer had breasts and Mr. Singer made fun of her often.

[56] Mr. Singer denied saying the applicant's back and front were the same and testified that a stripper came into the store once and the applicant asked why her name was Chesty, and Mr. Singer explained it was because she did not need a sign telling anyone which was her front and which was her back.

[57] The applicant also testified Mr. Singer said she had chicken or monkey feet because she was bow-legged, and he stopped using her as a customer in his ads and instead had her put shoes on another salesperson.

[58] The applicant also testified that in addition to the sexual assaults and harassment, Mr. Singer made derogatory comments about her accent or how she spoke. She testified that Mr. Singer asked customers if they understood what the applicant was saying and what she was talking about. Singer denied this, but admitted that when she told him she had one “uvary” he asked what the hell that was, and that when she said “doesn’t supposed to happen”, he repeated it. He testified the store was a stressful place and he liked to make jokes and have fun. He testified he and the applicant laughed together, and at times she was funny, and he corrected her language nicely.

[59] The applicant also testified that Mr. Singer told the applicant that at his birthday party she was going to taste the best food she had ever eaten, and told her that her people did not understand that it was gourmet food. In addition, he asked her what did she know because she was from Thailand. He also referred to Thailand as a third world country.

[60] Mr. Singer testified on cross-examination that the applicant spoke with a Thai accent and at times he could not understand her. He denied making fun of her accent because his parents were immigrants and he respected immigrants. He also denied telling the applicant that Thailand was a third world country.

[61] The applicant further alleged that it was good that the applicant’s marriage ended because her ex-husband was Iranian and they are terrorists and no good. He congratulated her for leaving, telling her she would be safe because the Iranians kill their women. The applicant pointed out her son is half Iranian.

[62] Mr. Singer testified that while he knew the applicant’s husband was Iranian, Iranians were not terrorists at that time, and he did not call him that. He denied telling

her that Iranians were dangerous. He testified that at that time Iranians were one of the few friends of the Jewish people and Israel. He denied telling her it was good she separated from him.

[63] In January 2007 the applicant fell off a ladder at work and injured herself. As a result of this fall, the applicant got involved with WSIB. Through WSIB she saw doctors, ultimately including a psychologist, Dr. Bart, and a psychiatrist, Dr. Kussin, both of whom gave evidence at the hearing.

[64] The applicant broke two ribs in her fall and also hit her head, which was not reported to the doctor at the time. Mr. Singer drove her to the hospital a day or two after she fell and left her there with her son. It was not clear from the evidence whether the applicant ever returned to work after that. Mr. Singer testified he permitted her to work on Sundays to supplement her WSIB income. He also testified on cross-examination that he permitted her to work a couple of hours a day plus Sundays.

[65] The applicant got WSIB, and agreed she told them she liked her work, and did not report the assaults. She explained she loved her customers. As of October 18, 2007, the applicant was told by WSIB that they considered her to not be cooperating with a return to work or medical treatments. Her benefits were suspended in April 2008 for failing to attend a labour market re-entry assessment, which she testified was because she was in pain.

[66] The applicant testified she thinks she went a bit crazy during rehabilitation. She felt like she was going to hurt herself and knew she needed to talk to someone because she realized she had been having issues with her boss. The therapist she spoke to referred her to Dr. Bart, whom she first saw in October 2008.

[67] Prior to that, however, the applicant was evicted from her apartment. Around the same time, she went to the police to report the assaults. The criminal charges ultimately were dismissed.

[68] The applicant received an eviction notice for non-payment of rent, dated November 9, 2007. The applicant testified she always paid her rent in cash, and had no recollection of not paying. She testified she thought she got an eviction notice because she went to the police. Mr. Singer denied this and pointed to the timing.

[69] The police took a statement from the applicant on January 20, 2008 in which she alleged sexual assaults by Mr. Singer from 1998 to 2008. She testified that she ultimately went to the police because she had thought that because she was not at work and was injured she would be safe from Mr. Singer, but instead he came to her apartment more than once in the guise of checking on her, but forced himself on her. The last time he did so, he threw her to the ground and when she told him he hurt her badly he laughed and said she was crazy. She testified she went to the police the next day because she thought it was the only way to stop him for good because she was afraid he might harm her.

[70] Mr. Singer testified the applicant ceased paying rent after she fell, last paying in January 2007. However, the application to the Landlord and Tenant Board (“LTB”) completed by Mr. Singer’s brother listed rent owing from November 1, 2006 to November 1, 2007. Mr. Singer testified he did not know how the applicant paid her rent, but agreed it appeared she had rent deducted from her pay cheques and agreed he would have had the ability to deduct her rent in October 2006 but did not think he should have to babysit her.

[71] Mr. Singer testified that after her fall she was working part-time and not earning enough to pay her rent. He testified the applicant had money issues even before and he had taken her for bankruptcy counselling, which he said she resented. He testified they had problems collecting the applicant’s rent for years, but when the eviction application was made she had not paid rent for 13 months and it was time for her to go, though he also testified that they had to start deducting her rent from her pay cheque because of her money problems.

[72] Mr. Singer testified that sometime between when his brother made the LTB application and the February 5, 2008 LTB hearing, the applicant came to his office and demanded \$25,000 for this sex thing. He testified he asked her if she was asking for \$25,000 for a sex thing, she said she was and he told her to get out and never come back alone. He stated he was angry and did not know what she was talking about. He testified it was blackmail for nothing. He testified he never saw or spoke to the applicant again. He denied evicting her for refusing to have sex with him. He testified he knew she went to the police to report some fantasy that never happened.

[73] The applicant testified that at the end, she had had enough and in order to scare him she told Mr. Singer she was going to sue him but she denied she asked him for money. She testified he told her to go ahead and sue him because no one would believe her when she could not even speak English. She testified he told her she was stuck and that while he had money and could get the best lawyers, she would have to rely on young, stupid lawyers from the community law office. He denied telling her no one would believe her if she reported him or threatening that she would have nowhere to go. He did not deny that once or twice he told her to shut up, but testified he said it in a nice way.

[74] The applicant testified that after she told him she would sue him he turned mean at work and began to complain that nothing was done in the store and it was filthy. He also sent her home and closed early because there were no customers, which meant she did not get paid.

[75] At the LTB hearing, Mr. Singer testified that his brother agreed the landlord, Buy-a-Hammer, would waive the \$9750 outstanding rent if the applicant moved out by February 29, 2008. The applicant did not recall this consent order and testified that after reporting the assaults she felt very uncomfortable and scared living in the apartment and wanted to leave.

[76] The applicant testified up until she went to the police she never paid separately for hydro, but around the same time as her WSIB benefits ceased she learned she had

to pay hydro. The applicant initially testified that her rent was \$750 per month, plus hydro, which costs a lot.

[77] The applicant further testified that up until she went to the police, she had parked behind the store. However, she then received a notice telling her she was not permitted to do so. She stopped parking in the garage but continued to park along the side wall until she was ticketed. She testified she believes this was a reprisal for no longer giving Mr. Singer sex. Mr. Singer for his part denied writing the parking notice. He testified he needed the parking spot for loading and unloading inventory. He did not know if the applicant was ticketed and he did not tell anyone to call the parking authority on her.

[78] The applicant testified she and her son moved out of the apartment in February 2008 and took only what would fit into their suitcases because she was told she was not allowed in the store even though some of their things were stored in the basement.

[79] Mr. Singer testified that in addition to not paying rent, the applicant not only did not pay her hydro bill, but in February 2008 he discovered an unauthorized connection between her apartment and the back of the store through the ceiling. He testified he did not talk to the applicant about it, that no one paid the utility bill and he had to pay a deposit to get it turned back on.

[80] He also testified with respect to incident reports he sent to WSIB in December 2007 in which he alleged the applicant stole money from the store till, and pocketed money she got when she worked on Sundays. He also told WSIB about two break-ins at the store in December 2007 in which money and footwear were stolen. He stated in the report to WSIB that he had no accusations against anyone at that stage. He agreed on cross-examination that he did not report the thefts to the police.

[81] Mr. Singer also testified with respect to an April 8, 2009 letter he dictated to WSIB that he filed as part of his hearing documents. He told WSIB the applicant was stealing from him. He testified on cross-examination that he did not fire the applicant when he found this out because he did not have proof, but he knew it was her because

customers told him she gave them a discount if they paid cash. He also testified he knew she took \$200 out of the cash for glasses when she was injured, but he called the optical store and found out she ordered \$800 sunglasses.

[82] In October 2008 the applicant saw Dr. Bart for the first time. The applicant was referred to her because she had deteriorated significantly psychologically in June 2008, which Dr. Bart testified she found out later was related to the applicant appearing in criminal court with respect to the charges against Mr. Singer.

[83] Dr. Bart assessed the applicant with chronic pain and emotional distress. She diagnosed post-traumatic stress disorder (“PTSD”), noting symptoms of dissociation, hypervigilance, hyperarousal, fight/flight, hyperventilation, sadness, emotional distress, flat affect, memory impairment, trouble focusing, physical arousal, cognitive impairment, restlessness and being emotionally closed down. The applicant was distressed when she arrived if a cab driver had taken her a different route or if the driver smelled a certain way, and was uncomfortable with most drivers because they were male.

[84] Dr. Bart testified the applicant was distressed by anything that reminded her of her employer or employment situation. She felt vulnerable and unsafe and became more socially isolated because she feared leaving her apartment. She did not think the applicant could return to work even though the applicant told her she enjoyed her work.

[85] Dr. Bart testified in her opinion the applicant’s trauma symptoms emerged when she was in pain from her fall, which in turn made her more vulnerable. Her trauma was also heightened by her decision to go to the police. The applicant’s PTSD was more severe than it would have been from just her fall. She testified she asked the applicant about other stressors, including her divorce and her son’s health issues. In her opinion the applicant’s PTSD resulted from the sexual assaults. She agreed on cross-examination she did not have access to the applicant’s family doctor’s clinical notes.

[86] Dr. Bart testified she wondered if the applicant had an acquired brain injury from her fall. When asked on cross-examination if the applicant’s symptoms could have been

caused by a concussion from her fall, she testified depression and chronic pain on top of a concussion could exacerbate all her symptoms, even leaving aside the trauma. She did not think the concussion accounted for the severity of the applicant's symptoms.

[87] In addition, she testified the applicant's pain and trauma caused the applicant to have problems accessing information, even simple information about her own life.

[88] Dr. Bart reported in her December 15, 2008 report that the applicant said Mr. Singer continued to harass her. The applicant testified she did not recall saying that, nor could she confirm whether it was true that he continued to harass her a year after she moved out of the apartment and during the time she had a restraining order against him. Dr. Bart testified the applicant told her Mr. Singer continued to call her.

[89] In December 2008, the applicant applied to WSIB for benefits for emotional injury due to abuse, but when shown the application she could not remember it, nor recall why she did not fill this in until that time. Dr. Bart testified she filled in the application for the applicant. The applicant's claim was denied in June 2009 because she said the assaults happened in her home, not at work. The applicant testified they happened at home and at work. The applicant also was asked about the appeal of the denial. It sets out that the applicant claimed her employer harassed her leading to several assaults at her home, and her appeal was denied because of a lack of proof of occurrence because there were no witnesses, she did not seek medical attention and she did not report the assaults at the time.

[90] The applicant testified the pain from the assaults is still inside her and is much worse than the pain from the fall. She testified WSIB did not believe her, nor did anyone else.

[91] The applicant also saw Dr. Kussin who testified for the applicant. He first saw the applicant in November 2008 and continued to see her about once a month right up to the time of the hearing. He agreed the applicant had PTSD from sexual trauma repeated over a long period of time, which makes it worse and more difficult to manage.

[92] In Dr. Kussin's report of October 19, 2009, he said the applicant was not ready to return to work. She was anxious all the time, lost her way when going places, and was depressed, fearful and not sleeping well. She also had flashbacks. He testified she would not be able to concentrate at work.

[93] Dr. Kussin also testified with respect to his January 19, 2016 report. He testified the applicant's story remained consistent over the years and he had never known her to be untruthful. His belief that she was telling the truth was a clinical diagnosis supported by a gut feeling about her authenticity that developed over time. He testified the applicant's symptoms were consistent with sexual assault, and he did not think there was any other diagnosis. Dr. Kussin testified the applicant has complex PTSD, which is more severe, and means that the applicant at times has psychosis.

[94] Dr. Kussin also testified the applicant has cognitive defects from her head injury, including memory and orientation. He testified that because the applicant's memory and PTSD symptoms are more severe than usual with just PTSD, he believes her symptoms result from both her head injury and her PTSD. He testified his January 1, 2009 entry referred to the applicant having significant memory problems. The applicant also testified that her memory comes and goes and sometimes she forgets many things and some days are a blank, but other days she remembers things very well. She testified sometimes she gets lost and does not know where she is.

[95] Dr. Kussin was taken through his clinical notes line by line and testified about them. He testified with respect to his August 4, 2009 note in which the applicant found out that WSIB had conducted surveillance on her, which had caused her anxiety. He stated this was particularly terrifying for someone with PTSD. In his follow up note of August 28, 2009 the applicant told Dr. Kussin she would rather get less money on ODSP or welfare than have anything to do with WSIB after what they did to her, which had made her upset and paranoid. The applicant remained suspicious of WSIB in November 2009 and he agreed there was an element of paranoia to her concern, which is why he opined she has complex PTSD. Dr. Kussin also agreed WSIB had told the applicant she could work, which added to her stress because she felt she could not.

[96] On cross-examination, Dr. Kussin was asked why the applicant stayed at her job for 28 years if she was abused there. He testified the applicant was not able to tell him specifically how long the abuse had gone on although she told him it started at the beginning and continued throughout her work history. He testified the applicant also told him the context which was that she lived upstairs in an apartment owned by her abuser, that she had a child and a job, and was threatened. She told Dr. Kussin she felt she would lose her job and apartment if she did not acquiesce. He testified that is not easy for someone like the applicant as a single mother and with her skill set and education to leave, and for someone like the applicant it is not an option.

[97] Dr. Kussin also agreed that the applicant told him she enjoyed her work with clients and finding them shoes that fit, but testified this was all overshadowed by the abuse she described.

[98] Dr. Kussin agreed the first mention of the word rape is not in his notes until May 2013. He testified prior to that the applicant told him her history that included regular sexual abuse and threats if she did not acquiesce, but he did not press her for specifics. He testified it was not that the applicant repressed the memories of rape but instead resisted talking about them because with PTSD talking about them triggers the feelings again and is upsetting. It therefore takes a long time to trust and feel comfortable enough to talk about it. Dr. Kussin also testified he used the word rape in the context of someone doing something to the applicant's body but not to her soul.

[99] Dr. Kussin recalled the first appointment when the applicant talked to him about her abuse because it was moving and she was so upset. He testified the applicant told him about the constant smell of the man, which he said is typical in PTSD. When it occurs with sexual trauma people often remember the smell and it is a trigger. When the applicant told him about the smell, for him it was an even stronger inference for him that she had experienced sexual trauma. He talked to her about it not being her fault.

[100] Dr. Kussin testified the applicant gave him details of oral sex and that she felt dirty. He used the word rape because it was not consensual and to contextualize for her

a separation between her soul from what someone did to her body. The applicant did not give him details of where the acts occurred but did mention an office. He testified he did not know anything about the office or the alleged perpetrator. He did not know if Mr. Singer was physically capable of doing what the applicant alleged.

[101] Dr. Kussin continued to see the applicant and agreed his April 19, 2016 clinical note said her memory was getting worse, which he testified reflects the normal variability of memory and post-concussion syndrome. He testified anxiety also can worsen one's memory. He agreed there were many stressors in the applicant's life, including her son and losing her job and her income, but testified none of these stressors accounted for the applicant's level of stress, including her flashbacks and hypervigilance. He testified she fit all the criteria given the severity and quality of her symptoms.

[102] Finally, Dr. Kussin was asked on cross-examination whether the applicant ever discussed her relationship with her former husband. He testified that in one session she told him that because of the sexual abuse she was suffering it made her very uncomfortable with intimacy with her husband, which factored into their marital problems. He was not able to give any information with respect to the timeline.

[103] Dr. Kussin testified that most of the time he has seen the applicant she has been depressed and described anxiety and insomnia. Medication has improved her anxiety and depression somewhat. However, she continues to describe PTSD symptoms including flashbacks, reliving the events, hypervigilance and dreams and nightmares. Triggers include being in a cab with a man who smells like the memory of her abuser, or sometimes if a man passes her on the street. Dr. Kussin testified in his view the applicant's PTSD was caused by her sexual trauma.

ANALYSIS AND DECISION

[104] The applicant has the burden of bringing forward sufficient evidence to prove that she experienced harassment or discrimination in violation of the *Code*. The applicant

must do this on a balance of probabilities, which means that the Tribunal must determine that it is more likely than not that the *Code* violations alleged by the applicant occurred. The Supreme Court of Canada confirmed in *F.H. v. McDougall*, 2008 SCC 53 (“*F.H.*”), that in order to satisfy the “balance of probabilities” standard of proof, the evidence must be “sufficiently clear, convincing and cogent.”

[105] To determine whether the *Code* was violated I must make findings of fact based on an assessment of the evidence, and where the evidence conflicts I must assess the credibility and reliability of the witnesses’ conflicting accounts of what happened. In assessing credibility, I have relied when necessary on the principles in *Faryna v. Chorny*, [1952] 2 DLR 354 (BCCA) (“*Faryna*”), in particular the following:

...Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility.

The credibility of interested witnesses, particularly in cases of conflict of evidence cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its 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 (...) Again, a witness may testify to what he sincerely believes to be true, but he may be quite honestly mistaken. (para. 356-357)

[106] I also have relied on the observations on credibility assessment made in *R. v. Taylor*, 2010 ONCJ 396, cited by the Tribunal in *Soheil-Fakhaei v. Canadian Business College*, 2012 HRTO 172 as follows:

“Credibility” is omnibus shorthand for a broad range of factors bearing on an assessment of the testimonial trustworthiness of witnesses. It has two generally distinct aspects or dimensions: honesty (sometimes, if confusingly, itself called “credibility”) and reliability. The first, honesty, speaks to a witness’ sincerity, candour and truthfulness in the witness box. The second, reliability, refers to a complex admixture of cognitive, psychological, developmental, cultural, temporal and environmental

factors that impact on the accuracy of a witness' perception, memory and, ultimately, testimonial recitation. The evidence of even an honest witness may still be of dubious reliability.

Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is honest witness, may, however, still be unreliable. (*R v. Morrissey* para 205)

[107] Depending on the circumstances, some portions of a witness' testimony may be more credible or worthy of belief than other portions. Accordingly, I can, with good reason, accept all, some or none of any witness' evidence: see *R. v. R.E.M.*, 2008 SCC 51, at para 65 ("*R.E.M.*").

Sexual Harassment

[108] As set out earlier in the decision, section 7(2) of the *Code* states:

Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee.

[109] Section 10 of the *Code* defines harassment as follows:

10(1) "harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

[110] Section 7(3) of the *Code* states:

Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome.

[111] In assessing this case, I am mindful of the issues of credibility and reliability, particularly in light of the applicant's documented and apparent issues with memory, and in light of her testimony that she forgets lots of things, though she will never forget the smell of Mr. Singer. However, I am also cognizant of the Supreme Court of Canada's ("SCC") statement in paragraph 65 of *R.E.M.*, above, that I can, with good reason, accept all, some or none of any witness' evidence. While the SCC's statement related to credibility, I find it can be applied equally to reliability.

[112] I also acknowledge that like the case of *F.H.*, this is a he said, she said case. The applicant called some limited corroborative evidence from her son and supporting evidence from her son and her doctors. Mr. Singer was the only witness for the respondents.

[113] Because this is a he said, she said case, I will set out, below, the respondent's challenges to the applicant's evidence.

[114] It was clear in this case that according to the testimony of the applicant, Dr. Bart and Dr. Kussin that the applicant's memory is fallible, or in the words used to assess testimony, not always reliable. The applicant testified openly that her memory comes and goes, that sometimes she forgets many things and some days are a blank, but also that on other days she remembers things very well.

[115] In assessing the applicant's testimony, I conclude that although it was not always reliable, it was credible, despite some contradictions. In reaching this conclusion, I have been particularly mindful in assessing the applicant's testimony of the statement from *Faryna*, above, that the real test of the truth of the story of the witness [...] must be its 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.

[116] The applicant gave her testimony in a straightforward way with obvious discomfort and distress at times. While she admitted to not remembering things sometimes, she also testified she cannot forget what Mr. Singer did to her. In addition, she provided details of her assaults, including remembering Mr. Singer's smell, how her knees felt on the concrete floor, the feel of semen on her face and hands and how she felt when Mr. Singer was on top of her.

[117] The applicant's truthfulness also was supported by both Dr. Bart and Dr. Kussin. In the case of Dr. Kussin, he has treated the applicant regularly since 2008 and testified he found the applicant's story to have remained consistent over the years. He testified her symptoms were consistent with sexual abuse. He also testified he had never known her to be untruthful. He testified that assessing her as credible was part of his diagnosis. Having said that, the Tribunal is acutely aware that it must assess credibility and not defer that assessment to any witness. In addition, in fact the parties made submissions about this issue during the examination and cross-examination of Dr. Kussin.

[118] Dr. Bart also testified in support of the applicant. She assessed the applicant's PTSD in light of other stressors in the applicant's life including her fall, her divorce and her son's health issues and concluded that her symptoms resulted from sexual assaults.

[119] The respondents challenged the applicant's evidence, which resulted in some contradictions. First, the respondent submitted that the applicant's evidence was not credible because she never reported the assaults to her family doctor despite at times being bruised and cut. I accept the applicant's explanation that she was ashamed and embarrassed. It also is of note, as the respondent submitted in closing, that the applicant's medical history from 2003 includes stress, anxiety, depression and being unable to cope with relationships, but nothing about sexual trauma. However, all the other complaints listed by the applicant's family doctor are consistent with the applicant's evidence about how she felt while she was being abused. The family doctor's notes also confirm that the applicant took anti-depressants while she worked at the store.

[120] Though no one argued it before me, the SCC's decision in *R. v. W.(R.)*, 1992 CanLII 56 (SCC), at p. 136, is instructive. The SCC found that, when assessing credibility, it was a reversible error of law to rely upon the stereotypical assumption that sexual assault survivors are likely to report the assault in a timely manner, stating (at p. 136):

This reference [to evidence that the older children had not raised concerns about the conduct at issue] reveals reliance on the stereotypical but suspect view that the victims of sexual aggression are likely to report the acts, a stereotype which found expression in the now discounted doctrine of recent complaint. In fact, the literature suggests the converse may be true; victims of abuse often do not disclose it, and if they do, it may not be until a substantial length of time has passed.

[121] The Tribunal relied on this case in *O.P.T. v. Presteve Foods Ltd.*, 2015 HRTO 675 ("*Presteve*"), and stated that even though the statement the SCC made was made in the context of child sexual abuse victims, the Tribunal has considered expert evidence with respect to a similar phenomenon in women who experience sexual misconduct: see *Cugliari v. Telefficiency Corporation*, 2006 HRTO 7 at paras. 187 to 198, and *Curling v. Torimiro*, [1999] O.H.R.B.I.D. No. 17 ("*Curling*") at paras. 70 to 72.

[122] I agree, as the Tribunal did in *Presteve*, with the expert evidence given in other Tribunal cases that women who experience sexual misconduct often do not report or disclose this conduct due to feelings of shame, humiliation and embarrassment. My finding is supported by the fact that the applicant testified to exactly these feelings.

[123] The respondent also questioned why the applicant's family doctor's note of May 26, 2003 stated she was alert, cheerful and doing well. However, he also accurately submitted that the applicant sought medical attention 22 times that year for the complaints listed in the preceding paragraph. I do not find that one notation by the applicant's family doctor detracts from the applicant's other consistent complaints.

[124] In addition, the respondent questioned the applicant's evidence about her sleep because it appeared to be inconsistent with the medical evidence. She testified she has

not slept well for many years now. However, the May 2008 psychological assessment stated she told the assessors she had no trouble falling asleep and sleeping 8 to 10 hours a night before her workplace accident. When asked about this apparent contradiction, she tried to explain it away by saying perhaps the assessors did not understand her English, but she also agreed that the assessors said she had good English skills and she does. However, she also said because of the issues in her head sometimes things do not come out the way she wants them to.

[125] I do not accept the applicant's evidence that the assessors misunderstood what she said about her sleep, and it is incongruous that the applicant told them she slept well before her fall. However, despite that, and despite my finding that this aspect of the applicant's evidence is not reliable, this one statement does not change my assessment of the applicant's overall credibility.

[126] I note in assessing the applicant's evidence that there was no doubt or question that she has memory issues. Dr. Bart testified that the applicant's pain and trauma caused her to have problems accessing information, even simple information about her own life. As such, I view the applicant's evidence in light of this testimony.

[127] The respondent pointed out inconsistencies in the applicant's evidence. These included WSIB's report that the applicant fell into a shoe rack, whereas the applicant said she fell off a ladder onto the floor. In addition, the applicant told Dr. Bart she had a large hematoma on her head but it was not documented by the hospital. I find neither of these to be contradictory. Dr. Kussin explained that it is not unusual that when a person presents at the hospital with broken ribs, that is the injury that immediately is addressed and it would not be unusual for a bruise on the head to be overlooked. With respect to the accident, the applicant testified she only remembered being on the floor.

[128] The respondent also questioned the veracity of the applicant's evidence because she told Dr. Bart that the respondent continued to harass her in 2008 when he was subject to a criminal restraining order. Without deciding the truth of the statement, the

existence of a criminal restraining order does not preclude contact, even though it is intended to stop it.

[129] The respondent also questioned where all the assaults took place given that the applicant's son testified he only remembered seeing Mr. Singer once at the door of their apartment. Again, in my view, this evidence does not mean the applicant's evidence was not credible, particularly in light of her evidence that many of the assaults took place in Mr. Singer's office and that Mr. Singer came into the apartment when her son was not there, and in fact Mr. Singer's evidence that the applicant's son slept over at his house fairly often.

[130] The applicant was also asked about her claim to WSIB for traumatic mental stress. It was put to her that her claim was denied because she claimed she was sexually assaulted at home and therefore did not identify a specific event at work that met the criteria of a trauma, as defined by the policy. The applicant testified that WSIB got it wrong, and in fact this is supported by the fact that the Worker's Report she filed on December 18, 2008 specifically refers to the location of the emotional injury as being the store. It further states that her employer (Mr. Singer) began touching her inappropriately not long after she began to work there.

[131] The applicant lost her appeal, with the Appeals Resolution Officer stating that she failed to establish "proof of occurrence" by not providing specific dates or witnesses, nor by seeking medical attention. I am not bound by this decision, and for the reasons set out above, I find that even though the applicant was not able to provide specific dates, this does not mean the events did not happen. Further, in cases of sexual harassment or abuse, there more often than not are no witnesses. I do not find this to be a bar to the applicant's claim.

[132] Finally, the applicant's evidence about when the first time the sexual assaults progressed to intercourse differed from what was set out in the Application, filed eight years prior to the hearing. Again, because of the applicant's memory difficulties, I find that although her evidence with respect to the timing of the progression of the assaults

was not reliable, it does not detract from her credibility. The applicant's evidence did not ever waver with respect to what Mr. Singer did to her over the course of many years.

[133] In considering the preponderance of the probabilities, I have also considered the circumstances under which the events the applicant alleges would have occurred, as well as the credibility of Mr. Singer's evidence. First, Mr. Singer did not deny he had the opportunity to do what the applicant alleges he did. The applicant worked and lived in the premises. As indicated, she testified Mr. Singer came into her apartment without knocking. Mr. Singer testified that to access the applicant's apartment, one used a pass card to open a box that held the key. Mr. Singer denied he had a card to access the key, but I do not find this evidence credible. I do not find it plausible that Mr. Singer did not have access to an apartment in which the applicant lived given that the landlord was a company he controlled.

[134] I also do not find Mr. Singer credible when he denied ever watching pornography in his office. The applicant not only gave very graphic evidence about pornography on the television in his office and what he said to her about it, but the applicant's son also remembered seeing what he called adult movies on that television. I preferred the applicant's son's evidence to Mr. Singer's because he gave his evidence in a straightforward and understated manner without embellishing it. He testified with respect to the only thing he recalled hearing and seeing between his mother and Mr. Singer. He did not add details that would have assisted his mother's case such as actually witnessing the kiss he said he thought he heard, but instead clearly stated he just saw them standing close together and his mother not looking happy.

[135] Mr. Singer did not deny that he was physically capable of holding the applicant so she could not get away, at least up until 2004 when he testified he was no longer able to do so because he did not have the strength in his hands. I find his evidence with respect to this not credible for the following reasons.

[136] Mr. Singer testified to more than one medical reason why he could not have done what the applicant said he did. However, the medical evidence did not support Mr.

Singer's claims not only because Dr. Wengle, who has been Mr. Singer's family doctor since 1989, did not testify, but also because Dr. Wengle's letter, disclosed as part of Mr. Singer's hearing documents, makes no mention of a lack of strength in Mr. Singer's hands. It further makes no mention of Mr. Singer being incapable of assaulting the applicant because of back pain or of his difficulty getting an erection.

[137] Dr. Wengle's letter states only that Mr. Singer got pain medication for osteoarthritis of the knees and multilevel degenerative disc disease around 2004 and that his neck and leg pain over and above the knee was diagnosed as multilevel degenerative disc disease and broad-based disc herniation with narrowing of the spinal canal by 2007. However, while Dr. Wengle states that the conditions deteriorated in the ensuing years, he wrote about Mr. Singer's current limitations but did not address any limitations the respondent may have had at the relevant time.

[138] In assessing Mr. Singer's evidence, I also have considered the fact that Mr. Singer raised several allegations against the applicant during his testimony that he had never raised before. These included that the applicant stole hydro and asked him for \$25,000 for what she called the sex thing.

[139] Mr. Singer also averred that he could not have assaulted or harassed the applicant because as of 2005 after he injured himself he went home each day by 3 or 4 p.m. yet also alleged that the applicant asked him for money for the sex thing sometime between 4 and 5 p.m. He further alleged that prior to the applicant's injury she had money problems and he had to take her to counselling for bankruptcy, which he testified she resented him for. He testified it was not his fault and he did not think she could manage the debt she had. He did not explain why he had any involvement in this.

[140] Mr. Singer also testified for the first time on cross-examination that the applicant had a key to the store, although he also testified on cross-examination that in dealing with the applicant's WSIB claim he told them that since the applicant's injury someone had broken into the store twice. While he told WSIB he did not have any allegations against anyone at that point, it was clear he was implying that it was the applicant who

broke in. He did not explain the incongruity of this when he also testified the applicant had a key to the store. Mr. Singer testified that WSIB told him to document everything so he did. He continued to deny he had any accusations against the applicant.

[141] Mr. Singer gave contradictory evidence that he did not know how the applicant paid her rent, but he also testified they had to begin deducting her rent from her pay cheque because she had money problems and did not pay.

[142] I also find Mr. Singer's evidence with respect to the altered photograph of the applicant not credible. He testified the applicant had nothing to do with advertising for the store, but admitted he likely took photos of her at some point, without explaining why he would have done so. His evidence that he did not have a photo of his penis was also unconvincing.

[143] I find on a preponderance of probabilities that Mr. Singer sexually harassed and assaulted the applicant both in her apartment and in his office which was part of her place of employment. The applicant was vulnerable given she had no family here, was single, lived above the store and English was not her first language. I find that Mr. Singer told the applicant she was stuck, that he had money and would get the best lawyers if she reported him while she would have to rely on community lawyers, and that she stayed because she felt she had no option.

[144] While the applicant's evidence was problematic in the ways I enumerated, the preponderance of the evidence points to the applicant being credible. She was able to recall specific details of how Mr. Singer smelled, how it felt to have semen on her face and hands or how dehumanizing it was to have Mr. Singer alter a photo as he did. She also provided great detail with respect to what Mr. Singer said to her when she finally told him she would sue him. She does not deny threatening to sue him, and while the applicant appears to have mixed up events and alleged that Mr. Singer commenced eviction proceedings after she went to the police, which is not the case, it is likely that he did so after she threatened to sue him.

[145] I find Mr. Singer sexually harassed and solicited the applicant both at work and as her landlord in violation of sections 7(1), (2) and (3) of the *Code*.

Discriminatory comments/Poisoned work environment

[146] The test for finding a poisoned work environment was articulated by the Ontario Court of Appeal as follows:

... There must be evidence that, to the objective reasonable bystander, would support the conclusion that a poisoned workplace environment had been created. ...

Moreover, except for particularly egregious, stand-alone incidents, a poisoned workplace is not created, as a matter of law, unless serious wrongful behaviour sufficient to create a hostile or intolerable work environment is persistent or repeated.

See *General Motors of Canada Ltd. v. Johnson*, 2013 ONCA 502 (CanLII) at paras. 66-67.

[147] The applicant alleged Mr. Singer made comments to her about her body, her skin colour, her accent and her country of origin.

[148] Mr. Singer admitted he made sexual comments and jokes. He also admitted he made fun of the applicant's accent and use of English at times, testifying he liked to make jokes. Mr. Singer dismissed this as he and the applicant laughing together, but the applicant's testimony painted this quite differently. Her testimony was that she found his comments humiliating. In light of Mr. Singer's testimony in which he did not deny making jokes about the applicant's English use, I find Mr. Singer created a poisoned work environment for the applicant with his comments.

[149] Mr. Singer also tried to explain what he said to the applicant about her body, specifically with respect to her front being indistinguishable from her back, as being a comment he made about a stripper when she came into the store. However, for the same reasons I have set out above in my discussion with respect to credibility, I prefer the applicant's testimony.

[150] The respondent questioned the applicant's evidence with respect to Mr. Singer's comments about her place of origin. The respondent submitted that the applicant's position that it was racist when Mr. Singer told the applicant she would get the best food at his birthday party was absurd. However, this is a mischaracterization of the applicant's evidence. The applicant testified that the context of Mr. Singer's remark was that she was going to taste the best food she had ever eaten at his birthday party, and told her that her people did not understand that it was gourmet food. In addition, he asked what did she know given she was from Thailand, and he referred to Thailand as a third world country. These remarks are in fact indicative of discrimination based on the applicant's race and place of origin.

[151] The applicant in closing submissions pointed out that Mr. Singer referred to something the applicant said in her job interview as cute and also referred to her as a girl. Mr. Singer's language was indicative of his view of women. I also note that during his cross-examination, he was combative with the applicant's counsel at times, and at one point told her she was wrong and should get better notes. The language he used with the applicant and the combativeness he displayed toward her counsel displayed a lack of respect for women generally.

[152] Given all of the evidence including the repeated comments and sexual harassment and solicitation and advances to the applicant, I find that Mr. Singer created a poisoned work environment for the applicant.

Reprisal

[153] The applicant alleged the respondents reprised against her for asserting her rights by going to the police.

[154] The respondent in closing submitted that the timing did not support this, and I agree. The landlord commenced the application to evict the applicant at the end of December 2007. The applicant went to the police in January 2008.

[155] Given the timing alone, I need not address the other issues that arose with respect to the LTB and alleged rent arrears issues.

[156] I also find that the applicant's claim that the respondents reprised against her by raising parking issues also fails. This allegation did not form part of the applicant's initial allegations in her Application. She claimed reprisal by the respondents for failing to return her to work after her fall, an allegation she did not give evidence about. The applicant's reprisal claim is dismissed.

Liability of the Corporate Respondents

[157] The applicant made submissions with respect to joint and several liability, and submitted that all three respondents should be jointly and severally liable for the discrimination.

[158] The issue of corporate liability was addressed by the Tribunal in *Presteve*. The Tribunal decided in that case that a corporate respondent is deemed to be liable for the violations of s. 5(1) of the *Code* by a personal respondent pursuant to s. 46.3 of the *Code* as acts or things done by him as an officer, official or employee of the corporate respondent in the course of his employment. The Tribunal cited the Supreme Court of Canada case of *Robichaud v. Canada (Treasury Board)*, 1987 CanLII 73 (SCC), in which it decided that the term "in the course of employment" did not require that the impugned actions of an employee fall within the four squares of a job description, but meant only that the actions were in some way related or associated with the employment within a purposive interpretation of human rights legislation. In this case, the personal respondent was the owner and principal of the store, which gave him the power and authority to take the actions that he did against the applicant. That is sufficient to find liability against the store under s. 46.3 of the *Code* and I find the store jointly and severally liable with Mr. Singer for the acts committed in the course of the applicant's employment.

[159] In addition, given that I have found that the personal respondent's sexual solicitations and advances and sexual harassment toward the applicant also created a poisoned work environment contrary to s. 5(1) of the *Code*, I find the store equally liable with the personal respondent.

[160] As the Tribunal said in *Presteve* respecting corporate liability for a violation of section 7 of the *Code*, pursuant to section 46.3 of the *Code*, a corporation is not automatically deemed to be liable for section 7 infringements committed by one of its officers, officials or employees. This does not mean a corporation can never be liable for harassment or sexual solicitations or advances committed by its officers, officials or employees. If the person who violates section 7 of the *Code* is a "directing mind" of the corporate respondent, this is a basis for imposing equal liability on the corporate respondent despite the language of s. 46.3: see *Ontario Human Rights Commission v. Farris*, 2012 ONSC 3876 (Div.Ct.) at para. 33; *Curling*, above, at paras. 70 to 72; *M.K. v. [...] Ontario*, 2011 HRTO 705; *Boldt-Macpherson v. The Hoita Kokoro Centre*, 2008 HRTO 35. The Tribunal found corporate liability, as I do in this case for the same reasons. I find the landlord jointly and severally liable with Mr. Singer for the acts of harassment that occurred in the applicant's apartment. I also find the store jointly and severally liable for the violations of the *Code* that occurred in the applicant's place of employment for the same reasons. The personal respondent was the owner and principal of the store and landlord at the time of the events at issue and therefore was part of their directing minds.

REMEDY

Monetary

[161] In this case, given the nature of the acts and the circumstances under which they occurred, namely that the applicant lived and worked in the same building and Mr. Singer was both the directing mind of her employer and her landlord, through a corporation, I find it appropriate to award damages jointly and severally and on a global basis.

[162] The applicant initially tried to file the Application under the old legal regime, but ultimately filed a new Application with the Tribunal. The applicant requests the following remedies:

- a. Damages for injury to dignity, feelings and self-respect in the sum of \$200,000;
- b. Special damages in lieu of notice in the sums of \$5772 and \$2964, respectively, for failing to return the applicant to work;
- c. Pre- and post-judgement interest on the monetary awards;
- d. An order that Mr. Singer attend a mandatory human rights training program at his cost.

[163] The Tribunal can award monetary compensation pursuant to section 45.2(1)1. of the *Code* as follows:

45.2(1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.

[164] The guiding principles governing an award of compensation for injury to dignity, feelings and self-respect were set out in *Arunachalam v. Best Buy Canada*, 2010 HRTO 1880. The Tribunal stated that in evaluating the appropriate damages for injury to dignity, feelings and self-respect, the Tribunal should consider both the objective seriousness of the conduct and the effect on the particular applicant who experienced discrimination: see, in particular, *Seguin v. Great Blue Heron Charity Casino*, 2009 HRTO 940 at para. 16.

[165] Damages will be generally at the high end of the relevant range when the applicant has experienced particular emotional difficulties as a result of the events, and when his or her particular circumstances make the effects particularly serious. The

Tribunal discussed some of the relevant considerations in *Sanford v. Koop*, 2005 HRTO 53 at paras. 34-38 which include:. See also: *ADGA Group Consultants Inc. v. Lane*, 2008 CanLII 39605,

- Humiliation and hurt feelings experienced by the complainant
- A complainant's loss of self-respect, dignity, self-esteem and confidence
- The experience of victimization
- Vulnerability of the complainant
- The seriousness, frequency and duration of the offensive treatment.

See also *ADGA Group Consultants Inc. v. Lane*, 2008 CanLII 39605.

[166] In assessing the monetary remedy for injury to dignity, feelings and self-respect, I have also kept in mind that the Tribunal's remedial powers are not meant to be punitive. See *McCreary v. 407994 Ontario*, 2010 HRTO 2369.

[167] The applicant submitted that her request for \$200,000 for injury to dignity, feelings and self-respect was in line with the remedy in *Presteve* in that she was subjected to repeated assaults and harassment on various grounds both in her home and workplace. In addition, she was subject to threats aimed at exploiting her vulnerability as an immigrant and single mother. The applicant further submitted that in fact her experience was more egregious than in *Presteve* because it spanned a longer period of time and involved very severe assaults.

[168] The respondents submitted that the applicant's request for \$200,000 was based on the Tribunal's award in *Presteve* and that it was not only at the highest end of damages for injury to dignity, feelings and self-respect but that amount was also awarded in a situation where the applicants were in a most vulnerable position because of their status in Canada as migrant workers and their lack of connection to the community, and because the personal respondent in that case was charged with sexual assault and pleaded guilty to simple assault.

[169] The medical evidence supported the applicant's evidence that she continues to have depression and finds it difficult to be around people. She also testified she still has nightmares that include feeling that someone is choking her or is on top of her so she cannot breathe. She tries to run but cannot. Dr. Kussin testified that the applicant continues to have flashbacks.

[170] The applicant testified at times she does not sleep well, which exacerbates her anxiety and depression. She testified she wonders if this will continue until she dies. She testified she shakes and sweats almost every night, and while medication helps, it only helps if she remembers to take it. Seeing her psychiatrist monthly also helps.

[171] The applicant was very emotional during her testimony and required several breaks to compose herself. She voiced great anger at Mr. Singer at times for what he did to her, stating she would never be able to forget what he had done.

[172] I find the applicant was in a vulnerable position given that she was a single woman raising a son with a disability; that she needed to live in the same building where she worked, which allowed her to care for her son; and that she was an immigrant who felt, as she put it, stuck in the situation she was in. She endured not only harassment and sexual assaults, but also threats.

[173] The applicant's ordeal lasted far longer and involved many more assaults and harassment than experienced by the applicants in *Presteve*. For those reasons, and because of the objective nature of the discrimination involving someone who was vulnerable and virtually unable to leave, as well as the lasting effect on the applicant, I find an award of \$200,000 as compensation for injury to dignity, feelings and self-respect is appropriate.

[174] I make no order with respect to lost wages because there was no evidence to permit me to consider the termination claim.

Interest

[175] The Tribunal has the power to award interest on damages for injury to dignity, feelings and self-respect, sometimes referred to as general damages. See *Presteve*, above; *Impact Interiors Inc. v. Ontario (Human Rights Commission)* (1998), 35 CHRR D/477 (OntCA); *Ontario (Human Rights Commission) v. Shelter Corp.*, [2001] OJ No. 297 (Div.Ct.).

[176] Pre-judgment interest is typically awarded on the basis of the pre-judgment interest rate established pursuant to section 127 of the *Courts of Justice Act*. The pre-judgment interest rate is typically based upon the interest rate from the quarter in which the proceeding was commenced, which in this case is the first quarter of 2009, which is 2.5%, which in my view is appropriate.

[177] I find that pre-judgment interest should run from the last incident of discrimination. I accepted the applicant's evidence that the last incident occurred in January 2008 and I set the date from which pre-judgment interest shall run at January 1, 2008.

[178] Post-judgment interest shall run on any amount of the award that remains unpaid more than 30 days after the date of this Decision at a rate of 2.0% calculated from the date of this Decision.

Public Interest Remedy

[179] Section 45.2(1).3 of the *Code* permits me to make an order directing any party to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with the *Code*. The applicant requested that Mr. Singer take human rights training at his expense.

[180] Given Mr. Singer's evidence that he no longer works, he is not in a supervisory position over any employees. As such, I find it unnecessary to order that Mr. Singer take human rights training.

ORDER

[181] For all of the foregoing reasons, I make the following orders:

- a. I find the store and the landlord jointly and severally liable with Mr. Singer for the violations of the *Code* and order the respondents jointly and severally to pay to the applicant the amount of \$200,000.00 as compensation for injury to her dignity, feelings and self-respect, plus pre-judgment interest at the rate of 2.5% running from January 1, 2008 to the date of this decision;
- b. I further order post-judgment interest on any part of the foregoing amount that remains unpaid more than 30 days after the date of this Decision at a rate of 2.0% calculated from the date of this Decision.

Dated at Toronto, this 24th day of January, 2018.

"Signed by"

Dawn J. Kershaw
Vice-chair