



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**BETWEEN:**

**Susan Kovios**

**Applicant**

**-and-**

**Inteleservices Canada Inc.**

**Respondent**

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## DECISION

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**Adjudicator:** Brian Cook  
**Date:** August 14, 2012  
**File Number:** 2010-05673-I  
**Citation:** 2012 HRTO 1570  
**Indexed as:** **Kovios v. Inteleservices Canada Inc.**

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**APPEARANCES**

Susan Kovios, Applicant                    )  
  )  
  )       Self-represented

Inteleservices Canada Inc., Respondent   )  
  )  
  )       Evan VanDyk, Counsel

## Introduction

[1] This is an Application filed under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the “Code”), alleging discrimination in employment on the basis of disability. In particular, the applicant alleges that the respondent failed to accommodate her sensitivity to scents or fragrances in the workplace. The respondent operates a call centre. The applicant was employed by the respondent for three days in January 2010.

[2] The Application was heard on April 11, 2012. I heard evidence and submissions from the applicant and evidence from three witnesses called by the respondent. These witnesses were Farrah Nugteren, who at the time was the respondent’s recruiter, Kristen Montgomery, who at the time, and currently is the Account Manager for the area where the applicant worked and Pam Sharpe, who was at the time and is currently the respondent’s Human Resources Manager.

## Decision

[3] For reasons that are set out below, I conclude that the respondent did not discriminate against the applicant and in particular that the respondent did not fail to accommodate the applicant’s disability.

## Background

[4] The respondent operates a call centre. At any one time it has approximately 200 agents and there are two shifts. Employees work in a large open space that has rows of cubicles with walls that are about four feet in height.

[5] The applicant has a scent and fragrance sensitivity. As discussed in more detail later, the diagnosis of this condition is not clear and is not well documented in the evidence she presented to the Tribunal.

[6] The applicant testified that she has experienced problems with scent sensitivity since 2008. She testified that the condition has caused problems in previous workplaces. Prior to her employment with the respondent, she had last been employed in October 2009. The applicant testified that her scent sensitivity was a factor that contributed to the end of that employment.

[7] The applicant responded to a job ad placed by the respondent in January 2010. The respondent's head office is in the United States. She was first screened by telephone by a person at head office and was then invited to an interview at the call centre.

[8] The applicant was interviewed by Ms. Nugteren, the respondent's recruiter. She was the person who did the initial interviews and was involved in the orientation of new employees. Ms. Nugteren is no longer an employee of the respondent, but appeared as a witness at the hearing.

[9] The applicant testified that during the interview, she told Ms. Nugteren that she has a scent sensitivity and asked if this would be a problem. Ms. Nugteren told her it would not be a problem because the employer has a fragrance-free policy. Ms. Nugteren also told her that any issues that might arise would be dealt with. In her testimony, Ms. Nugteren agreed that the applicant identified that she has a scent sensitivity. She says she told the applicant that there was a fragrance-free policy but that it was a guideline and that with over 200 people working in the same area it would not be possible to guarantee that there would be no exposure.

[10] Ms. Nugteren testified that when she called people to tell them they had been accepted for employment, she reviewed specific policies like the dress policy and also the fragrance-free policy. She testified that she would tell people that they should not wear perfume or cologne although she was uncertain about whether people were told not to wear perfume or cologne at all or only not to wear strong perfume or cologne.

[11] Ms. Nugteren testified that she was impressed with the applicant's background and presentation at the interview and she recommended that the applicant be offered a position.

[12] A few days after the interview with Ms. Nugteren, the applicant attended the call centre to start what was to be a three-day training session. She was part of a group of nine trainees.

[13] The first day of the training session was Thursday, January 14, 2010. The group met in a small meeting room with Chelsea, who was the trainer. Chelsea is no longer employed by the respondent and was not available as a witness. The training session lasted from approximately 1:00 to 6:00 PM.

[14] At the start of the day on January 14, Ms. Nugteren came to the room and briefly reviewed a number of policies and procedures, including the fragrance-free policy.

[15] The applicant testified that she immediately noticed that Buffy, one of the members of the group, was wearing perfume. She was surprised by this, given the fragrance-free policy. As the day went on, she began to develop a headache which she described as a migraine, which she said is a common symptom when she is exposed to scents. She did not say anything until the end of the day when she told Chelsea that she has a scent sensitivity and that she had a migraine as a result of scent exposure. She did not specifically identify Buffy to Chelsea but did say that someone was wearing a fragrance and that this was a problem. The applicant told Chelsea that she hoped things would be better on the next day.

[16] The second day of training was Friday, January 15. The group met again in the same small room. The applicant testified that she noticed perfume again and felt that it was worn by Buffy again. She did not say anything until the break, when she complained to Chelsea and said that she might have to leave because she was starting to feel unwell. She told Chelsea that Buffy was the person who was wearing a fragrance.

[17] The applicant testified that she does not know if Chelsea spoke directly to Buffy. However, in the Application, the applicant indicated that she believed that someone did speak to Buffy because she noted that Buffy looked upset. Buffy was no longer in the group by the third day of training, although the applicant thinks this may have been because Buffy had poor English skills and had dropped out for that reason. The respondent's witnesses noted that there is typically a high turnover during training and that up to a third of the trainees typically leave before the end of the third day of training.

[18] After the break and after the applicant spoke to Chelsea, Chelsea turned a fan that was operating in the room so that it was blowing directly on the applicant. The applicant testified that this did not help and actually made the situation worse because now scented air was blowing in her face. Chelsea asked if the fan helped. The applicant testified that she did not say anything because it appeared that Chelsea did not "get it". However, as the respondent pointed out, in the Application, the applicant indicated that she had asked that the fan be pointed towards her. The applicant testified that this was not correct.

[19] The third day of training was Monday, January 18. The group met in the small training room as it had on the other days. The applicant testified that she did not notice any fragrance when they were in the small room. They then moved to a larger training room. There was some disagreement between the witnesses about why this move occurred. The applicant testified that the change in rooms was necessary because by the third day, the training required all the participants to use a computer. The large room was equipped with computers and the small room was not.

[20] Kristen Montgomery was the respondent's Account Manager. Ms. Montgomery testified that the small room was equipped with computers. Her understanding is that the group was moved to the larger room because it had better ventilation and that the change was made to provide accommodation to the applicant.

[21] When the group changed rooms, the applicant stayed behind to talk to Chelsea. The reason she stayed behind was to find out more information about the work

schedule. The applicant then joined the rest of the group in the larger room. Ms. Montgomery was present and was going to be doing the training along with Chelsea. When the applicant came into the larger room, she noticed a strong smell of cologne. She asked the person sitting beside her if she noticed a smell of cologne. The person beside her said that she was in fact wearing cologne. The applicant is not sure that this was true because the smell persisted even when the person changed seats.

[22] The applicant testified that she complained about the smell to Chelsea and told her that she did not think she could continue in the environment because of the strong smell of fragrance that she experienced. She testified that Chelsea then asked Ms. Montgomery what to do.

[23] Ms. Montgomery suggested that since the training program was almost finished, the applicant could leave the training group and finish her training by shadowing one of the workers on the call centre floor. The applicant agreed to this and Ms. Montgomery took her to one of the call centre cubicles to sit beside one of the call centre workers. Ms. Montgomery testified that she could not smell cologne or any other particular scent when she was in the large room with the applicant. She did not tell the call centre worker about the applicant's scent sensitivity out of consideration for the applicant's right to privacy. However, she did make sure that there was no obvious scent in the area.

[24] The applicant testified that the call centre worker was wearing cologne and that this was immediately obvious to her. She was already feeling unwell from the time in the training room and this further exposure caused her to feel worse. She was feeling nauseous and light headed and could not focus. She was also very upset because of continuing exposure to scents. She testified that she felt she was on the verge of a panic attack.

[25] After about ten minutes, the applicant left the workstation and talked to Ms. Montgomery. She testified that she told Ms. Montgomery that she could not stay in the

environment without accommodation and that she would have to leave. Ms. Montgomery did not have any other suggestions and so she left.

[26] Ms. Montgomery testified that the applicant approached her after the applicant had been with the call centre worker for about ten minutes. The applicant was visibly upset and distraught. She testified that the applicant said that the job was not working out and she had no choice but to leave because she could not work for the respondent. Ms. Montgomery testified that the applicant did not ask for any specific accommodation and Ms. Montgomery could not think of anything more that could be done.

[27] The applicant testified that on or about January 19 (the day after she left the workplace), she called and spoke to Ms. Nugteren and asked if anything could be done to allow her to work for the respondent. She was told that there was nothing available. Ms. Nugteren recalled this conversation in her testimony. She said that her understanding was that the applicant had not been able to work in the call centre environment and that as call centre jobs were all that were available, she told the applicant that there was nothing else available.

[28] The applicant testified that a day or two after her conversation with Ms. Nugteren, she called the respondent's head office in the United States to complain about her experience. She testified that Ms. Sharpe called her after that. She testified that she told Ms. Sharpe that she had been forced to leave the respondent's workplace because the fragrance-free policy was not enforced and as a result she had been exposed to scents that had made her feel sick. She testified that Ms. Sharpe had no suggestions about how she might be able to continue in employment.

[29] Ms. Sharpe testified that she did speak to the applicant but that it was on January 18, just before the applicant left the workplace. Ms. Sharpe testified that during the conversation, which was not long, the applicant appeared to want her to know what had happened during the training period and also about the applicant's history of other jobs that had not worked out because of her scent sensitivity. Ms. Sharpe testified that the applicant did not say that she was seeking accommodation. She did agree that the



applicant said she was leaving because the respondent had not enforced its fragrance-free policy. Ms. Sharpe testified that she did not try to stop the applicant from leaving because it seemed that the applicant was intent on leaving. As well, the applicant appeared to be extremely upset. Ms. Sharpe indicated that she would have followed up further but did not because the applicant did not return to the workplace and so seemed to have quit.

### **The Respondent's Fragrance-Free Policy**

[30] There are several versions of the respondent's fragrance-free policy. The most comprehensive of these is found in the Human Resources policy book which includes the following policy statement:

Inteleservices is committed to help provide a workplace free of unwanted scents. Fragrances in the workplace can greatly affect employees with asthma and/or sensitivity or allergy to certain chemical based products "multiple chemical sensitivity" (MCS). As such these sensitivities may cause dizziness, nausea, headaches, migraines or respiratory irritations, any of which may result in going home to recover or possible life threatening [situations].

[31] The policy goes on to discuss things that people can do to adhere to the policy including not using "perfumes, colognes, hand lotions, aftershaves, scented hair spray, powder, richly scented deodorant/antiperspirant, air fresheners, scented candles, poinsettias, pine boughs and the like."

[32] The policy concludes with the following:

These guidelines are voluntary, so its enforcement relies on the good will of all employees, customers, clients, and visitors of Inteleservices. However, it is hoped that people will come to understand that scented products are, by their very nature, shared, hence not "personal".

[33] A less comprehensive statement is found in a human resources Memo addressed to all employees. Ms. Sharpe testified that a copy of this memo is always posted in the washrooms to remind employees about the importance of the policy. The

memo notes that fragrance allergy or sensitivity can be a serious problem and asks that employees “voluntarily refrain from using or wearing” products on the premises including perfumes, colognes, body sprays, scented hair sprays, hand lotions, aftershaves and strongly scented detergents/air fresheners.” The policy states:

This is not a “ban” on scented products, but a request to help make the workplace more comfortable for people suffering from allergies and sensitivities to different products and chemicals.

[34] There is also a “Policies and Procedures Summary” consisting of a two-page handout that summarizes a number of different policies, including the fragrance-free policy which is summarized in the following terms:

Please be considerate of [others] and refrain from spraying perfumes, hairsprays or colognes on the call centre floor or in bathrooms. There are people who have allergies to these items and they can be irritating to other employees.

[35] Even the more specific and detailed Human Resources policy book version of the policy is not in fact a “fragrance-free” policy. It is rather a request that employees voluntarily refrain from using “perfumes, colognes, hand lotions, aftershaves, scented hair spray, powder, richly scented deodorant/antiperspirant, air fresheners, scented candles, poinsettias, pine boughs and the like.”

[36] The respondent’s evidence is that it has developed individualized accommodation for individual employees who have complained of specific exposures to scents. Ms. Sharpe testified that there are currently two employees who require some accommodation because of scent sensitivity. One of these has only been an employee for a short while. She was allowed to go home for the day with pay after she complained that the person she was sitting beside was wearing perfume or cologne and that she was feeling unwell. The other employee who has a scent sensitivity has been an employee for over four years. That employee has advised that she gets shortness of breath when she comes in contact with certain scents. Ms. Sharpe testified that if this employee identifies a co-worker who is wearing a strong perfume or fragrance, the co-

worker will be required to wash or may be sent home. The employee is also allowed to choose where to sit so as to ensure that any exposure is minimized.

[37] Ms. Sharpe testified that she enforces the fragrance-free policy. She testified that if she notices that an employee is wearing a strong perfume or cologne, she may require the employee to wash the fragrance off. If it is embedded in the employee's clothes, she may require the employee to go home without pay.

### **The Applicant's Scent Sensitivity**

[38] As noted earlier, the applicant testified that she has experienced scent sensitivity since 2008. She believes that she is not only sensitive to certain scents, but that her olfactory sense has been increased so that she is aware of scents that others do not notice. She described her condition as "hypersensitivity".

[39] The applicant testified that she has identified certain products that she knows she is specifically sensitive to but she has not been able to identify all the chemicals or scents she is sensitive to. Her understanding is that it would be extremely difficult to determine this because there are so many possibilities.

[40] The applicant is not affected by all scents. She testified, for example, that she is not sensitive at all to cigarette smoke, and in fact was a very heavy smoker until recently when she tried unsuccessfully to quit but was able to reduce her smoking. She believes that she may only be sensitive to "artificial" scented products and that tobacco does not contain "artificial" product, which is why she is not affected by cigarette smoke.

[41] After some experimentation, she has determined that some laundry and cleaning products cause symptoms but some do not. She is, for example, able to use Pine-Sol and Lysol if they are diluted.

[42] The applicant testified that she can usually avoid exposure when she is out in the community. For example, if she is grocery shopping and encounters someone wearing

a fragrance, she will go to another aisle until the person leaves.

[43] The applicant testified that the symptoms she develops after exposure seem to vary based on the degree and length of exposure. The symptoms may include severe bronchitis and headaches. She testified that she was concerned that she felt that she was starting to develop these symptoms as a result of her exposures at the respondent's workplace. The respondent pointed out that the applicant has not provided any medical confirmation to confirm that the applicant was developing these symptoms as a result of exposures at the respondent's workplace.

[44] The applicant testified that shorter exposures to small amounts of scent can trigger less severe symptoms. For example, at the hearing, she indicated that when she went to the Tribunal's washroom during the lunch break, she noticed a smell of perfume (the Tribunal also has a scent-free policy). The respondent's female witnesses indicated that they did not notice the smell when they were in the same washroom. The applicant testified that she had a sort of tickle in her throat as a result of this exposure. She appeared to have a mild cough. The applicant indicated that she also felt that she was reacting to some scent in the hearing room even though all the participants had not used any scented products. She noted that the ventilation in the room was circulating air from other parts of the building and she felt that the circulating air could very well contain some scents that were causing her to experience symptoms.

[45] The applicant's documents include a report from Dr. Michael Alexander, a specialist in internal medicine and clinical immunology. The report is dated October 8, 2010, which is about eight months after the events relevant to this Application. Dr. Alexander performed skin testing which did not confirm any allergy. He indicated that the applicant "experiences hypersensitive reactions to scented products, which is not an IgE mediated phenomenon." There was a suggestion that she could have further testing but she decided that there was no point, since the testing could not test for fragrances.

[46] The applicant saw a naturopath for a few months in 2008 but she could not afford further treatment. She referred to a letter from the naturopath, dated May 26,

2008, which indicates that the applicant is “extremely sensitive to chemicals such as scents, odours and air fresheners”, and that she requires accommodation to avoid such exposures. The report does not provide any further details and it appears that the statements in the report are based only on the history provided to the naturopath by the applicant and are not based on any medical investigation or assessment.

[47] The applicant indicated that she is not sure that she could function in a workplace unless the workplace was completely fragrance-free. This would mean that the workplace was free of all fragrances, including fragrances that are detectable only by her. She indicated that she could not work in in a large room if one person in the room was wearing a fragrance, even if the person was several meters away from her work station, and even if the fragrance was not detectable by others.

### **The Legal Test**

[48] Section 5(1) of the *Code* provides as follows:

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, age, record of offences, marital status, family status or disability.

“Disability” is defined in section 10 of the *Code*:

“disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*.

[49] Section 17 of the *Code* provides as follows:

17. (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.

(2) No tribunal or court shall find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

[50] Pursuant to section 17, the first question in the case of an employee with a disability is whether the employee is capable of performing the essential duties of employment that is available with the employer. The employer must take reasonable measures to accommodate the needs of the disabled employee to allow the employee to perform the essential duties of the employment unless accommodation would result in “undue hardship”.

[51] In *Central Okanagan School District No. 23 v. Renaud* (1992), 95 D.L.R. (4<sup>th</sup>) 577, the Supreme Court of Canada discussed the accommodation process and the mutual obligations of workplace parties in the following terms:

To facilitate the search for an accommodation, the complainant must do his or her part as well. Concomitant with a search for reasonable accommodation is a duty to facilitate the search for such an accommodation. Thus in determining whether the duty of accommodation has been fulfilled the conduct of the complainant must be considered.

This does not mean that, in addition to bringing to the attention of the employer the facts relating to discrimination, the complainant has a duty to originate a solution. While the complainant may be in a position to make suggestions, the employer is in the best position to determine how the complainant can be accommodated without undue interference in the

operation of the employer's business. When an employer has initiated a proposal that is reasonable and would, if implemented, fulfil the duty to accommodate, the complainant has a duty to facilitate the implementation of the proposal. If failure to take reasonable steps on the part of the complainant causes the proposal to founder, the complaint will be dismissed. The other aspect of this duty is the obligation to accept reasonable accommodation. This is the aspect referred to by McIntyre J. in *O'Malley*. The complainant cannot expect a perfect solution. If a proposal that would be reasonable in all the circumstances is turned down, the employer's duty is discharged.

[52] In *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, [1999] 3 S.C.R. 3, at paragraph 64, the Supreme Court emphasized that the accommodation process requires an individualized investigation of accommodation measures and assessment of the employee's needs:

Courts and tribunals should be sensitive to the various ways in which individual capabilities may be accommodated. Apart from individual testing to determine whether the person has the aptitude or qualification that is necessary to perform the work, the possibility that there may be different ways to perform the job while still accomplishing the employer's legitimate work-related purpose should be considered in appropriate cases.

[53] The duty to accommodate thus requires both the employer and the employee to co-operate in the search for solutions that will allow the applicant to perform the essential duties of employment without causing undue hardship for the employer. The employee must identify that she requires accommodation and provide sufficient information to the employer to allow the employer to develop appropriate solutions.

### **The Applicant's Disability**

[54] The applicant has a scent sensitivity but the exact nature of this sensitivity is not clear. The medical information the applicant provided for the purposes of this Application provides very little detail about the nature and extent of the applicant's scent sensitivity. In another case it might be necessary and important to explore this further in order to determine what steps a respondent could reasonably take to accommodate

such a condition and possibly to be clear that the condition is a disability for the purposes of the *Code*. In this case, the respondent agrees that the applicant's scent sensitivity is a disability. Because of my ultimate findings, for the purposes of this decision, I have assumed that the applicant has a disability within the meaning of the *Code*.

### **The Training Period**

[55] It is not disputed that during the three days of training the applicant complained that she was experiencing symptoms due to exposure to scents and I have no reason to doubt this. However, I also accept the evidence of Ms. Nugteren and Ms. Montgomery that the scents that the applicant complained of were not apparent to them when they were in the same room. The applicant's evidence is that she is "hypersensitive" to scents and that she is sensitive to scents that others cannot detect. During the hearing, she complained of exposure to scents in the Tribunal's washroom that, according to the respondent's witnesses, were not apparent to them. She also indicated that she was experiencing symptoms in the Tribunal's hearing room that she related to scents that she thought might have come from the building ventilation system that were not apparent to anyone else in the hearing room.

[56] It is not disputed that the applicant identified that she has a scent sensitivity during her initial interview with Ms. Nugteren. Ms. Nugteren assured her that the employer has a fragrance-free policy but also noted that because of the large number of employees and the high staff turnover there might not be full compliance with the policy at all times.

[57] The applicant alleges that the respondent failed to accommodate her disability by failing to enforce its fragrance-free policy.

[58] As noted, there are different versions of the respondent's fragrance-free policy. The version in the Human Resources policy book is the most comprehensive, and asks employees and visitors to refrain from using "perfumes, colognes, hand lotions,



aftershaves, scented hair spray, powder, richly scented deodorant/antiperspirant, air fresheners, scented candles, poinsettias, pine boughs and the like.” The less comprehensive employee handout asks people to “refrain from spraying perfumes, hairsprays or colognes on the call centre floor or in bathrooms.”

[59] Either version is intended to restrict the use of noticeably scented products in the workplace. Neither version is intended to restrict the use of all scented products.

[60] While the fragrance-free policies ask for only voluntary adherence, Ms. Sharpe indicated that she may remind employees of the policy if she notices that they are wearing a fragrance. She also indicated that particularized accommodation can be arranged for individuals.

[61] It is not clear to me that the respondent failed to enforce its fragrance-free policy as the applicant alleges. On the applicant’s evidence, during the first two days of the training program, Buffy was wearing perfume. The applicant did not specifically complain that Buffy was wearing perfume until the second half of the second day of training. The applicant says that the smell of perfume was quite strong and so should have been obvious to Chelsea, and that Chelsea should therefore have insisted on the first day that Buffy remove the perfume. However, there is no evidence before me to show that the fragrance in the room was obvious to everyone in the room and it is difficult to weigh the applicant’s evidence on this point because it is clear that her hypersensitivity makes her sensitive to scents that are not detectable by others.

[62] After the applicant brought the situation to Chelsea’s attention, Chelsea attempted to solve the problem by turning the fan so that it faced the applicant. Chelsea did this either on her own initiative, as the applicant indicated in her testimony, or at the request of the applicant, as indicated in the Application. While the applicant found this did not help, she did not say anything to Chelsea, even when Chelsea asked the applicant if the fan had helped. There is also some suggestion that Chelsea spoke to Buffy about her wearing perfume. In the Application, the applicant indicated that Buffy appeared to be upset after the break on the second day, suggesting that Chelsea did

speak to her. By the third day Chelsea would have noticed that Buffy was no longer in the group and so would reasonably have surmised that the source of the applicant's concerns was no longer present.

[63] When the applicant told Chelsea and Ms. Montgomery that she was still having problems on the third day, Ms. Montgomery arranged for the applicant to stop the training program and to shadow someone on the floor. The applicant discovered that this person was wearing a fragrance. I accept Ms. Montgomery's evidence that she could not detect that the person was wearing a fragrance because it seems highly improbable that she would have placed the applicant with someone who was noticeably wearing a fragrance.

[64] The applicant did detect that the person on the floor was wearing a fragrance. However, she did not inform Ms. Montgomery about this or ask to be placed with a different employee. She rather determined that she had to leave the workplace.

[65] I do appreciate that by that time the applicant was very emotional. She testified that she felt she was having a panic attack. In these circumstances, it is understandable that the applicant may have been unable to clearly articulate her experience. However, an employer cannot provide accommodation for a problem that it does not know about.

[66] It appears that the applicant would likely have had difficulties in the workplace even if the respondent's fragrance-free policy had been more rigidly enforced. Based on the applicant's evidence, she required not only an environment free of noticeable scents, but an environment free of scents that were not detectable to others but affected her because of her "hypersensitivity".

[67] The question of whether the workplace could be accommodated without undue hardship so that the applicant would not be exposed even to scents not noticeable by others is not a question that arises in this case because a request for such accommodation was never made or suggested by the applicant.

[68] It is apparent, based on her evidence, that the applicant's experience is that she is affected by scents that are not detectable by others. If the accommodation that she required was that she could not be exposed to scents that are not detectable by others, she should have been clear that was the case. She did not make this clear and instead indicated that her needs could be met by having the fragrance-free policy enforced. However, the fragrance-free policy, in any of its iterations, requests that employees not use scented products and in particular refrain from using strongly scented products.

[69] Ms. Nugteren testified that she informed the applicant that full compliance with the fragrance-free policy was difficult because of the large number of staff and the high staff turnover. Even if Ms. Nugteren did not explain this, the applicant's own experience should have made it obvious to her that there would be significant challenges for her in the workplace. She did not identify these challenges to the respondent at any time. The respondent nevertheless made attempts to accommodate the applicant, for example, by turning the fan to face the applicant and allowing her to complete the training program earlier. While the applicant found that these solutions were not adequate, she did not say anything to the respondent. She did not tell Chelsea that the fan was not helping, even when Chelsea specifically asked her. She did not tell Ms. Montgomery that the person she was assigned to shadow on the call centre floor was wearing a fragrance or ask to be assigned to shadow someone else. She rather advised Ms. Montgomery that she had to leave because she could not work in the call centre.

[70] According to the applicant, she had a conversation with Ms. Sharpe a few days after she left the workplace, after she had called the respondent's head office. She told Ms. Sharpe that she had to leave the workplace because she had been exposed to scents that were causing her to feel quite sick. She told Ms. Sharpe that she felt that the employer was not following its fragrance-free policy and this is why she was forced to leave. She wanted the respondent to enforce its fragrance-free policy so that she could continue to work for the respondent.

[71] According to Ms. Sharpe, this conversation occurred as the applicant was leaving the workplace on the third and final day of the training program. According to Ms.

Sharpe, the applicant was very upset during the conversation, which lasted about ten minutes. Ms. Sharpe says the applicant told her about her past difficulties with other employers and did not say very much about her work with the respondent. Ms. Sharpe did testify that the applicant did say that she was leaving because the respondent had not enforced its fragrance-free policy. She understood the applicant to be saying that she felt that she could not work in the workplace.

[72] Ms. Sharpe should perhaps have picked up on the applicant's statement that she had been unable to continue working in the call centre and the applicant's suggestion that the reason for this was that the respondent's fragrance-free policy was not being enforced. However, in all of the circumstances of this case, I find that Ms. Sharpe's failure to clarify the situation does not mean that the respondent discriminated against the applicant by failing to accommodate. In particular, whether the conversation between the applicant and Ms. Sharpe occurred as the applicant was leaving the workplace or a few days later, the applicant did not explain what accommodation she was seeking, apart from enforcement of the fragrance-free policy. In the circumstances of this case, it appears to me that from the outset, the applicant had a positive obligation to accurately identify to the respondent what her accommodation needs were and to clearly explain to the respondent why the solutions that had been attempted were not adequate.

## **DECISION**

[73] The applicant did not experience discrimination in employment with the respondent. The Application is dismissed.

Dated at Toronto, this 14<sup>th</sup> day of August, 2012.

*"Signed by"*

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Brian Cook  
Vice-chair