

CANADA / JUDGMENT

Atwood v. CAC Computers

2001 BCSC 875

COURT

Supreme Court of British Columbia

DECIDED

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S001488

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DANA ROBYN ATWOOD
PLAINTIFF

AND:

CAC COMPUTERS & COMMUNICATIONS INC.,
WILLIAM O'DROWSKY, WAYNE SMITH
AND JOHN CAMPAGNE
DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE CULLEN

Counsel for the Plaintiff: Robert E. Eades

Counsel for the Defendants: J. Raymond Pollard

Date and Place of Trial: May 29, 30 & 31, 2001

Vancouver, B.C.

- [1] This is an action for damages for wrongful dismissal arising out of the termination of the contract of employment entered into by the plaintiff and the defendant CAC Computers & Communications Inc. ("CAC") on March 5, 1999. The contract was terminated on September 3, 1999 with the defendant agreeing to pay one month's salary in lieu of notice and to provide a letter of reference for the plaintiff.
- [2] The plaintiff was at the time of her employment by CAC, 28 years old having only the year previously concluded her studies at Simon Fraser University by obtaining a degree in psychology with an interdisciplinary minor.
- [3] The defendant CAC is a company involved in computer sales and "systems integration" which means that it will work with its customers to tailor the computer equipment which it sells to them to suit their particular requirements. To fulfil its mandate the company had sales staff, technical staff, and some administrative staff.
- [4] CAC was formed in 1989 by the defendants William O'Drowsky and Wayne Smith who are its President and Vice-President, respectively. The defendant John Campagne is employed as a salesman of the company and was during the tenure of the plaintiff.
- [5] The plaintiff had worked briefly at the company as a temporary replacement for the receptionist before she was hired to replace an employee who was moving away. Her job was titled "Sales Administrator" and her function was primarily to work with the four salesmen at the firm and with the vendors from whom the defendant company obtained the equipment for "integration" and sale to its customers.
- [6] Her job description was set out in a letter offering her employment dated March 5, 1999 marked as an exhibit at the trial. It reads as follows:

...

CAC Computers & Communications Inc, is pleased to offer you the position of Sales Administrator, starting March 8, 1999. You will be working very closely with Katherine Chabot, the current Sales Administrator. Katherine is leaving CAC on March 19, 1999 s time is of the essence for you to learn as much from Katherine as possible during this time.

This position includes the following responsibilities:

- Working directly with the sales team
- Preparing purchase orders and expediting same with the suppliers
- Tracking shipments from the suppliers, receiving them and shipping the orders to our customers preparing the necessary packing slips and invoices
- Receiving calls from our customers, answering general product questions, order status, etc.
- Maintaining product pricing from our suppliers - hard copy and web based

- Organizing and maintaining product information from our suppliers
- Ordering, arranging and ensuring product literature is current
- Generally helping the marketing and sales division of the company

SALARY

As discussed in our interview, there will be a probationary period of 3 months. Salary during this time will be based on \$32,000 per year. After the 3 months, and assuming CAC wants you to continue in the position, we will increase your salary to \$33,500 per year and you will be eligible for a monthly bonus of up to \$250 based on the company making revenue targets.

Pay checks are issued on the 15th and the last day of the month, with income tax, CPP and EI deducted.

BENEFITS

CAC has a benefits plan that includes life insurance, AD&D, dependent life, long term disability, extended health plan and dental. This is a shared cost plan between the employer and employee. Your net monthly cost as a single person is approximately \$60. We will pay your BC Medical Plan premiums in full.

Vacation is two weeks per year with allowances of 10 days per year for sickness, required days off, etc. All statutory holidays are observed and the time between Christmas and New Years is on a reduced schedule.

Any personal expense incurred for legitimate business expenses will be reimbursed by the company upon submission of a personal expense report. Training/education courses you are asked to take by CAC will be reimbursed including course fees, travel and accommodation.

Dana, we look forward to you joining our fast growing organization. I'm sure you'll fit into our sales oriented, fun-loving, somewhat hectic culture.

- [7] The foundation of the plaintiff's claim is set out in paragraph 7 of her statement of claim asserting that "the defendant terminated the plaintiff's employment on September 3, 1999 without cause and for her failure to accept continuing harassment." Built on that foundation are claims for damages for "feelings of degradation, loss of self esteem and mental stress caused by the defendants"; and for being brought into "hatred, ridicule and contempt" by "the untrue and defamatory words used by the personal defendants" in the course of their harassment of the plaintiff.
- [8] In support of the latter assertions the plaintiff originally pleaded s. 15 of the Charter of Rights and Freedoms alleging the defendants' discriminatory treatment of her, but conceded the Charter was inapplicable and at trial applied to amend the statement of claim to read as follows:

10. The Plaintiff pleads the provisions of the Human Rights Code 1996 RSBC Chapter 210 Section 13(1) as a result of the Defendants' discriminatory treatment of her which is in violation of the said statute and entitles the Plaintiff to damages for its breach.
- [9] The plaintiff has also pleaded that the corporate defendant and its principals, O'Drowsky and Smith, owed a fiduciary duty to her to protect her from harassment, a duty which they failed to fulfil.
- [10] Given the claims in this case and the nature of the evidence, it seems to me it would be practical to determine whether the evidence supports the foundation of a wrongful dismissal claim or the related claims before considering the application to amend the statement of claim.
- [11] The plaintiff bases her claim upon allegations of certain prurient utterances and activities of co-workers including the defendants O'Drowsky, Smith and Campagne and on the failure of the defendants CAC, Smith and O'Drowsky to prevent a continuation of such conduct.
- [12] The plaintiff claims the behaviour at the work place affected her significantly and in the result her ability to successfully perform her duties and meet her employer's expectations was seriously compromised to the point where she was unable to carry on in her position.
- [13] The particulars of the behaviour the plaintiff claimed to be harassment consisted of co-workers bringing up pornographic images on their computer screens; sending them around the office; using suggestive or coarse language; using discriminatory language in relation to non-caucasian and gay people; on one occasion, lifting her skirt to see her undergarments; in relation to the defendant John Campagne, punching her in the arm while she was having a conversation with a co-worker and then suggesting she was "pre-menstrual" when she objected; and also in relation to Campagne, being shouted at, sworn at and insulted when she failed to deal with an order in the manner he wished.
- [14] The plaintiff also claimed that several employees and the defendant O'Drowsky had pornographic magazines in their offices and when she objected to their presence they told her to either mind her own business or mind her own "fucking business".
- [15] The picture painted by the plaintiff was of a work place which was not conducive to the creation of professional or respectful relationships, but one which encouraged discriminatory and disparaging behaviour particularly in relation to the plaintiff.
- [16] The plaintiff's case rests entirely on her testimony. In it she described the effect of the environment of the work place on her as being "embarrassing, frustrating and aggravating", she testified it made her angry and that she felt she had no defence to it. She further testified she felt as though she was "living in suspended animation, in shock" and she felt "very depleted", had "no energy" and no defences against it. She testified that she gained weight, that her skin and hair were in "horrible condition" and that she "complained constantly to her friends".

- [17] The plaintiff testified that she made several attempts to meet with the company's principals to do something to create a more professional atmosphere by dealing with what she described as a "toxic environment" and to deal with her relationship with the defendant John Campagne. She testified that by August of 1999 the defendant Campagne was no longer allowing the plaintiff to fulfil her duties in relation to his sales, and that a second salesman similarly refused to have her deal with his sales.
- [18] The plaintiff testified that she had sought a meeting with the defendants O'Drowsky and Smith on several occasions to deal with what she perceived as conflicts with her co-workers. She acknowledged, however, that she made no attempt to complain about, or bring to the attention of O'Drowsky and Smith, the issues involving the presence of pornography on computer screens, the incident involving her co-worker lifting her skirt, the incident involving John Campagne wherein she alleged he punched her in the arm and called her "pre-menstrual", or any other incidents forming the basis for her claim of harassment.
- [19] The plaintiff did acknowledge that she had a total of five meetings with one or another or both of the firm's principals:
1. On March 12, 1999 with Wayne Smith and Katherine Chabot, the person the plaintiff was replacing;
 2. On July 7, 1997 with Wayne Smith, constituting a review of her performance to that date and a review of the processes and procedures she was to support;
 3. On August 27, 1999 at her request to deal with issues involving her relationships with the sales team;
 4. On September 2, 1999 with Smith and O'Drowsky after Smith had conducted a review and investigation into issues about the plaintiff's relationship with her co-workers;
 5. A final meeting on September 3, 1999 with Smith and O'Drowsky when the termination of the contract of employment occurred.
- [20] It could not be argued that there was not a libidinous element to the atmosphere at CAC. There was also some evidence that there was an unpleasant air of intolerance reflected in the casual utterances of some of the employees. The issue before me is not, however, a general one involving the compliance of the firm or its employees with the norms of decent behaviour or the objectives of the Human Rights Code as this is not proceeding under that Act. The issue is much narrower and involves a determination of whether the plaintiff has established that through harassment and discrimination which was condoned by management, she was placed in a position of being effectively unable to perform her duties, such that the termination of her contract of employment amounts to an actionable, wrongful dismissal.

- [21] A key ingredient for successful prosecution of this action is proof of the alleged effect of the impugned behaviour upon the plaintiff. Although it may be proved to have occurred, if it does not have the consequences imputed to it by the plaintiff it cannot sustain her action. In this case, she asserts that she found the behaviour of her co-workers and management "embarrassing, frustrating and aggravating" and that it created a "toxic environment" in which she felt unable to perform and in the result she was not capable of meeting the ultimate expectations of her employer expressed on September 2, 1999 requiring her to devise an "action plan" to deal with the issues of her relationship with the sales team and her attitude towards the company.
- [22] The case for the defendants, advanced through cross-examination of the plaintiff and the testimony of the defendants and their witnesses, is that the plaintiff was in no way adversely affected by the atmosphere at the defendant firm; that in fact she made a significant contribution to it by distributing pornography, by relating stories of her own "sexual adventures", by revealing her undergarments to several co-workers, by walking around the office with a riding crop, by referring to herself as "Mistress Dana" or "Temptress Extraordinaire", by showing prurient pictures of herself and a friend to her co-workers, and by the tenor and tone of her demeanour and conversation generally.
- [23] It is the defendants' contention that the plaintiff failed to fulfil the role she was hired to perform, not because of the toxic environment, harassment or discrimination, but because she did not apply herself, spent too much time on personal matters, came into conflict with her co-workers over priorities, and had a corrosive attitude towards the firm and her role in it. The defendants deny harassment, deny the plaintiff was dismissed, but say if she was, she was given sufficient payment in lieu of notice, and in the alternative, there was just cause for the plaintiff's dismissal.
- [24] The evidence in support of the defendants' case is considerable and consists of e:mails and pornographic images sent to and from the plaintiff and downloaded from her computer, "ICQ" messages sent from the plaintiff to a co-worker and downloaded from that employee's computer, and as well, the testimony of the defendants and their witnesses.
- [25] One of the plaintiff's allegations against the defendant O'Drowsky was that he used the term "knob treats" which she understood to mean fellatio. The plaintiff claimed the defendant O'Drowsky used the term to disparage and embarrass her in front of her colleagues by inviting her into his office to perform oral sex. O'Drowsky testified on his own behalf and although he admitted to using the term, he denied directing it at the plaintiff or anyone in particular. He was not challenged in cross-examination on his denial and the plaintiff made no specific allegation about when, in what context, or in front of whom he directed the comment at her. Other witnesses called by the defendant supported O'Drowsky's evidence. In the circumstances I do not accept the plaintiff's evidence that the plaintiff O'Drowsky used the term directly in relation to her.

[26] Of some utility in gauging the likelihood of her assertions of feeling embarrassed and disparaged by O'Drowsky's use of the term is an e:mail which she sent to him on May 11, 1999 after receiving his announcement that, as the company had met its targets, employees would be rewarded "in kind". The plaintiff's e:mail response to O'Drowsky was:

With what Bill - blow jobs!!!!

[27] On the evidence before me, it does not appear that the plaintiff felt demeaned, humiliated or embarrassed by the atmosphere at CAC. Nor does it appear that she was simply adapting to the pre-existing culture at the firm in order to "fit in" or "make her way". On the contrary, the evidence tends to suggest that her attitudes towards sexuality and her appetite for pornography were already developed and existed outside of her connection with CAC and her co-workers there. The evidence that establishes her attitudes comes from a number of e:mails which she sent and received during her employ at CAC. On May 11, 1999 she sent the following e:mail to a friend:

Rod this is my work email address - I have two - PLEASE PLEASE BE CAREFUL WHAT YOU SEND TO THIS!! Our conversations are ok but any dirty pictures or stuff the accountant is also a low grade computer hacker!!! Our conversations are actually better sent here because I can access it easier and it lets me know when I have mail ...K have a good one!

Miss Kitty

[28] On May 20, apparently during work hours, she sent an e:mail to a person she identified as "Miss Payton":

Miss Payton,

A friend just told me about an opportunity to make some extra \$\$\$. How does this sound, tell me what you think ...

A guy friend of hers sets up a meeting for myself and a female friend (if I decide to do it) my friend and I go dance a little from what I understand strip each other and have sex while a "customer" watches! No touching just watches - the guy who set it up is there in the other room for safety, and it apparently pays \$700 to \$1000. ??? Anyway I'm going to meet the guy first!! I want to know who he is and get a vibe it sounds a little shady ... who knows that this "guy" might expect or who his "customers" are. If that's all I have to do is have sex with a girlfriend while someone watches - I'm there !! ha ha

Just thought I'd run it by you, sort of interesting considering our conversation last Sunday. Take care I'll be in touch soon, Peace/Love & Happiness Miss Dana

[29] Later, in July of 1999, she e:mailed another friend with the following message:

Sorry sweetie Jamie appears unconvertible! Ha Ha And those 200 boys HELLO ROD THEY'RE GAY! HA HA most of them showed up at celebrities and the afterhours. Tee hee besides I have my hands full right now I'm apprenticing as a "Dominatrix"!!

[30] On August 18, 1999, she e:mailed another friend with the following message:

Hey Adam...Sorry I missed your Party - Chrissy and I were SO!! high finding our way home to my house was difficult, let alone operating a motor vehicle or trying to find something !!! Even though we had a great time I'm still dissapointed that I missed the party!

Hey Thanks for the PIC!! Keep em coming yipee!!

I guess you've figured it out that I like girls and boyz hey!! like my voyeuristic tendencies aren't obvious!!! Dana

The "PIC" she referred to was a pornographic picture of a woman which her friend had sent her and which she sent to one of her co-workers at CAC.

[31] In some of her e:mails she referred to herself as "Miss D" or "Mistress D" or "Miss Kitty". In one to her friends, again from her workplace, she referred to herself as "Mistress D. Temptress Extraordinaire". She obtained several pornographic images from the internet and sent them off to friends and to her co-worker at CAC, Tasha Paquette, in most cases with appreciative comments. She also received pornographic images of women from Tasha Paquette and passed them along to friends, again some with appreciative comments. The plaintiff sent a number of other e:mails to friends that revealed her apparent enjoyment of viewing pornography and her interest in various prurient matters.

[32] In connection with the plaintiff's receipt of e:mails from her co-worker, Tasha Paquette, Ms. Paquette did testify at the trial and explained that the plaintiff asked her to pass on pornographic pictures including some of women posing as dominatrixes and ones involving two to three women or three women and a man. Ms. Paquette testified that the plaintiff also discussed her own interest in being a dominatrix. Ms. Paquette also testified that on one occasion the plaintiff brought a riding crop into work and on occasion walked around the office smacking the crop into her hand, in effect, posturing as a dominatrix. Other workers at the office including the defendants Smith and O'Drowsky and employee Kevin Mah testified and corroborated Ms. Paquette's evidence regarding the riding crop. The plaintiff's e:mails to friends outside the office provides ample corroboration of her penchant for pornographic images including images of women and I accept Ms. Paquette's evidence in that regard. I am also satisfied on the basis of all the evidence that the plaintiff did in fact bring a riding crop to the office and used it to posture as a dominatrix.

[33] In addition there was evidence called by the defendants that the plaintiff told her co-workers about a fetish party or fetish parties that she had gone to and showed pictures of herself and a female friend scantily clad and in provocative poses prior to going to one such party. Although the plaintiff acknowledged having pictures of herself and a friend going to what she described as a "costume party" she denied showing the pictures to co-workers saying, in effect, that it was Tasha Paquette who showed the pictures not her.

- [34] On several occasions in the course of her evidence, the plaintiff attempted to attribute acts that others testified she committed, to Tasha Paquette. In particular she testified it was Tasha Paquette who strode around the office with her riding crop, it was Tasha Paquette who showed the pictures around, and it was at Tasha Paquette's instigation, that she sent the e:mail to "Miss Payton" referred to above. In each case Tasha Paquette denied her involvement with these matters, and I am satisfied that her evidence is to be accepted over that of the plaintiff in each of these issues.
- [35] The defendant called as witnesses two other employees, Barth Siemans and Kevin Mah, who testified to the plaintiff's conduct and behaviour while in the employ of CAC. Both Mr. Siemans and Mr. Mah testified that the plaintiff was very open with all employees about her sexuality and appeared to take some enjoyment in recounting her "sexual adventures" to co-workers. Both Mr. Mah and Mr. Siemans testified that they began to find her conversations distasteful and Mr. Siemans testified that he asked her to stop such discussions when in his presence.
- [36] In relation to the incident in which the plaintiff claimed that a co-worker lifted her skirt to look at her undergarments, there are two versions to that event. According to the plaintiff she was talking with Tasha Paquette at the reception desk near the front of the office when Kevin Mah came up and without any discussion simply lifted up her skirt and looked at her undergarments. According to Tasha Paquette and Kevin Mah the situation was somewhat different. Tasha Paquette testified that the plaintiff was talking to her and wanted to show her some new garters that she had purchased and was wearing, and lifted her skirt to do so. She testified that Kevin Mah overheard the discussion and came out and asked if the plaintiff would show him the undergarments and the plaintiff went into his office and apparently did so.
- [37] Kevin Mah testified to more or less the same facts and said that the plaintiff revealed her undergarments to him on two occasions, the first at his request and the second when she asked him to help her adjust the garter belt that she was wearing. In connection with this evidence, I am inclined to accept the version given by Tasha Paquette and Kevin Mah over that of the plaintiff. The plaintiff's version lacks an air of reality, and a context, whereas the evidence of Tasha Paquette and Kevin Mah is corroborative, has a context, and has the ring of truth.
- [38] In relation to the plaintiff's complaint about the presence of pornographic magazines in some of the offices at CAC, again there are two versions. According to the plaintiff the magazines in O'Drowsky's office were kept in a book shelf and all she could see of them were their spines. She testified that nonetheless their presence was offensive to her and she made her feelings about them known. She denied ever looking at the magazines by herself or with Tasha Paquette.

- [39] According to Tasha Paquette, the plaintiff went into the office, found the magazines, and called her in so that they could look at the magazines together. Ms. Paquette testified that the plaintiff was laughing and appeared to be enjoying herself and did not seem to be at all offended by the magazines. Ms. Paquette also testified that she was unoffended as well by the presence of the magazines.
- [40] Again, in view of all the evidence, I am unable to accept the plaintiff's testimony on this point. Given her apparent penchant for pornography, her protestations about being offended by the mere presence of such magazines seems contrived. In my view, Ms. Paquette's version of the events is to be preferred.
- [41] The defendant John Campagne testified on his own behalf and on behalf of the defendants. He denied the substance of the allegations made against him by the plaintiff to the effect that on several occasions he swore at her, insulted her publicly and punched her in the arm when she was talking to a co-worker. He said he would not have called her pre-menstrual as he had never used that expression but conceded that he may have used the expression PMS in relation to the plaintiff on an occasion when she objected to him touching her on the arm to get her attention.
- [42] Mr. Campagne gave a different version of the events leading to the deterioration in his relationship with the plaintiff than that given by the plaintiff. He gave several examples of situations in which she was difficult to work with, made herself inaccessible by closing her door, and failed to deal with sales orders in a timely way when he was concerned that her failure would cost himself and the company a customer. He denied ever swearing at Ms. Atwood and although he acknowledged he may have spoken to her in a loud voice, it was not to intimidate her it was simply because he was standing either in the hall and speaking to her while she was in her office or at different points in the hallway from her.
- [43] The defendant Smith in his evidence was asked whether he had ever heard John Campagne swear at or insult the plaintiff and he responded that he had not. He testified that while there were various people around the office that did use course language including the plaintiff, he had known John Campagne for approximately a dozen years and had never heard John Campagne swear at anyone.
- [44] The circumstances leading to the termination of the plaintiff's contract of employment is mainly addressed through the evidence of the plaintiff and of the defendant Wayne Smith. The defendant Smith had several meetings with the plaintiff over the course of her six months of employment with the firm.
- [45] Smith testified that he had his first meeting with the plaintiff after the commencement of her duties on March 12, 1999 which involved Katherine Chabot, her predecessor, and was directed at ensuring that the plaintiff was receiving proper training for the job and was learning the processes and procedures she was expected to support.

- [46] The second meeting Smith testified, was on July 7, 1999 and was a somewhat belated review conducted of the plaintiff's performance and focussed upon her relationship with the sales team and the processes which she was required to support to fulfil her responsibilities. According to the plaintiff and Smith, the plaintiff developed a flow chart for discussion at the next weekly meeting.
- [47] The third meeting on August 27th occurred after Mr. Smith had returned from holidays and was at the request of the plaintiff and it focussed on her difficulties with two of the four members of the sales team and their apparent decision to "take back" her duties to do themselves.
- [48] That meeting led Mr. Smith to conduct an "investigation" during which he spoke with other employees who had dealings with the plaintiff and learned of a number of issues regarding the plaintiff's attitudes and work habits. In particular the employees that Mr. Smith spoke to expressed concerns that the plaintiff spent too much time on personal matters, didn't have an appropriate sense of priorities, had a bad attitude towards the firm, and was difficult to work with.
- [49] During his investigation, Mr. Smith learned of comments the plaintiff made about the firm in her "ICQ" messages to co-worker Tasha Paquette. He was able to obtain printed copies of the plaintiff's messages dating back several weeks. The messages which contained the comments revealing the plaintiff's attitude were marked as an exhibit at the trial. They reveal feelings of anger and contempt towards co-workers and the firm. Throughout the messages she used coarse and disparaging language describing her co-workers and the principals of the firm and asserted several times that she was unwilling to perform her duties on particular days. None of the ICQ messages revealed any concern with any form of harassment.
- [50] As a result of his investigation Mr. Smith testified that he had a fourth meeting with the plaintiff and with Bill O'Drowsky on September 2, 1999. That meeting focussed on the issues regarding the plaintiff's attitudes towards the firm and her relationship with the sales team, and it was suggested to the plaintiff by Smith and O'Drowsky that she should put together an "action plan" to address the difficulties which had been identified by Mr. Smith's investigation.
- [51] The fifth and final meeting took place on September 3, 1999 and at that meeting the plaintiff informed Mr. Smith and Mr. O'Drowsky that she was unable or unwilling to come up with an action plan to try and change her attitude and her relationship with her co-workers, in particular the sales team. She testified the behaviour at the firm was unprofessional and she would not accept the working conditions and as a result she was fired.

- [52] During the meeting on September 3rd, after the plaintiff expressed her unwillingness to address the issues raised, the issue of the terms of the plaintiff's departure was raised. According to the plaintiff, the issue "some how came up", but she couldn't recall how. She essentially denied any involvement in discussions leading to the agreement to pay her four weeks salary and provide her with a letter of recommendation in lieu of notice.
- [53] According to the defendant Smith, after it became evident that the plaintiff was not willing to address the issues that had been raised, they began to talk about the severance package. Relying on notes that he made at the time, he testified that initially he offered to pay her two weeks salary in lieu of notice and she responded that that was not what she had in mind and came up with a suggestion of four weeks salary in lieu of notice and a letter of recommendation. The defendant Smith indicated the he accepted her request and told her that her severance would go ahead on that basis and asked her to draw up a letter of recommendation but reserving to himself the right to edit it before sending it.
- [54] I do not find the plaintiff's characterization of the circumstances in which the terms of her departure were agreed upon as believable. Her assertion that the issue "some how came up" but that she couldn't recall how is inconsistent with the surrounding evidence. It is clear that when the plaintiff attended that meeting she expected the employment relationship to end. She went to the office that morning with a friend, presumably in the expectation that she would not be long at the office. In addition, on September 2nd, the day before, prior to her penultimate meeting with Smith and O'Drowsky, she e:mailed a friend signalling her desire to find new work. It is clear from Mr. Smith's testimony and from his notes that the initial offer made to the plaintiff was less than what she ultimately received, and it stands to reason that the change in the severance reflected her expressed wishes.
- [55] Ultimately, the plaintiff was given a letter dated September 3, 1999 and signed by the defendant Smith setting out the terms of the severance agreement on the following terms:

September 3, 1999

...

Dear Dana:

As discussed and agreed to in our meeting of today, the following outlines the terms of the severance agreement between Coast Peripherals & Systems, Inc. and yourself.

1. You will be paid for work for the month of September up to and including September 3, 1999, in the amount of \$279.17 less source deductions.
2. You will be paid a severance of 4 weeks pay including unused vacation in the amount of \$2576.92 less appropriate source deductions.
3. The check is enclosed for items 1 and 2.
4. Your benefits will stay in effect until the end of September 1999.

5. The company is agreeable to signing a letter of recommendation provided we have the right to edit such letter.

Should you have issues with the above, please inform me in writing by September 7, 1999.

Dana, we wish you the best of luck in your future endeavours.

Respectfully,

Wayne Smith

Vice President

[56] The evidence and pleadings in this case give rise to the following questions:

- (a) Did the defendant terminate the plaintiff's employment on September 3, 1999 without cause and for her failure to accept continuing harassment?
- (b) Did the plaintiff suffer mental distress from the "unacceptable conduct" and "untrue and defamatory words" of the defendants?
- (c) Was the plaintiff subjected to discriminatory treatment within the meaning of the Human Rights Code 1996, R.S.B.C. c. 210, s. 13(1) such that she is entitled to damages for its breach?
- (d) Did the defendants Smith and O'Drowsky owe the plaintiff a fiduciary duty to protect the plaintiff from harassment which they failed to fulfil?
- (e) Was the payment of four weeks salary in lieu of notice insufficient in the circumstances?
- (f) Is the plaintiff entitled to aggravated damages and an extension of the notice term as a result of the circumstances of her dismissal.

[57] In my view, the evidence called in this case does not bring much lustre to any of the parties, including the plaintiff. While it is clear that the CAC office atmosphere was not a model of work place decorum it is equally clear that the plaintiff not only was not troubled by it, she actively participated in and encouraged the atmosphere that she now complains of.

[58] In my opinion the evidence falls short of establishing the plaintiff's employment ended as a result of "her failure to accept continuing harassment". On the contrary, it appears the plaintiff's penchant for discussing her sexual propensities and adventures became something of an issue with several of her co-workers, and that her departure ultimately led from her unwillingness to accept the legitimate, as opposed to non-legitimate demands of her role.

[59] In disposing of this matter, I have considered the issue of whether the lax management of the atmosphere at CAC gives rise to a right of recovery for the plaintiff on the footing that it created an environment in which discrimination and harassment could flourish and, as a consequence, the plaintiff was denied the opportunity to develop relationships with her co-workers in an appropriate setting. In *Harris on Wrongful Dismissal*, the learned author notes at p. 3 - 207:

An attitudinal conflict may be prompted or fuelled by an extremely low level of management expectations as well as an excessively high one. This is particularly likely to be a factor in employment with a "team" character. As Mr. Justice Hinds observed in *McDonald v. Richardson Greenshields of Canada Ltd.* (1985), 69 B.C.L.R. 58 (B.C.S.C) it would be unjust to put the blame for the employee's failings as a team member wholly on him or her if the team itself was allowed to drift aimlessly.

[60] The learned author also points out at p. 3-208:

... a personality conflict that spirals downward into a dysfunctional and intolerable work environment may give rise to constructive dismissal.

[61] In the case at bar, I am satisfied, although there clearly was lax management of the office's atmosphere in terms of the nature and degree of prurient and intolerant expressions, those were not in reality an issue for the plaintiff who willingly participated in them. I find that there was an attempt made by the defendant Smith during the course of the plaintiff's employment at CAC to assist her to come to terms with the demands of her job and the relationships it entailed, and that the ultimate failure in that regard cannot be attributed to the employer, CAC, or its principals Smith and O'Drowsky.

[62] As far as the defendant Campagne is concerned, I am not satisfied that his interaction with the plaintiff gives rise to a sustainable cause of action. Although he may have been difficult for the plaintiff to work with and demanding, the assertions of harassment and discrimination which the plaintiff makes in this lawsuit were not matters that she brought to the attention of either O'Drowsky or Smith, as principals of the employer, for redress, and as a result, even if true would not give rise to an independent action outside the context of a procedure under the Human Rights Code. See *Bhadauria v. Seneca College of Applied Arts and Technology* (1981), 2 S.C.R. 181 (S.C.C.); *Allen v. C.F.P.L. Broadcasting Ltd.* (1995), 9 C.C.E.L. (2d) 56 (Ont. Gen. Div.); *Caychuk v. Best Cleaners and Contractors Ltd.* [1995] B.C.J. No. 1203 (B.C.S.C.).

[63] In any event, I am not satisfied on consideration of all of the evidence that the defendant Campagne either struck the complainant as she alleges on the arm three times, or swore at her in a loud and demeaning way. I do find however, that he was angry and upset with her on occasions and may have raised his voice. As to her assertion that he referred to her as being "pre-menstrual" or "having PMS" I find on all the evidence that he likely did so. Such a comment cannot be excused as part of the culture which the plaintiff willingly subscribed to. It is a personal and manifestly offensive comment which could only be calculated to

demean, given the relationship of the defendant Campagne to the plaintiff and the circumstances in which it was made. On the basis of *Seneca, supra*, *Allan, supra*, and *Caychuk, supra*, however, it appears that any action that the plaintiff may have against the defendant Campagne is limited to the provisions of the Human Rights Code and the procedures created under that legislation. It follows that I would not give effect to the plaintiff's application to amend the statement of claim.

- [64] In my opinion, in all the circumstances, even if the plaintiff's departure from her employment could be characterised as a dismissal as opposed to a resignation, it was not wrongful in the sense of being actuated by any inappropriate considerations or circumstances. I have considered the factors set out in the authorities which govern the question of an appropriate period of notice.
- [65] This is not a case in which the plaintiff spent a lengthy period in the employ of the defendant; she was not fulfilling a senior role at the firm; she was not induced to leave other secure employment to accept the job at CAC; and I am not satisfied that this is a case in which the conduct of the employer at the time of termination justifies the extension of the period of notice as in *Wallace v. United Grain Growers Ltd.* (1997), 97 C.L.L.C. 210 (S.C.C.).
- [66] In this case, while the plaintiff was, unfortunately, not exposed to the most professional of work places, I am satisfied on the whole of the evidence that the erosion of her relationship with the firm and its employees was not a product of that environment and that the employer in the person of the defendant Smith made efforts to integrate the plaintiff into the firm so that she could perform adequately. In the result, however, the plaintiff's relationship with other employees in the firm appeared irreparable by early September of 1999, a fact which she recognised, and which led to the termination of her employment with the defendant CAC.
- [67] I have considered the judgment in *Pelech v. Hyundai Auto Canada Inc.* (1992), 63 B.C.L.R. (2d) 24 (B.C.C.A.). In that case an appropriate standard for sufficient severance was determined to be the Employment Standards Act S.B.C. 1980, c. 10, s. 42 which provided that an employer shall not terminate an employee without giving the employee, in writing, at least two weeks notice where the employee has completed a period of employment of at least six consecutive months.
- [68] In the current Act, R.S.B.C. 1996 c. 113, s. 63 provides for two weeks notice after 12 consecutive months of employment.
- [69] In my view the severance package granting a month's wages and a letter of recommendation to the plaintiff was adequate in all the circumstances.
- [70] I am also satisfied that there has been accord and satisfaction between the plaintiff and defendants in this case and that the plaintiff agreed to accept one month's payment and a letter of recommendation in full satisfaction and discharge of her claim. I have considered the submissions of counsel for the plaintiff that the plaintiff did not have the benefit of time

to reflect or consult with counsel before accepting the terms of her termination. While that is certainly a factor to consider, in my view in the case at bar it is offset by the fact that there is clear evidence that the plaintiff went to the CAC office expecting the termination of her employment and prepared to negotiate the terms by which it was accomplished.

Additionally there is evidence she made the effort to delete her e:mails before her termination, presumably to avoid compromising her bargaining position. In my opinion, in the circumstances of this case, there was true accord and satisfaction between the plaintiff and the defendant even if the payment of one month's salary could be deemed to be insufficient.

[71] In view of my findings it follows that the questions which the evidence and pleadings in this case give rise to must be answered in the negative insofar as the plaintiff is concerned. Thus, I find that the plaintiff's employment was not terminated for her failure to accept continuing harassment. I find that she did not suffer mental distress from the "unacceptable conduct" and "untrue and defamatory words" of the defendants. I find that the plaintiff is not entitled to damages for breach of the Human Rights Code 1996, R.S.B.C. c-210, s. 13(1) given that that Code sets out its own procedure for a determination of the rights and remedies which it creates. I find that the defendant Smith and O'Drowsky are not liable for a breach of a fiduciary duty in connection with the plaintiff's complaints. I find that the payment of four weeks salary in lieu of notice was not insufficient in the circumstances of this case. I find that the plaintiff is not entitled to aggravated damages or an extension of the notice term as a result of the circumstances of her dismissal, nor is she entitled to punitive damages.

[72] For the reasons I have set out I order that the plaintiff's action be dismissed with costs to the defendants.

"A.F. Cullen, J."

The Honourable Mr. Justice A.F. Cullen

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