

Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

BETWEEN:

**GROUPE D'AIDE ET D'INFORMATION SUR LE
HARCÈLEMENT SEXUEL AU TRAVAIL DE LA
PROVINCE DE QUÉBEC INC.**

- and -

MIREILLE DES ROSIERS

Complainants

- and -

JEAN BARBE

Respondent

REASONS FOR DECISION

2003 CHRT 24

2003/06/27

MEMBER: Athanasios D. Hadjis

TABLE OF CONTENTS

I. THE PARTIES TO THE COMPLAINT 1

II. FACTS 3

A. December 1996 4

B. January 1997 5

C. February 1997 5

D. March 1997 6

E. April 1997 6

F. May 1997 7

G. August 1997 7

H. September 1997 7

I. October 1997 8

J. November 1997 8

K. February 1998 9

L. April 1998 10

M. Actions Initiated by Ms. Des Rosiers in Response and the Ensuing Consequences 10

III. LAW 13

IV. ANALYSIS 15

A. Credibility of the Evidence 15

B. Was the Impugned Conduct Related to Sex, Race, or National Ethnic Origin? 16

C. Was Mr. Barbe's Conduct Welcome? 16

D. Was the Impugned Conduct Serious Enough to Create a Hostile Environment? 18

V. REMEDY 18

A. Lost Wages 18

B. Expenses 21

C. Non-pecuniary Damages 22

D. Donation to *Groupe d'aide* 24

E. Interest 24

F. Letter of Apology 25

G. Human Rights Sensitization Training 25

H. Retention of Jurisdiction 26

[1] It is alleged in the present complaint that Mireille Des Rosiers was harassed by Jean Barbe, her supervisor at *Canadian Broadcasting Corporation* ("CBC"), on the basis of several prohibited grounds of discrimination, namely her sex (female), her race (Black) and her national or ethnic origin (Haitian), in violation of s. 14 of the *Canadian Human Rights Act* ("Act").⁽¹⁾

I. THE PARTIES TO THE COMPLAINT

[2] On April 1, 2003, about five weeks before the hearing was scheduled to begin, the Canadian Human Rights Commission ("Commission") notified the Tribunal that it was officially withdrawing as a party. The Commission was consequently not present at the hearing and no representations were made on its behalf.

[3] On April 15, 2003, during a conference call that I conducted, Mr. Barbe's lawyer, M^e Clément Groleau, declared that he no longer had a mandate to represent his client. M^e Groleau stated that Mr. Barbe was in the process of filing for bankruptcy. This was later confirmed by Mr. Barbe himself, during a subsequent conference call. Mr. Barbe also stated that he was not going to be in attendance at the hearing into the complaint. Indeed, neither Mr. Barbe nor anyone representing him appeared at the hearing, which was conducted over the course of three days at the Federal Court of Canada Building in Montreal. According to the Tribunal record, Mr. Barbe resides in Montreal and he was duly served with several notices advising him of the date, time and place of the hearing.

[4] On the first day of the hearing, a motion was presented to add Ms. Des Rosiers as a party, and more significantly, as a co-complainant. The complaint form, which was filed on March 8, 1999, was not signed by Ms. Des Rosiers, but rather by a representative of a non-profit support group for victims of harassment called *Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec Inc.*, ("*Groupe d'aide*"). Ms. Des Rosiers had sought the assistance of *Groupe d'aide* after the alleged incidents of discrimination had taken place. She and a representative of *Groupe d'aide*, Linda Smith, went to the offices of the Commission together, to file the complaint. Ms. Smith explained at the hearing that the Commission employee who received the complaint recommended that a representative of *Groupe d'aide* sign the document instead of Ms. Des Rosiers.

[5] The motion to add Ms. Des Rosiers as a party was therefore formally made by *Groupe d'aide*. For the reasons that I read into the official record, I granted *Groupe d'aide*'s motion to add Ms. Des Rosiers to the case. I noted that under s. 40(1) of the *Act*, a group of individuals having reasonable grounds to believe that someone has engaged in a discriminatory practice may file a complaint, whether or not the victim is a member of that group. Section 53(2) specifies that the Tribunal can order remedies for the benefit of the "**victim** of the discriminatory practice", not necessarily the complainant. Thus, it appears that it is not essential for the victim to be the complainant, in order to gain redress under the *Act*.

[6] However, I also noted that s. 48.9(2)(b) of the *Act* empowers the Tribunal to make rules governing the addition of parties and interested persons to the proceedings. In *Desormeaux v. OC Transpo* ⁽²⁾, it was held that this provision appears to contemplate the possibility of the Tribunal authorizing the addition of a party, even as a complainant. This power should be exercised with some caution, particularly if any unfairness to any of the other parties would arise as a result. In the present case, since Mr. Barbe did not appear at the hearing, he did not tender a formal objection to the addition of Ms. Des Rosiers as a party. In my ruling, I pointed out that although the complaint was signed by *Groupe d'aide*, it referred exclusively to events experienced by Ms. Des Rosiers while working with Mr. Barbe. The addition of Ms. Des Rosiers

to the case would therefore not raise any new issues or facts of which Mr. Barbe was not already aware. Taking all of these considerations into account, I concluded that no issue of fairness would arise if Ms. Des Rosiers were allowed to join the case as a complainant at this stage and I therefore granted the motion.

[7] Due to the withdrawal of the Commission and the absence of Mr. Barbe, the hearing was conducted solely in the presence of two parties, Ms. Des Rosiers and *Groupe d'aide*, represented by Ms. Smith. Neither of these parties was assisted by legal counsel at the hearing. The facts recounted in this decision are therefore based exclusively on the evidence that was led by the Complainants.

II. FACTS

[8] Ms. Des Rosiers is a Black woman of Haitian origin who was raised in Montreal. She resided in California for several years, during which time she earned a degree in marketing from the University of California in Los Angeles (UCLA) and worked in the radio-television industry, with American Broadcasting Radio. When she returned to Montreal, she decided to pursue her career within the same field and gained employment with a local private radio station. In 1996, her manager at that station informed her of a project that had been put in place at the CBC for the integration of members of minority groups into its workforce.

[9] The project, which was subsidized by the Federal Government's Department of Canadian Heritage, provided funding for the hiring of trainees and the payment of their salaries over an initial period of three months. If the employer decided to continue to employ the trainees after the end of this period, the program would continue to fund a portion of their salaries for several more months. Ms. Micheline Léonard was in charge of the project when Ms. Des Rosiers applied for a trainee position in late 1996. Ms. Léonard testified at the hearing that the project's coordinators wanted to avoid the development of an impression amongst other CBC employees that these trainees were only hired because of their minority status. Consequently, trainees were required to pass a complicated and intensive series of tests and interviews before being hired.

[10] Ms. Des Rosiers confirmed in her testimony that she underwent this process. She recalls that she was one of about eight persons to be selected from amongst the three hundred or so applicants. She believes that her extensive knowledge with respect to the artistic milieu, based on her previous broadcasting experience, was an important factor in the decision to hire her for the television show to which she was assigned. The television program in question was entitled *La vie d'artiste*. Its broadcasts consisted principally of interviews and reports regarding personalities from the artistic world, including actors, playwrights and poets.

[11] Ms. Des Rosiers was employed originally as a researcher, but before long, she was assigned researcher-producer duties and she eventually made on-camera appearances. The program was put together by a team of individuals. Mr. Barbe, who was the editor in chief of the show, was the team's supervisor.

[12] In her testimony, Ms. Des Rosiers described the various events of alleged harassment that occurred during the course of her employment under Mr. Barbe's supervision. I have set out these events according to the months in which she testified that they occurred.

A. December 1996

[13] At Ms. Des Rosiers's first meeting with Mr. Barbe, he mentioned several times that the other researcher on the team, Johanne Comte, was his spouse. Because of the emphasis that Mr. Barbe appeared to be placing on this point, Ms. Des Rosiers felt compelled to comment that Ms. Comte must nonetheless have been well qualified in order to have acquired the job. Ms. Des Rosiers was surprised to hear Mr. Barbe reply, "I don't care about her qualifications, it's her ass that interests me". (*Je m'en fous de ses compétences, c'est son cul qui m'intéresse.*)

[14] Later that month, Jocelyn Barnabé, who was Mr. Barbe's supervisor and one of the producers of the television show, asked a small favour of Ms. Des Rosiers and she agreed. Mr. Barbe approached Ms. Des Rosiers afterwards and said that she should have been more "aggressive" and not agreed to Mr. Barnabé's request. Mr. Barbe added that some of his former girlfriends were Black. He then advised her that in order to succeed, she should "screw around". (*Tu devrais baisser.*)

B. January 1997

[15] Mr. Barbe mentioned at a meeting, attended by Ms. Des Rosiers, that he was looking for someone to look after his dog while he was out of town. When someone at the table asked if Ms. Des Rosiers would be interested, Mr. Barbe interjected, "She should get along with Charlotte [the dog], she is black like her". (*Elle devrait s'entendre avec Charlotte, elle est noire comme elle.*)

[16] In the same month of January 1997, the production team was having a meal at the *Chez Miville* restaurant, which is located within the CBC's building in Montreal, the *Maison de Radio-Canada*. Ms. Des Rosiers mentioned at the table that she knew the former director of the Culture and Variety division at the CBC. Upon hearing this, Mr. Barbe commented that she must have acquired the job through this connection, adding, "Was it good?" (*Est-ce que c'était bon?*). Ms. Des Rosiers interprets this statement as implying that she had sexual relations with the former director.

C. February 1997

[17] Ms. Des Rosiers had by now collaborated on several features, yet she noticed that her name had not appeared on any of the show's closing credits. At about the same time, she informed Mr. Barbe that she wished to produce a report on the Cinémathèque québécoise. He objected, stating that a story on this topic should only be done by a Québécois. (*La Cinémathèque québécoise, c'est les Québécois qui devraient faire ça.*)

[18] In the same month, Ms. Des Rosiers co-produced a report on the works of playwright Michel Tremblay, focussing on the fact that his plays had been translated into 127 languages. To

this end, Ms. Des Rosiers incorporated into the piece several interviews with foreign-language commentators (Italian, Romanian, Japanese and Haitian-Créole). The Haitian commentator, who happens to be Ms. Des Rosier's brother, is an award-winning writer and was the Vice-President of the *Union des écrivains et écrivaines québécois*. During a pre-screening of the report, Mr. Barbe remarked out loud that he was against the usage of "the Haitian". (*Je suis contre l'Haitien dans le reportage.*)

D. March 1997

[19] Ms. Des Rosiers recalls that Mr. Barbe and Ms. Comte walked into her office together one day. Ms. Comte was carrying a photograph of a well-known Black humorist of Haitian origin, Anthony Kavanaugh. Ms. Comte pinned the photo on Ms. Des Rosiers's bulletin board and said, "Here's your new boyfriend". (*Voici ton nouveau chum.*) Mr. Barbe then added, "You [Ms. Des Rosiers] should mate with him". (*Tu devrais t'accoupler avec.*) Mr. Barbe and Ms. Comte made these comments even though Ms. Des Rosiers was married.

[20] Ms. Des Rosiers also remembers walking into Mr. Barnabé's office one day and finding him standing next to Mr. Barbe and Ms. Comte. There were several photographs on the table in front of them and when Ms. Des Rosiers arrived, Ms. Comte picked one up and gave it to her. The photo was of Mr. Barbe in the nude. Ms. Des Rosiers does not know why this photo was shown to her other than to make her feel uncomfortable.

E. April 1997

[21] Mr. Barbe remarked to one of the office's secretaries that he noticed she had changed her hair colour. He then turned to address Ms. Des Rosiers and told her that she appeared "more white than usual". (*Il a dit que je paraissais plus blanche que d'habitude.*)

F. May 1997

[22] At a party that was held at the end of the show's season, Mr. Barbe told Ms. Des Rosiers that she should get up and dance since it was "in your blood". (... *que c'était dans votre sang*). He then added, while grabbing his crotch, "If you dance, you'll get a nice gift". (*Si tu danses, tu auras un beau cadeau.*) He also commented on her breasts, asking her if they were "real" (*véritables*). Ms. Des Rosiers testified that he made similar comments about her breasts throughout the period that she worked for him.

G. August 1997

[23] At a production team meeting, Mr. Barbe remarked, "I've hired rejects, Arabs, Blacks, Jews. All that's left for me are the handicapped" (*J'ai engagé des laissés-pour-compte, des Arabes, des Noirs, des Juifs. Il me reste juste des handicapés.*) He pointed out that hiring minorities was beneficial (*payant*) because of the subsidies that were provided. Ms. Comte contributed to the conversation by stating that she was opposed "to these advantages that we are giving to minorities". (*Moi, je suis contre ces avantages qu'on donne aux minorités.*) Ms. Des Rosiers testified that she was shocked to hear these comments, especially since she herself was hired

through an employment equity program. She nonetheless restrained herself from making any comment at that time.

H. September 1997

[24] Ms. Des Rosiers proposed doing a story about the French author, Marcel Proust. Although the idea was well received by Mr. Barnabé, Mr. Barbe derided her suggestion, stating that she should be doing stories about Créole culture. On this occasion, she turned to him and said, "Leave me alone" (*lâche-moi*). She testified that for as long as she worked with Mr. Barbe, he used to repeatedly blurt out to her, "Do something on Créole". (*Fais donc quelque chose sur le créole.*)

I. October 1997

[25] During a production meeting, another staff member proposed that a report be done about African music. The discussion then shifted to finding an appropriate musician to interview. Mr. Barbe interjected by turning to Ms. Des Rosiers and saying, "She must know that African that you are looking for, all the Blacks know each other" (*Elle devrait connaître cet Africain que tu cherches, tous les Noirs se connaissent*). Ms. Des Rosiers pretended not to hear him but, after being repeatedly baited so as to elicit a reply, she retorted that she wanted them to stop this discussion and move on to something else.

J. November 1997

[26] On November 24, 1997, Ms. Des Rosiers met an acquaintance, Ms. Michaëlle Jean, near the main entrance to the *Maison de Radio-Canada*. At that time, Ms. Jean, who is also Black, was the anchorperson for the newscasts of the CBC's French language all-news network, the *Reseau de l'information* (RDI). Ms. Des Rosiers was explaining some of the incidents of alleged harassment that she was experiencing at work when, by coincidence, Mr. Barbe, Mr. Barnabé and another male CBC employee passed by. Ms. Des Rosiers introduced the three men to Ms. Jean, after which Mr. Barbe said, "What's this? A Black women's meeting, the Blacks are getting together?" (*Mais c'est quoi? C'est une réunion de femmes noires? C'est quoi, là, les Noires se réunissent?*)

[27] He then said that he had seen Ms. Jean in the studio where the famous Black fashion model, Iman, had recently been interviewed; adding that he assumed Ms. Jean was there because she also was Black. Ms. Jean testified at the hearing and confirmed that these comments were indeed made. She specifically recalls how bizarre and strange she found Mr. Barbe's persistent remarks about skin colour. Ms. Des Rosiers stated in her testimony that Mr. Barbe went on to compare the women's skin colours and wonder out loud which one had a lighter complexion.

[28] When Ms. Des Rosiers returned to her office, about fifteen minutes after this chance encounter ended, she found Mr. Barbe seated in her office chair, leaning back with his feet on her desk. As she walked in, he said, "So, you're hanging around Blacks now, eh?" (*Tu te tiens avec les Noirs maintenant, hein?*)

K. February 1998

[29] The second week of that month had been designated as Black History Week, an event that had been well publicized within the CBC. Posters to celebrate the occasion had been placed throughout the workplace. On the Monday of that week, as she was seated in her office, she noticed Mr. Barbe and several staff members dancing, singing and laughing outside her door. Mr. Barbe was wearing a Rastafarian-style wig on his head with a Jamaican-style hat on top. He had draped a Jamaican flag over his shoulders and had begun prancing around the work area, moving his hands towards his armpits, acting as if he were a monkey. Later on, the wig was placed on a pole to which a tattered T-shirt was attached, and Mr. Barbe and the other employees paraded around with this object in their hands.

[30] This activity was repeated every day that week. Ms. Des Rosiers testified that she felt so humiliated that she made arrangements to work outside the office on the Friday, just so she could avoid her colleagues. Just about every member of the staff, even Mr. Barnabé, participated to varying degrees in this activity. Ms. Des Rosiers points out that she was the only member of a visible minority group to be working on the *La vie d'artiste* production team.

[31] About one week later, a staff meeting was conducted at the Chez Miville restaurant. At the end of the meeting, as Ms. Des Rosiers got up from her chair and turned to step away from the table, she accidentally knocked over a glass of water. Mr. Barbe immediately remarked, "It's not surprising that she should knock over a glass, with her big African ass" (*C'est pas étonnant qu'elle renverse un verre avec son gros cul d'Africaine.*) She gave Mr. Barbe an angry look and continued on her way. Her colleague, Claude Laforest, testified that he heard Mr. Barbe make some comment at that meeting over which everyone at the table laughed, but he could not recall the exact words.

[32] During another production meeting, which was held on February 28, 1998, the team realized that they needed another report to complete an upcoming show. Ms. Des Rosiers mentioned that she had almost finished a report on Haitians, which had been assigned to her, and she proposed that it could be used to fill in the gap. Mr. Barbe turned to her at this point and said that she should add to her report scenes of "sweaty, male Negroes" (*des mâles nègres en sueur*) and that images of "sweaty Negroes are always nice" (*c'est toujours beau des nègres en sueur*). Ms. Des Rosiers, trying to ignore Mr. Barbe's comments, continued to discuss the report with Mr. Barnabé. All of a sudden, Mr. Barbe leaned forward towards her and said, "Mireille, shut up, shut up." (*Mireille, ta gueule, ta gueule.*)

L. April 1998

[33] During a production meeting, a young female staff member mentioned how fearful she was about visiting her dentist. Everyone around the table soon began to discuss their own painful experiences with doctors. Mr. Barbe remarked that one of his worst experiences was having his penis examined by a doctor to determine whether he had caught some disease. After telling his story, Mr. Barbe turned towards Ms. Des Rosiers and said the disease that he may have caught was "because of one of your sisters". (*À cause d'une de tes soeurs.*)

M. Actions Initiated by Ms. Des Rosiers in Response and the Ensuing Consequences

[34] Ms. Des Rosiers occasionally discussed some of the above events with Ms. Léonard, including Mr. Barbe's comment about his dog, his statements about hiring minorities and his remark after the water glass was knocked over. Ms. Des Rosiers testified that she hesitated complaining too emphatically, for fear of being accused by others of over-dramatizing the situation. She pointed out that Mr. Barbe was still her boss and she feared that filing complaints of a formal nature against him would harm her career and thereby "add fuel to the fire".

[35] In February 1998, Ms. Des Rosiers learned that Ms. Léonard's office had spoken to Mr. Barnabé about Mr. Barbe's conduct. Some days later, Ms. Des Rosiers spoke to Mr. Barnabé about the situation. He contended that Mr. Barbe's behaviour was neither sexist nor racist and that after all, Mr. Barbe is "just an iconoclast". Mr. Barnabé also advised Ms. Des Rosiers that if she followed through on her complaints, she would lose her job and be the only one to suffer. In mid-April 1998, Ms. Des Rosiers discussed the matter with the CBC's human resources department but she was given no specific advice at this time other than an assurance that the department would be contacting her again in the future.

[36] In late April 1998, a meeting, which was arranged by Mr. Barnabé, took place between Mr. Barbe and Ms. Des Rosiers. Mr. Barbe opened by apologizing to Ms. Des Rosiers. He went on, however, to say, "Anyway, 'big African ass' is not an insult, I love big asses". Ms. Des Rosiers did not consider this to be an apology but rather, yet another humiliation.

[37] She claims that around this time, her work began to be sabotaged. For instance, she would make appointments to interview guests for her reports and the film crew would be deliberately diverted elsewhere, leaving her unable to record the interviews. She also claims that interviews that she was originally assigned to do were redirected to other members of the staff.

[38] In mid-May 1998, Ms. Des Rosiers met with a representative of the Commission, who informed her that there existed a harassment policy at the CBC. No one had told Ms. Des Rosiers of this before. The Commission advised her to formally notify the employer of her concerns as soon as possible, in order to avoid falling outside the time limits that are set out in the policy. Ms. Des Rosiers therefore sent her letter of complaint to the President of the CBC on May 19, 1998.

[39] The television program's operations for that season ended in the month of June. Ms. Des Rosiers was informed by the CBC that it was inquiring into her complaint. The CBC's human resources department assured Ms. Des Rosiers that her job was not in jeopardy and that she should return to her office when production for the new season would commence, on August 17, 1998. However, when she walked into her office on that day, she found that all her personal effects had been removed. Mr. Barbe was occupying her office and he stated that it was now his. A short time later, she heard Mr. Barbe and Mr. Barnabé speaking to each other in the latter's office. When she approached them to ask what had happened to her things, Mr. Barbe walked away. Mr. Barnabé then told her that because she had complained to the CBC President, he no longer wanted to have her in his department. He accompanied Ms. Des Rosiers to the human

resources department where another individual reiterated that she was no longer wanted there, and that she had to leave the building immediately or else security would be called.

[40] In the following days, Ms. Des Rosiers contacted Mr. Barnabé's supervisor, who initially told her that having filed a complaint, she should have expected such treatment. However, after Ms. Des Rosiers explained that the initial complaint to Mr. Barnabé was made by Ms. Léonard's office, the supervisor's attitude changed and she agreed to help Ms. Des Rosiers find some other employment at the CBC. Unfortunately, Ms. Des Rosiers was only given a single one-month contract and was assigned some occasional freelance work thereafter, until about May 1999. Since she was unable to make a living from this sporadic work, she began seeking other employment, and finally, on October 10, 2000, she was hired by Air Canada's marketing department, where she is employed to this day.

[41] I indicated earlier in this decision that *Groupe d'aide* filed the present complaint against Mr. Barbe on March 8, 1999. Apparently, a complaint was also filed against the CBC but it was settled while the matter was still before the Commission. A preliminary question arose, in the months leading up to the hearing of the present complaint, regarding the disclosure to Mr. Barbe of the minutes of that settlement. The question was ruled upon by the Chairperson of the Tribunal on April 2, 2003,⁽³⁾ as a consequence of which, certain portions of the settlement agreement were ordered to be disclosed. However, this document was never produced at the hearing and I have not viewed it.

III. LAW

[42] According to s. 14(1)(c) of the *Act*, it is a discriminatory practice to harass an individual on a prohibited ground of discrimination in matters related to employment. The prohibited grounds of discrimination include sex, race, and national or ethnic origin (s. 3(1)). Section 14(2) specifies that sexual harassment is deemed to be harassment on a prohibited ground.

[43] The Supreme Court of Canada held in *Janzen v. Platy Enterprises Inc.*,⁽⁴⁾ that sexual harassment can be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of harassment. The Court noted that sexual harassment in the workplace attacks the dignity and self-respect of the victim, both as an employee and as a human being. The analytical framework for assessing claims of sexual harassment has been held to be equally applicable where the harassment is related to another prohibited ground, such as race and national or ethnic origin.⁽⁵⁾

[44] In order for a complaint of harassment to be substantiated, the following factors are to be considered:⁽⁶⁾

(i) The harasser's conduct must somehow be shown to be of a nature that is related to the alleged ground of discrimination.⁽⁷⁾ The harassing conduct, particularly in cases of sexual harassment, may be physical in nature, such as pinching, grabbing, hugging and kissing. Harassment can also be verbal in nature, encompassing conduct such as insults or remarks regarding a person's sex,

national or ethnic origin, or race, as well as comments regarding a person's appearance or sexual habits. The Tribunal's determination of whether the conduct is related to one of the prohibited grounds of discrimination should be carried out in accordance with the standard of a reasonable person in the circumstances of the case, keeping in mind the prevailing social norms.

ii) The acts that are the subject of the complaint were unwelcome. In other words, one must determine whether the alleged harasser's conduct was desired or solicited. This task can be accomplished by assessing the complainant's reaction at the time of the alleged incidents of harassment, and determining whether she expressly, or by her behaviour, demonstrated that the conduct was unwelcome. A verbal "no" is not required in all cases and a repetitive failure to respond to a harasser's comments could constitute a signal to him that his conduct is unwelcome. In these cases, the appropriate standard to apply is that of a reasonable person in the circumstances.

(iii) Ordinarily, harassment requires an element of persistence or repetition, but in certain circumstances, even a single incident may be severe enough to create a hostile environment. The objective reasonable person standard is used to assess this factor as well.

[45] In the sexual harassment case of *Stadnyk v. Canada (Employment and Immigration Commission)*, the Federal Court of Appeal suggested that where proper expert evidence is before the Tribunal confirming that male-female interaction may be perceived differently by men than by women, then the appropriate standard against which to measure the alleged conduct should be that of a reasonable *woman*.⁽⁸⁾

IV. ANALYSIS

A. Credibility of the Evidence

[46] Without the presence of a responding party at the hearing, Ms. Des Rosiers's evidence was obviously left uncontradicted. Even so, I found her to be a credible witness, who testified in an eloquent and clear manner. I note that in her testimony, the dates to which Ms. Des Rosiers attributed a handful of events differed from those set out in the written complaint that was prepared in March 1999. For instance, according to the complaint form, Mr. Barbe's remark regarding his dog, Charlotte, occurred in December 1997 and not January 1997. Similarly, his comment about how Ms. Des Rosiers appeared "more white than usual" is indicated as having occurred in October 1997, as opposed to April 1997. I do not perceive these discrepancies as a weakness in her testimony. To the contrary, they serve to demonstrate that instead of blindly restating what was written on the complaint form, Ms. Des Rosiers testified on the basis of her actual memory of the incidents. That she may have occasionally misstated, during her testimony, the month or year of a particular event, is not of any real significance. I also note that the witnesses who were called to testify by Ms. Des Rosiers and *Groupe d'aide* said that they had not discussed the content of their testimony with the complainants prior to being called to the

witness stand, and that they testified based on their independent recollections of the facts and corroborated Ms. Des Rosiers's evidence to a certain extent.

B. Was the Impugned Conduct Related to Sex, Race, or National or Ethnic Origin?

[47] Ms. Des Rosiers claims Mr. Barbe's impugned conduct, as described in her evidence, relates to at least one, if not more, of the proscribed grounds of discrimination under the *Act*.

[48] It is clear from all of the evidence that a portion of Mr. Barbe's alleged harassing behaviour was sexual in nature, encompassing such things as his gesture towards his crotch at the May 1997 office party, his repeated comments about Ms. Des Rosiers's breasts, his advice that she should "screw around" and his implication that she got her job because she slept with an executive of the CBC.

[49] However, Mr. Barbe's harassment was not just sexual in nature. It also extended to matters related to Ms. Des Rosiers's race and origin. His offensive remarks included making comparisons between Ms. Des Rosiers's skin colour and that of his dog, stating that dancing was in her blood, and making racial comments about her physical features. He made a point of blurting out, in her presence, derogatory racial comments against Africans and Blacks. His conduct revealed distaste on his part for all things pertaining to her Haitian background. His insistence that she report on Créole culture was made in a condescending fashion, as if to suggest that because of her ethnic background she was not worthy or capable enough to comment upon mainstream Quebec or Francophone culture. Mr. Barbe's contemptuous and demeaning behaviour with respect to the Rastafarian wig was strikingly racial in nature and a gross insult to all Black persons, be they of Jamaican, Haitian or any other origin.

[50] I am therefore satisfied that the nature of Mr. Barbe's impugned conduct was at times either sexual, racial, or related to Ms. Des Rosiers's national or ethnic origin.

C. Was Mr. Barbe's Conduct Welcome?

[51] It is clear from Ms. Des Rosiers's evidence that she did not desire nor solicit Mr. Barbe's alleged discriminatory conduct. On several occasions, she openly demonstrated to him that she was offended by his comments. Thus, at one point, she became so fed up with his incessant remarks that she should prepare a report about Créole, that she replied in a forceful manner, "Leave me alone!" (*Lâche-moi!*). Similarly, when Mr. Barbe asked Ms. Des Rosiers whether she had begun "hanging around with Blacks", following her meeting with Michaëlle Jean, Ms. Des Rosiers angrily retorted, "Excuse me!" (*Pardon!*).

[52] In general, however, Ms. Des Rosiers did not respond outwardly to Mr. Barbe's comments, but rather pretended to ignore them. I accept her explanation that Mr. Barbe was, after all, her boss and she feared the consequences that a confrontation with him would have on her career, particularly given that she was merely a trainee. It was for this reason that she chose to address the problem through the back channels, so to speak, by expressing her concerns to Mr. Barnabé and Ms. Léonard, in the hope that these individuals were better placed to convey the message to Mr. Barbe. For instance, she complained to Mr. Barnabé about Mr. Barbe's remark that she had

no business doing a report on the *Cinémathèque québécoise*. Unfortunately, Mr. Barnabé was unwilling to intervene and, in fact, became Mr. Barbe's apologist, taking the position that Mr. Barbe was not really racist or sexist, just an "iconoclast". In any event, Ms. Des Rosiers eventually realized that she could hardly count on Mr. Barnabé's understanding, considering his participation in the "masquerade", as she described it, involving the Rastafarian wig.

[53] Besides, it is unreasonable for Mr. Barbe to have ever considered his behaviour towards Ms. Des Rosiers as welcome. How could any person reasonably conclude that Ms. Des Rosiers, a Black woman of Haitian descent, would welcome his "masquerade", his crude gestures with his crotch, his repeated remarks about her breasts, his comparison between her and his dog, and his numerous other aspersions against Blacks and Haitians. To do so would be ludicrous.

[54] I am therefore satisfied that in the circumstances, Ms. Des Rosiers's response to this conduct was reasonable and that consequently, Mr. Barbe's behaviour was not welcome.

D. Was the Impugned Conduct Serious Enough to Create a Hostile Environment?

[55] Mr. Barbe's discriminatory conduct began as early as his first meeting with Ms. Des Rosiers, when he made the sexually offensive remark that he was only interested in her colleague's "ass", and extended over the entire period that she worked on the *La vie d'artiste* program. Some particular aspects of his conduct were very serious, notably his weeklong "masquerade" with the Rastafarian wig. I find that this act alone was of such gravity that one could reasonably conclude that Ms. Des Rosiers was working within a hostile environment. When combined with the myriad of other offensive comments and acts engaged in by Mr. Barbe, touching on numerous facets of Ms. Des Rosiers's identity (her race, her gender and her national/ethnic origin) as well as her dignity as a person, there can be no doubt that her workplace environment had been poisoned.

[56] For all these reasons, therefore, I find that Mr. Barbe harassed Ms. Des Rosiers on the basis of all three prohibited grounds referred to in the complaint: race, sex and national/ethnic origin.

V. REMEDY

A. Lost Wages

[57] Ms. Des Rosiers is seeking compensation for the wages that she lost due to the non-renewal of her *La vie d'artiste* employment contract (s. 53(2)(c) of the *Act*). Although it was Mr. Barnabé who informed her, on August 17, 1998, that she would not be rehired for the 1998-99 season, Ms. Des Rosiers contends, based on circumstantial evidence, that Mr. Barbe had a hand in this decision. She points out that when she returned to her office on August 17th, Mr. Barbe had occupied it and said it was now his. She also recalls having been told by Mr. Barnabé, on an earlier occasion when she was assigned additional work on a couple of other television programs, that it was Mr. Barbe who had decided to provide her this opportunity. Finally, she claims that the person who replaced her on the *La vie d'artiste* program was a very close

acquaintance of Mr. Barbe. Drawing on these facts, she concludes that Mr. Barbe must have been involved in the decision not to renew her contract.

[58] It may in fact be that Mr. Barbe did not want Ms. Des Rosiers to return to the show and it is even possible that he expressed this opinion to Mr. Barnabé. Nonetheless, on the evidence before me, the decision to refuse her renewal was Mr. Barnabé's, or possibly that of the CBC's human resources department, but certainly not Mr. Barbe's. It is noteworthy that the human resources department representative who advised Ms. Des Rosiers to leave the building on August 17, 1998, as well as Mr. Barnabé, both made it clear that they themselves were upset with the filing of the complaint letter with the CBC President. I am unconvinced that the decision not to renew can be ascribed, even in part, to Mr. Barbe.

[59] Yet, there still remains one other related issue. Although Mr. Barbe was not involved in the decision not to hire back Ms. Des Rosiers, can the non-renewal nevertheless be indirectly linked to his discriminatory conduct? Had it not been for Mr. Barbe's harassment, Ms. Des Rosiers would not have complained and sent a letter to the CBC President. Mr. Barnabé, in turn, told Ms. Des Rosiers that she was dismissed from the show because she sent the letter.

[60] A similar issue came before the Canadian Human Rights Tribunal in *Nkwazi v. Correctional Service of Canada (No. 4)*.⁽⁹⁾ The complainant in that case, claiming that her manager had harassed her, complained to higher management, whose reaction, in turn, was to retaliate against the complainant and not renew her casual contract. The Tribunal came to the following conclusion⁽¹⁰⁾:

In cases of discrimination, the goal of compensation is to make the victim whole, subject to principles of foreseeability, remoteness and mitigation. In this case, I am satisfied that there is a causal connection between the original discriminatory practices and the loss of Ms. Nkwazi's job: had Ms. Neufeld not treated Ms. Nkwazi in a discriminatory fashion, Ms. Nkwazi would not have complained about her to RPC management, and the retaliation would not have occurred. In other words, the damages that result from the non-renewal of Ms. Nkwazi's casual contract are damages flowing from Ms. Neufeld's original breach of the *Act*, and may be considered from the perspective of remedy.

Was the decision by Mr. Barnabé to refuse the renewal of Ms. Des Rosiers's contract a reasonably foreseeable consequence of Mr. Barbe's harassment? Do the damages arising from the non-renewal flow from Mr. Barbe's breach of s. 14 of the *Act*? I note that in *Nkwazi*, the respondent before the Tribunal was the institutional employer, the Correctional Service of Canada, not the individual who actually committed the discriminatory practice against the complainant. As a result, the employer ended up being held liable for the loss of income arising from *its* decision not to renew the complainant's employment contract.⁽¹¹⁾

[61] Mr. Barbe is not the employer in the present case and I have already determined that the evidence is insufficient to support the contention that he was involved in the non-renewal of Ms. Des Rosiers's contract. In *Canada (Attorney-General) v. Green*,⁽¹²⁾ the Federal Court-Trial Division stated that the proper test for assessing damages includes the notions of remoteness and

foreseeability. The Court referred to an excerpt from Mr. Justice Marceau's reasons in *Canada (Attorney-General) v. Morgan*⁽¹³⁾:

The idea is always the same: exclude consequences which appear down the chain of causality but are too remote in view of all of the intervening facts. Whatsoever be the source of liability, common sense still applies.

Accordingly, I find that Ms. Des Rosiers's loss in wages arising from the independent decision of the employer, the CBC, (as expressed through the conduct of the show's producer, Mr. Barnabé, and perhaps the CBC's human resources representative), to refuse to renew Ms. Des Rosiers's contract for *La vie d'artiste*, to be too remote from Mr. Barbe's discriminatory conduct. It would strain common sense to hold Mr. Barbe liable for a third party's retaliatory acts, in which I am not convinced he played a part.

[62] Ms. Des Rosiers is therefore not entitled to damages from Mr. Barbe, for her lost wages.

B. Expenses

[63] Ms. Des Rosiers claims that she should be compensated for certain expenses that she incurred as a result of Mr. Barbe's discriminatory practice (s. 53(2)(c) of the *Act*).

[64] The expenses being claimed include the fees for lawyers whom Ms. Des Rosiers consulted in 1998. She acknowledges that these fees are for services relating to the grievance that she sought to file against the CBC, and more specifically, certain difficulties she had convincing her union to file the grievance. As such, these expenses are not related to the present complaint against Mr. Barbe and she is therefore not entitled to their reimbursement.⁽¹⁴⁾

[65] Ms. Des Rosiers is also claiming the fees that she paid for consultations with two psychologists, from September 1998 until June 2000. She testified as to the extent that her physical and mental health had deteriorated as a result of Mr. Barbe's harassment. I am satisfied that these professional services were warranted and that they are directly related to Mr. Barbe's discriminatory practice. The total amount of these fees is \$1,515.00. Photocopies of the invoices documenting these expenses were not communicated to Mr. Barbe or his counsel prior to the hearing. However, in one of the documents disclosed to Mr. Barbe's counsel by the Commission, in March 2003, it is indicated that the invoices would be forthcoming. In the ensuing weeks, neither Mr. Barbe nor his counsel raised any issue regarding this limited disclosure, with the Tribunal. Obviously, with the respondent side being absent from the hearing, no objection was made to the entry into evidence of these receipts. I note that the sums claimed for these psychologists' consultations are reasonable, apparently averaging \$60.00 per visit. Taking all of these factors into account, I am satisfied that Ms. Des Rosiers is entitled to claim these expenses.

[66] Mr. Barbe is therefore ordered to pay to Ms. Des Rosiers the sum of \$1,515.00 in reimbursement of her expenses.

C. Non-pecuniary Damages

[67] Ms. Des Rosiers is claiming compensation, under the current version of the *Act*, for the pain and suffering that she experienced as a result of the discriminatory practice (s. 53(2)(e)), as well as special compensation because Mr. Barbe wilfully or recklessly engaged in the discriminatory practice (s. 53(3)). The maximum award available under each provision is \$20,000.

[68] Prior to the amendments to the *Act* that took effect on June 30, 1998,⁽¹⁵⁾ awards to victims for non-pecuniary damages were limited to only \$5,000 (s. 53(3) of the older version of the *Act*). In *Nkwazi*,⁽¹⁶⁾ the Tribunal held that where the discriminatory conduct occurs prior to that date, the previous limits apply.

[69] By June 1998, the season's production of *La vie d'artiste* had ended and Ms. Des Rosiers had no further contact with Mr. Barbe. In the written complaint, the last documented act of harassment is listed as being Mr. Barbe's pseudo-apology during which he claimed that "big African ass" is not an insult. This event occurred in April 1998. During the month of May, Mr. Barbe was away in Europe and had no contact with Ms. Des Rosiers. In her testimony, Ms. Des Rosiers alleged that some of her work was sabotaged after she formalized her complaints against Mr. Barbe, but these incidents took place in mid-June 1998, at the latest.

[70] The only event involving Ms. Des Rosiers's experience with Mr. Barbe and the *La vie d'artiste* team that she alleges to have occurred after June 30, 1998, is the notification of her dismissal, which took place on August 17, 1998. As I already explained earlier in this decision, the non-renewal of Ms. Des Rosiers's contract cannot be linked to Mr. Barbe's discriminatory conduct. Furthermore, he did not harass Ms. Des Rosiers during either of his minor interactions with her on that day (in her office and in Mr. Barnabé's office). In her testimony, Ms. Des Rosiers did not refer to any other meeting or contact with Mr. Barbe after this date.

[71] I therefore find that all of Mr. Barbe's discriminatory conduct occurred prior to the June 30, 1998 amendments to the *Act*. I am bound to apply the provisions of s. 53, as they stood at the time when the discriminatory practices took place. According to the older version of s. 53(3), compensation not exceeding \$5,000 may be ordered where a person engaged in the discriminatory practice wilfully or recklessly, or where the victim suffered in respect of feelings or self-respect as a result of the practice.

[72] I am convinced that Mr. Barbe's discriminatory conduct was reckless and even wilful at times. For instance, his decision to parade around in a Rastafarian wig, in plain view of the only Black staff member, during Black History Week, could only have been done with the intention of humiliating Ms. Des Rosiers. His numerous other vulgar and insulting comments and gestures relating to her race, origin and gender were no less mean-spirited and were engaged in without any consideration of the consequences to her feelings or her well-being.

[73] I am similarly satisfied that Ms. Des Rosiers suffered deeply in respect of her feelings and her self-respect. She testified that experiencing harassment that simultaneously belittled her sex, her race and her culture heightened her pain and aggravated the effect of the discrimination. These insults were coupled with an underlying suggestion that she was not a real Québécoise.

[74] In light of all the circumstances, I order Mr. Barbe to pay to Ms. Des Rosiers the sum of \$5,000.00 in non-pecuniary damages, pursuant to the pre-amendment version of s. 53(3).

D. Donation to *Groupe d'aide*

[75] The Complainants request that Mr. Barbe be ordered to make a donation to *Groupe d'aide*. Ms. Smith pointed out that *Groupe d'aide* is a non-profit charitable organization made up of volunteers who assist victims of harassment. The group's assistance to Ms. Des Rosiers and the entire Tribunal process was useful, particularly in light of the withdrawal by the Commission shortly before the start of the hearing.

[76] The Tribunal's authority to order remedial measures, however, is governed entirely by the *Act*. None of the remedies enumerated in s. 53 of the *Act* contemplate the possibility of ordering a respondent to make a payment to anyone other than the victim of his discriminatory conduct. The Complainants' request must therefore be denied.

E. Interest

[77] Interest is payable in respect of the monetary awards made in this decision (s. 53(4) of the *Act*). However, since I have ordered the maximum award for non-pecuniary damages available under the previous version of the *Act*, no interest is payable regarding this sum.⁽¹⁷⁾ The interest on the remaining award shall be simple interest calculated on a yearly basis, at a rate equivalent to the Bank Rate (Monthly Series) set by the Bank of Canada, to run from the date of the complaint, March 8, 1999, until final payment.

F. Letter of Apology

[78] The Complainants request that Mr. Barbe be ordered to remit a sincere letter of apology to Ms. Des Rosiers. In light of the recent Federal Court-Trial Division decision in *Stevenson v. Canadian Security Intelligence Service*,⁽¹⁸⁾ to the effect that the Tribunal lacks the jurisdiction to make such orders, this request is denied.

G. Human Rights Sensitization Training

[79] Ms. Smith informed the Tribunal that among the services that *Groupe d'aide* provides to the public is sensitization training with respect to harassment and human rights. The Complainants request that Mr. Barbe be ordered to attend such a training session.

[80] It is evident from Mr. Barbe's behaviour that he could certainly benefit from such training. Mr. Barbe is therefore ordered to attend a course on harassment and human rights to be organized by *Groupe d'aide*, in consultation with the Commission, as provided for under s. 53(2)(a) of the *Act*. The course must be comprised of no less than one and no more than three full-day sessions. The reasonable cost for this training shall be paid by Mr. Barbe.

H. Retention of Jurisdiction

[81] I retain jurisdiction in the event that any dispute arises regarding the quantification or implementation of any of the remedies in this decision.

"Original signed by"

Athanasios D. Hadjis

OTTAWA, Ontario

June 27, 2003

CANADIAN HUMAN RIGHTS TRIBUNAL

COUNSEL OF RECORD

TRIBUNAL FILE NO.: T736/4102

STYLE OF CAUSE: Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec Inc. v. Jean Barbe

PLACE OF HEARING: Montreal, Quebec

(May 5, 6 and 7, 2003)

DECISION OF THE TRIBUNAL DATED: June 27, 2003

APPEARANCES:

Linda Smith For Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec Inc

Mireille Des Rosiers On her own behalf

1. ¹ R.S.C. 1985, c. H-6.
2. 2 (2 October 2002), Ottawa T701/0602 (C.H.R.T.) (transcript).
3. ³ *Groupe d'aide et d'information sur le harcèlement sexuel du travail de la province du Québec Inc. v. Barbe*, 2003 CHRT 15.
4. ⁴ [1989] 1 S.C.R. 1252.
5. ⁵ *Rampersadsingh v. Wignall*, [2002] C.H.R.D. No. 27 at para. 40 (C.H.R.T.)(QL); *Dhanjal v. Air Canada* (1996), C.H.R.R. D/27 at para. 206 (C.H.R.T.) aff'd [1997] F.C.J. No. 1599 (F.C.T.D.)(QL); *Marinaki v. Canada (Human Resources Development)*, [2000] C.H.R.D. No. 2 at para. 187 (C.H.R.T.) (QL).
6. ⁶ *Canada (HRC) v. Canada (Armed Forces) and Franke ("Franke")* (1999), 34 C.H.R.R. D/140 at paras. 29-50 (F.C.T.D.); *Bushey v. Sharma*, 2003 CHRT 21 at paras 104-107.
7. ⁷ *Rampersadsingh*, *supra*, note #5 at para. 41.
8. ⁸ (2000), 38 C.H.R.R. D/290 at para. 25 (F.C.A.).
9. ⁹ (2001), 41 C.H.R.R. D/109 (C.H.R.T.).
10. ¹⁰ *Ibid.* at para. 234.
11. ¹¹ *Ibid.* at para. 242.
12. ¹² (2000), 38 C.H.R.R. D/1 (F.C.T.D.).
13. ¹³ [1992] 2 F.C. 401 at 416 (F.C.A.).
14. ¹⁴ See *Larente v. Canadian Broadcasting Corp.*, [2002] C.H.R.D. No. 11 at paras. 293-297 (C.H.R.T.).
15. ¹⁵ *An Act to amend the Canada Evidence Act and the Criminal Code in respect of persons with disabilities, to amend the Canadian Human Rights Act in respect of persons with disabilities and other matters and to make consequential amendments to other Acts*, S.C. 1998, c. 9, s. 27.
16. ¹⁶ *Supra*, note #9 at paras. 257-270.
17. ¹⁷ *Canada (Attorney General) v. Hebert* (1995), C.H.R.R. D/375 at para. 23 (F.C.T.D.).
18. ¹⁸ 2003 FCT 341 (F.C.T.D.).