HUMAN RIGHTS BOARD OF ADJUDICATION

IN THE MATTER OF:	A Complaint by WANDA ROSS against 4888970 MANITOBA LTD. (o/a Gillam Motor Inn) alleging a breach of Section 14 of *The Human Rights Code*;
AND IN THE MATTER OF:	*The Human Rights Code*, C.C.S.M., Chapter H175, as amended;

BETWEEN:

WANDA ROSS,

Complainant,

- and -

4888970 MANITOBA LTD. (o/a Gillam Motor Inn), MICHAEL BLAHY,

Respondent.

DECISION

Hearing Date: December 11 – 13, 2017

Appearances:

Wanda Ross, *Complainant*

Ms. Isha Khan, *for the Human Rights Commission*

Michael Blahy, *in person and for the Respondent Corporation (as co-owner)*

Mr. Lawrence Pinsky, *Adjudicator*

HUMAN RIGHTS BOARD OF ADJUDICATION

IN THE MATTER OF:	A Complaint by WANDA ROSS against 4888970 MANITOBA LTD. (o/a Gillam Motor Inn) alleging a breach of Section 14 of *The Human Rights Code*;
AND IN THE MATTER OF:	*The Human Rights Code*, C.C.S.M., Chapter H175, as amended;

BETWEEN:

WANDA ROSS,

Complainant,

- and -

4888970 MANITOBA LTD. (o/a Gillam Motor Inn),
MICHAEL BLAHY,

Respondent.

DECISION

December 13, 2017

[1] Wanda Ross alleged that her former employer, a numbered company that operated the Gillam Motor Inn in Gillam, Manitoba, permitted two of its employees, one of whom was the general manager of the hotel, to discriminate against her in her employment and to harass her. In addition or in the alternative, she alleged that the Respondent failed to take reasonable steps to terminate the harassment and discrimination that she claimed she suffered at the hands of the two individuals employed by the Respondent corporation.

[2] The Commission and Ms. Ross both confirmed toward the end of the hearing that, contrary to Ms. Ross' original complaint, the discrimination that she suffered, and for which she was seeking redress, was based on her ancestry, and not her "sex (female), including sex-determined characteristics and/or disability (needed time off due to a hysterectomy)", or her "perceived disability (addictions)", as had been claimed originally. These reasons proceed on that basis.

[3] As a preliminary matter, I note that on the final day of the hearing, in closing argument, I was asked by counsel for the Commission to add Mr. Michael Blahy and Mr. Michael Bruneau,

the co-owners of the Respondent corporation, as personal Respondents. As can be seen, I have ordered Mr. Blahy named as a Respondent. My reasons for doing so, and my reasons for adjourning the request to name Mr. Bruneau as a personal defendant are set out later in this decision.

[4] For the reasons that follow, I find that Ms. Ross did suffer discrimination in her employment, as well as harassment. I further find the Respondent/employer did not take reasonable steps to terminate the discrimination and harassment that Ms. Ross suffered at the hands of their employees, Mr. Darrell Nichol and Mr. David Dunn.

FACTS:

[5] On or about January 6, 2013 Ms. Ross began work for the Respondent corporation, 4888970 Manitoba Ltd., which operates the Gillam Motor Inn in Gillam, Manitoba. She was initially employed as a waitress, however over the course of time she also worked in housekeeping, occasionally as a cook, as well as at the front desk dealing with cash. During the course of her employment, Mr. Darrell Nichol was the general manager of the Gillam Motor Inn and Mr. David Dunn was most often Ms. Ross' coworker, though sometimes he served as substitute manager when Mr. Nichol was away.

[6] In her complaint, Ms. Ross described herself as "part Black and part Aboriginal".

[7] Ms. Ross testified that she was subject to many slurs based on her real or perceived ancestry. She was also subject to being present while racial slurs were repeated, whether to customers or between staff (Mr. Nichol and Mr. Dunn).

[8] Ms. Ross alleged that Mr. Nichol used the inherently racist and discriminatory expression "…there's no nigger in the wood pile" in conversation with her and/or in her presence in conversations with others. Ms. Ross also alleged that when an Indigenous individual would enter the Gillam Motor Inn he would commonly say things like "drunken fucking Indians", "drunken savages", "why don't they get jobs", and/or "oh here we go again". These racist and discriminatory comments are alleged to have begun in February 2013 and continued throughout her employment.

[9] Ms. Ross alleged that by the end of February 2013 Mr. Dunn began falsely telling customers that she was a drunk, a thief, and/or a junkie. Ms. Ross opined that Mr. Dunn began using these terms to describe her as a result of her ancestry.

[10] Eventually Ms. Ross worked up the strength to tell Mr. Dunn to "back off" and/or used stronger language. Apparently, and not unexpectedly, the dysfunctional workplace relationship that existed, soon deteriorated further. Ms. Ross alleged that after a day or so of calm, the harassment got worse.

[11] As a result of these repeated racial slurs, Ms. Ross testified that she broke-down and cried. She attempted to speak with Mr. Nichol about it, who responded that Ms. Ross was imagining the situation. I find that she was not.

[12] The discriminatory comments continued over time, and continued to take an increasing emotional toll on Ms. Ross. The emotional toll Ms. Ross suffered was evident right up to and including at the hearing itself.

[13] Ms. Ross testified that on occasion, during the course of her employment, Mr. Nichol had to attend at medical appointments, and on those occasions Mr. Dunn was put in charge. Ms. Ross alleged that Mr. Dunn spread rumours that Ms. Ross stole money. He further allegedly claimed "all black people are thieves".

[14] Mr. Blahy testified that he is one of the owners of the Respondent company. Mr. Blahy owns (or at the material time owned) a 50% interest in the Respondent, numbered company. Mr. Blahy and his partner, Mr. Bruneau (the other 50% owner), own a number of inns or hotels throughout rural Manitoba and Northwestern Ontario. Mr. Blahy testified that each of these motor inns or small hotels are owned by a separate numbered company.

[15] Mr. Blahy testified that he generally is not present at these inns/hotels, but rather travels between them from time-to-time staying for short periods of time as part of his role in managing their operations. Mr. Blahy's evidence was that he only attends to the Gillam Motor Inn once every 4 – 6 weeks, and only for a few days. He testified that he was in contact with the general manager every day or every other day by e-mail or phone.

[16] Ms. Ross testified that she wrote a personal and confidential letter to Mr. Blahy toward the end of March 2013, in which she advised him what had been going on and the harassment and discrimination that she felt she was suffering at the hands of Mr. Nichol and Mr. Dunn. Ms. Ross testified that she taped the letter to the office doors addressed to Mr. Blahy so that he would find it when he arrived. As it turns out, the letter was removed from the door. Ms. Ross' evidence suggested that Mr. Dunn removed the letter. I need not make any finding in that regard.

[17] According to Mr. Blahy's evidence, when he arrived at the Gillam Motor Inn, although the letter was missing, he found the discarded envelope in the wastepaper basket. He testified that it appeared to be in Ms. Ross' handwriting.

[18] Ms. Ross and Mr. Blahy did discuss matters. Mr. Blahy testified that he did not recall Ms. Ross indicating anything about racial slurs or other attacks based on her ancestry. His recollection was that Ms. Ross described that she and Mr. Dunn were "butting heads". On cross-examination Mr. Blahy testified that he could not be certain that the issue of racial slurs and insults based on ancestry had not been raised.

[19] Mr. Blahy's evidence was that when he and Ms. Ross met she was complaining about Mr. Dunn and not about Mr. Nichol. He testified that she complained that Mr. Dunn told staff that she had missed work because of drunkenness. Mr. Blahy stated that he told Mr. Dunn not to say something like that again when he did not know if it was true. He testified that Mr. Dunn agreed.

[20] Mr. Blahy testified that his recollection was that he received no further complaints about Mr. Dunn or Mr. Nichol, and the next he heard about this situation was in July 2013 when Mr. Dunn phoned him to say that Ms. Ross resigned. Mr. Blahy testified that Mr. Dunn had told him that Ms. Ross had said that she was seeking other part-time work at another restaurant.

[21] There were other incidents similar to those aforementioned described in the complaint that I need not set out in these reasons. Overall, Ms. Ross testified that there was no real abatement of the insults and attacks that she suffered.

[22] Mr. Blahy testified that Mr. Nichol had told him, prior to Ms. Ross' "resignation", that despite the "head-butting" Ms. Ross was a good employee. In fact, she was such a good employee

that when she required certain medical procedures in Thompson, and needed an advance to return to Gillam, it was the Respondent corporation that paid that advance.

[23] While working at the Gillam Motor Inn, Ms. Ross stayed in accommodations (a trailer) provided by the Respondent corporation. Ms. Ross testified that as part of her employment she paid rent by way of deduction in her income of $350.00 per month.

[24] Ms. Ross continued to work for the Respondent corporation, although she had some concern with her shiftwork being changed to nights. Ms. Ross testified that she did not want to work nights.

[25] Mr. Blahy agreed with Ms. Ross' evidence that she did not initially do evening work, but stated that she was later asked to do evening work. He testified that the Respondent corporation had to accommodate other employees, such that evening work was always a possibility.

[26] There does not appear to have been a written employment contract, and none was produced at the hearing. Ms. Ross testified that there were verbal agreements dealing with her employment, including that she would only have to work the dayshift. I am not convinced that Ms. Ross and the Respondents reached a consensus on the latter term.

[27] There were some minor inconsistencies in Ms. Ross' evidence as to whether she wanted to return to school to finish her social work degree or not and/or whether she wanted to work an extra or different job or not. Perhaps if she wished to change her employment it was due to the working environment in which she found herself, or perhaps for other reasons. Regardless, suffice it to say that Ms. Ross found that she was working a different shift than she wished and had originally intended in a toxic environment.

[28] Ms. Ross testified that eventually, on or about July 24, 2013, after enduring months of discriminatory comments, she contacted the Labour Board who suggested that she contact the Human Rights Commission about the circumstances of her employment. Her evidence was that she called these entities without realizing that Mr. Dunn was standing behind her listening to her call.

[29] Ms. Ross testified that she had a letter of resignation that she had prepared and discussed with her employer or fellow employees or both, but did not hand over. Regardless, Ms. Ross either

resigned or was forced to "resign" on or about July 25, 2013. On July 25, 2013 Mr. Blahy sent a letter from another hotel confirming that Ms. Ross' "resignation" had been accepted, even though she had not submitted her letter of resignation. This was likely due to the verbal comment she had made that she was going to resign.

[30] Ms. Ross had planned her resignation to take effect approximately six weeks into the future, on or about September 15, 2013. In Mr. Blahy's letter, "accepting her resignation", he said that six weeks' notice was not required and that one week was sufficient, but that she would be paid in lieu of notice. Ms. Ross was told not to return to work.

[31] Ms. Ross testified that she was told she had until September 5, 2013 to be out of the staff trailer. She testified that she moved out later by consent with her employer, but ultimately she did not receive her final cheque.

[32] From Ms. Ross' evidence, it would appear as though the Respondent corporation unilaterally decided to increase the rent for the trailer to $800.00 per month once Ms. Ross was no longer working at the Gillam Motor Inn. There was no evidence of any agreement or basis for this increase.

[33] Presumably the Respondent undertook some sort of "accounting" on its own and decided that Ms. Ross would not receive her final cheque, which was instead "used up" by the aggregate of this unilateral additional rent that the Respondent determined to charge her (likely intended to "encourage" an earlier departure), and the advance paid to her to help her return from Thompson following her medical procedure ($225.00). Ms. Ross was not consulted or notified in advance of the increase in rent, neither did she consent to it.

[34] Ms. Ross subsequently moved to Churchill, Manitoba, and then relocated to Winnipeg. She testified that she obtained new employment in or about October 2013.

[35] Importantly, under cross-examination Mr. Blahy testified that he could not say if Ms. Ross had complained to him about racial comments she had to endure. He did not recall if he told Ms. Ross that he talked about the issue of racial complaints with Mr. Nichol or Mr. Dunn. He did acknowledge recalling that Ms. Ross was very upset. He also confirmed that he told Ms. Ross that he would talk to Mr. Dunn. Mr. Blahy then testified that he did not know if he said anything to

Mr. Dunn thereafter. He testified that he may have talked to Mr. Nichol about Mr. Dunn, but was not certain of that either.

[36] Mr. Blahy testified that he was upset when he read the complaint that he received in early 2014 (January). Mr. Blahy admitted however that he did not really do much following receipt of the complaint.

[37] Mr. Blahy testified that he was and is opposed to any kind of racial slurs, attacks, or comments about anyone's ancestry at any of his businesses. He testified that many of his customers and staff are Indigenous, and that he absolutely does not condone such behaviour.

[38] Mr. Blahy testified that he never heard negative terms about Black people. He did however recall negative terms being used about Indigenous people.

[39] Mr. Blahy confirmed that Ms. Ross was paid $175.00 biweekly. He testified that rent was $379.17 per month, not the amount of $350.00 that Ms. Ross testified she was paying as rent. Neither party tendered any proof of the rental payment.

[40] Mr. Blahy testified that following the July 2013 dismissal or resignation Ms. Ross asked for her job back. He testified that he refused to "re-hire" her. He testified that because she asked for her job back he concluded that there must have been a mistake in the complaint, as he opined that a person would not ask for their job back if employed in an environment that was a bastion of discriminatory conduct (my phraseology).

[41] Mr. Blahy did not consider the possibility that with little money and significant isolation in a relatively small community, a request to return to work might have only signaled desperation. I do not take the request to return to work as corroborative of any suggestion that no discrimination occurred, or that the Respondent employer acted reasonably to redress such discrimination.

[42] Mr. Blahy testified that he did not know if any money was owing to Ms. Ross. He testified that he did not know about the increase in rent that Ms. Ross testified about, and was unaware of any additional rent. He also testified that he was unaware of any additional rent being deducted from her income. He ought to have made himself aware of these issues, and certainly had ample opportunity to do so.

[43] Mr. Blahy testified that at the time of the alleged incidents there was no harassment policy in any of his operations, but since that time he said harassment policies have been instituted, which policies were taken from the labour context. No written policies were provided by Mr. Blahy. They ought to have been if such policies exist.

CREDIBILITY AND DELAY:

[44] Ms. Ross' complaint stems from events that date back to 2013. The essentials of Ms. Ross' complaint have been consistent from the time that she filed it up to and including the evidence she gave at the hearing. The fact that Ms. Ross' evidence was so consistent is testament to her credibility.

[45] Ms. Ross delivered her evidence in a straight-forward, albeit somewhat emotional manner (understandably so in the circumstances) with a general consistency over time that did not appear to be contrived or artificially manufactured. Although Ms. Ross' evidence was consistent in the main, there were some relatively minor inconsistencies in her evidence. These inconsistencies however were of a trifling nature, such as dealing with her income in 2013.

[46] Given the passage of time, these minor inconsistencies were understandable and support the contention that her evidence was reliable, not merely rehearsed. When it came to the heart of her evidence and the substance of her story, there were no substantial inconsistencies, despite the significant passage of time.

[47] As set out above, appearing on behalf of the Respondent company was Mr. Michael Blahy. In terms of Mr. Blahy's credibility, I found that he too was credible in giving his evidence such as it was. Although he briefly attempted to resile from his position, ultimately Mr. Blahy unequivocally confirmed that he simply did not know whether or not the discriminatory behaviour complained of occurred or not, and could not deny that same occurred.

[48] Mr. Blahy did not call any evidence that contradicted the essence of Ms. Ross' testimony. Ms. Ross was not substantially shaken in her testimony under cross-examination on the substance of her complaint. On the principle issue of the discrimination and harassment there was no serious challenge to Ms. Ross' credibility.

[49] Part of the problem that the Respondent faced in defending the claim was that the two individuals employed by him were not available to give evidence. Mr. Blahy testified that Mr. Nichol had suffered a stroke, was subject to trusteeship by the Public Trustee, could not walk, could not talk, and could in no way participate in the proceedings or in the defense. Mr. Blahy further testified that Mr. Dunn had "fallen off the face of the earth".

[50] The Respondents share in the responsibility for not having any evidence from either of these two individuals. The Respondent also bears responsibility for not providing any corroborative evidence respecting payments owed to Ms. Ross (or not), and in failing to produce any policy prohibiting harassment.

[51] Mr. Blahy received the complaint in 2014. The Respondent company could have obtained statements or other evidence from Mr. Nichol and/or Mr. Dunn and other individuals employed by the Respondent corporation at the time that could have assisted him if there was a viable defense. He chose not to do so, whether because no such evidence was ever available, or due to what he described as his aversion to dealing with conflict and difficult problems.

[52] The Respondent company and Mr. Blahy could have elected to participate in the investigation of this matter. They could have moved expeditiously to try and address the issues raised by Ms. Ross. They could have come prepared with evidence of any remedial action taken (for example, a harassment policy) and evidence respecting funds that did or did not remain owing to Ms. Ross. Instead Mr. Blahy and the Respondent corporation elected not to do anything, other than try and avoid the claim and its consequences.

[53] Mr. Blahy testified that he has difficulty in dealing with matters of conflict, and is conflict-avoidant. He testified that he is in the process of seeking and/or obtaining help to be able to deal with such matters in the future, but the fact remains that he and the Respondent company did not deal with this matter promptly, or for that matter responsibly. He testified that he was not aware of the seriousness of the matter, and that he wishes and hopes never to be engaged in such a circumstance again.

[54] While I accept Mr. Blahy's testimony in respect of the matters set out in paragraph 53 above, that does not relieve the Respondent company or him from their responsibilities as

employers. It also does not relieve either from their responsibility to ensure that they do not operate a discriminatory workplace. Instead, it bolsters my acceptance of most of Ms. Ross' evidence.

[55] It would be remiss of me not to mention the fact that it is regrettable that this complaint took over four years to be determined. There is a natural delay in the system that stems from the investigative and problem-solving work that the Human Rights Commission is mandated to undertake pursuant to the Human Rights Code in dealing with such complaints prior to the adjudicative stage. That said, four years is too long a period to have this type of matter outstanding.

[56] The laudable aspect of the investigation and resolution process contemplated by the Human Rights Code is that many claims are settled or otherwise resolved in a cooperative and restorative manner. The lamentable aspect, as seen in this case, is the lengthy delay that appeared only to exacerbate the suffering Ms. Ross experienced as a result of the unresolved and unremedied discrimination.

[57] To be clear, some of the responsibility for that delay was due to the non-participation of the Respondent (and/or the Complainant) for certain periods. Overall however most of the delay in having this matter determined appears to have been the result of an apparent lack of resources at the Human Rights Commission. This is regrettable, as victims of discrimination in Manitoba (and/or targets of false claims thereof) bear the brunt of the delay and the ongoing harm that can result.

ANALYSIS:

[58] As aforementioned on a balance of probabilities, and even beyond that, Ms. Ross' evidence is believed. Ms. Ross endured literally months of insults and slurs, touching upon both her Black and Indigenous ancestries, all in breach of the Human Right Code.

[59] It has been determined (long ago) that the Human Rights Code should be interpreted generously to give effect to its broad public purpose (*Winnipeg School Division No. 1 v. Craton*, [1985] CanLII 48 (SCC)).

[60] Abella, J. in a recent decision stated that:

> The discrimination inquiry is concerned with the impact on the Complainant, not the intention or authority of the person who is said to be engaging in discriminatory

> conduct" (*British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, CanLII paragraph 88).

As she pointed out:

> The key is whether the harassment has a detrimental effect on a Complainant's work environment (*British Columbia Human Rights Tribunal v. Schrenk*, (*supra*), paragraph 89).

[61] There can be little doubt but that Ms. Ross suffered a serious negative impact in her employment. She was the subject of unwelcome, racist, and discriminatory comments that had a detrimental effect on her work and her work environment.

[62] Racial attacks and insults about a person's ancestry cut to the very core of a person's identity. It is sometimes difficult to put into words the effect of such racial attacks, attacks upon the foundational constructs of the individual that such insults engender. The attack is not merely against the individual, but also against their family, culture, and the root of their being. For the target of such attacks, historical wrongs and atrocities can be dredged up, potentially forcing them to confront a dark past of historical and sometimes recurring wrongs, potentially feeling isolated, hurt, and ashamed.

[63] Left unremedied the corrosive effect of this type of working environment on the individual is heinous. There are also negative effects on society as a whole of permitting such comments to subsist. Permitting such commentary, if not normalizing it, creates or enables an environment in which decency, kindness, civility, productivity, and humanity are sacrificed.

[64] Our legislature has made it unambiguously clear that such behaviour is not acceptable in our province. The preamble of Manitoba's Human Rights Code states the following:

> WHEREAS Manitobans recognize the individual worth and dignity of every member of the human family, and this principle underlies the *Universal Declaration of Human Rights*, the *Canadian Charter of Rights and Freedoms*, and other solemn undertakings, international and domestic, that Canadians honour;
>
> AND WHEREAS Manitobans recognize that:
>
> (a) implicit in the above principle is the right of all individuals to be treated in all matters solely on the basis of their personal merits, and to be accorded equality of opportunity with all other individuals;

> (b) to protect this right it is necessary to restrict unreasonable discrimination against individuals, including discrimination based on stereotypes or generalizations about groups with whom they are or are thought to be associated, and to ensure that reasonable accommodation is made for those with special needs;
>
> (c) in view of the fact that past discrimination against certain groups has resulted in serious disadvantage to members of those groups, and therefore it is important to provide for affirmative action programs and other special programs designed to overcome this historic disadvantage;
>
> (d) much discrimination is rooted in ignorance and education is essential to its eradication, and therefore it is important that human rights educational programs assist Manitobans to understand all their fundamental rights and freedoms, as well as their corresponding duties and responsibilities to others; and
>
> (e) these various protections for the human rights of Manitobans are of such fundamental importance that they merit paramount status over all other laws of the province.

[65] To permit the type of indignity and attack upon Ms. Ross that she suffered falls far below the standard expected of any employer. Indeed it falls below the standard expected of any civilized interaction in Manitoba governed by the Human Rights Code.

[66] In her closing submission Ms. Ross stated through tears that it felt to her like nobody cared about the type of discrimination, harassment, and unfair conduct that she endured. While she may have felt that way, the fact is that the Manitoba Human Rights Code not only condemns such conduct, but goes further in facilitating a process of remediation to redress such conduct in appropriate cases. As the Supreme Court of Canada recently reminded us, this is a fundamental feature of our society.

[67] Writing for the majority of the Supreme Court, the Honourable Mr. Justice Rowe recently stated:

> The protections afforded by Human Rights legislation are fundamental to our society (*British Columbia Human Rights Tribunal v. Schrenk*, (*supra*), paragraph 31).

[68] In Manitoba, our Human Rights Code acknowledges that past discrimination against certain groups has resulted in serious disadvantages to members of those groups. Such disadvantages are the disadvantages of our society as a whole, and should not be tolerated.

[69] While Mr. Blahy cannot personally be accused of racist or ancestry-based discrimination, the Respondent corporation permitted such conduct to go on, creating an intolerable environment, not only for Ms. Ross, but generally for Manitobans entering their establishment. Undoubtedly, the environment in which Ms. Ross found herself while employed with the Respondent corporation in 2013 breached the Human Rights Code.

[70] This case is one that (as requested) should result in damages for injury to Ms. Ross' dignity, feelings, and/or self-respect, in accordance with Section 43(2)(c) of the Human Rights Code. Counsel for the Commission had requested $15,000.00, based upon the circumstances of this case and in keeping with the case law.

[71] Upon inquiry, I was advised by Mr. Blahy that if ordered this amount would not result in the Respondent being put out of business. He suggested however that such an amount would be felt by the Respondent company.

[72] I reviewed a number of cases, including *Emslie* v. *Doholoco Holdings Ltd.* 2014 CanLII 71723 (MB HRC); *E.T.* v. *Dress Code Express Inc.*, [2017] O.H.R.T.D. No. 590; *Stein* v. *British Columbia* (Human Rights Tribunal), [2017] B.C.J. No. 1438; *Dhanjal* v. *Air Canada*, [1996] C.H.R.D. No. 4; *Bate* v. *Smith*, 2017 BCSC 1261 among others. I weighed the nature of the discrimination, awards in other cases, the period of time the discrimination to which Ms. Ross was subject subsisted, the position of the Respondent in permitting the situation to continue, Mr. Blahy's position in condemning such conduct at the hearing, the pain and suffering Ms. Ross endured, the place of Ms. Ross' experience on the spectrum of such conduct, and the case law, among other factors. I see nothing inappropriate in awarding damages for injury to dignity, feelings and/or self-respect of Ms. Ross in the amount of $15,000.00, given the foregoing considerations, the nature of the breach of the Human Rights Code, its seriousness, and the failure of the Respondent to act reasonably to remediate the situation. I therefore set the figure accordingly.

[73] Counsel for the Commission also asked that I award exemplary damages as punishment for any malice or recklessness involved in the contravention, in accordance with Section 43(2)(d) of the Human Rights Code. Counsel for the Commission pointed out that the Respondent had ample opportunity to rectify the situation, and really did nothing or only made anemic efforts to address the problem.

[74] I do not find that the Respondent corporation and/or Mr. Blahy acted with malice in their actions and/or inactions in dealing with Ms. Ross' complaint. I cannot however help but find recklessness in the Respondent corporation's and Mr. Blahy's failure to deal with the complaint, both when made by Ms. Ross directly and upon receiving the complaint from the Commission. The fact that Mr. Blahy might be avoidant of difficult situations is not an excuse. There was recklessness in not addressing this matter.

[75] Ms. Ross suffered ongoing indignities due to the fact that this matter was never properly addressed by the Respondent corporation or Mr. Blahy. Had the Respondent not "buried its head", Ms. Ross might have been able to get on with her life earlier. Instead she was compelled to live in a trailer owned by the Respondent, near those personally responsible for the conduct complained of, isolated, without proper employment, and without having the resources to reestablish herself for a period of time.

[76] As the majority decision stated in *British Columbia Human Rights Tribunal v. Schrenk*, (*supra*), paragraph 49:

> … employees, in the context of their work, are a captive audience to those who seek to discriminate against them.

[77] This was likely all the more true for Ms. Ross working in the relatively small and isolated community of Gillam, Manitoba.

[78] It is to Ms. Ross' credit that she was finally able to reestablish herself in a reasonably timely manner and to some degree, mitigate her financial losses. None of that effects the recklessness with which the Respondent dealt with the complaint. That said, I do not place this recklessness at the high-end of the scale of malicious or reckless conduct contemplated by the Human Rights Code. Accordingly, I award $2,000.00 as exemplary damages.

[79] Pursuant to Section 43(2)(a) of the Human Rights Code (as requested), I order that the Respondents implement appropriate policies to prohibit such conduct in the future. I order the Respondents to adopt and implement a special program that has as its object the amelioration of discriminatory conduct, including insults based on ancestry, or other insults based on the characteristics set out in Section 9 of the Human Rights Code. I order the Commission to supervise the implementation of such special program to include the management, directors, and staff of the Respondents. I make this order pursuant to Section 43(2)(e) of the Human Rights Code having found that the Respondents engaged in a pattern or practice of contravening the Human Rights Code over time without taking appropriate steps to ameliorate or resolve the problem. I further order that the Respondents undertake this special program across every property and/or corporation in which Mr. Blahy is a director and/or has an interest of at least 50%, and that these programs be commenced within six months of the release of these reasons.

[80] If there is any question as to whether this aspect of the order applies to a particular corporation or entity, I will retain jurisdiction to determine that matter, which may be brought back before me at the request of any party to this proceeding and/or any entity potentially affected by this order within six months of the release of these reasons.

[81] The Commission asked that I order Mr. Blahy and Mr. Bruneau to undergo an additional educational program. I do not make that order. I did not hear evidence that would support any suggestion that Mr. Blahy was in favour of such conduct, "merely" that he did not undertake sufficient, or any, steps to remediate it. I do not find that Mr. Blahy personally is possessed of such thoughts or actions, nor do I find that he endorses such conduct. Accordingly, and given the totality of my order, I do not see the need to make such an order.

[82] Finally, I have been asked to make an order compensating Ms. Ross for any adverse effects of the contravention of the Human Rights Code she suffered that caused her financial loss, and to compensate her for expenses incurred, or benefits lost by reason of the contravention or for such portions of those losses, expenses, or benefits as I consider just and appropriate in accordance with Section 43(2)(b) of the Human Rights Code.

[83] I cannot help but find that the discriminatory environment that Ms. Ross endured contributed to her desire to leave her employment. I find that it was in large part the discrimination

that she suffered that led to her leaving her employment earlier than she might have otherwise. This further caused an upheaval in her life, both economic and otherwise. While Ms. Ross' intention to complete her social work degree might also have been a factor in her deciding to leave her employment (likely more so relating to her intended time of departure), it was the discriminatory conduct that led to the financial chaos she endured.

[84] I have been asked to make an award under this head of relief for the balance of July, August, and September 2013 to compensate Ms. Ross for salary loss. By my calculation there were approximately five (5) pay periods from July 28, 2013 to October 5, 2013. I will make an award to compensate her for five pay periods, balancing all of the factors and issues set out above.

[85] The evidence before me was that Ms. Ross earned $175.00 biweekly. By my calculation that amounts to $875.00 ($175.00 x 5). I had no reliable evidence of the tips that Ms. Ross may have received (although I heard evidence and accept that she received tips), and no reliable evidence as to whether she reported any tips to the Canada Revenue Agency (aside from Ms. Ross' recollection, which was not clear on detail). Having said that, on a balance of probabilities, I find that she likely received some tips, and I award her an additional moderate amount of $125.00 in respect of same for the same time period.

[86] The Commission asked me to make an order dealing with the change in the rental accommodation fee. I resist making such an order, as that is likely a matter best left to the Residential Tenancies Branch (whether or not within their timelines and authority). Beyond that, in the aggregate, the award I am making is sufficient to compensate Ms. Ross properly.

COSTS:

[87] On the first day of the hearing Mr. Blahy did not appear. His evidence in explaining his lack of appearance was that he had been ill for a couple of days, and that he did not realize that it was Monday, the day the hearing was to commence. Beyond that, he said, again as he had previously, that he had a conflict-avoidance issue that he was trying to address, which led him to miss the day. Mr. Blahy tendered no medical evidence of any kind.

[88] On the same day, Ms. Ross did attend, however she left in frustration when the matter did not proceed. I was advised that there had been a personal loss that Ms. Ross had suffered the

previous week, and that she was unable to continue that day. Ms. Ross similarly tendered no medical evidence. Both parties attended the balance of the hearing.

[89] Section 45(2) of the Human Rights Code grants me jurisdiction to deal with the issue of costs where I regard a complaint or reply as frivolous or vexatious, or I am satisfied that the investigation or adjudication has been frivolously or vexatiously prolonged by the conduct of any party.

[90] I note that at prehearing conferences which had been held, I had asked and received the Respondent's consent to file a reply. In fact, no reply was filed.

[91] The deleterious effect of the delay occasioned by no one appearing for the Respondent corporation on the first day of the hearing was lessened by the fact that the Complainant left the hearing before it began, mandating an adjournment in any event, as requested by counsel for the Commission.

[92] I note as well that the Respondent did not participate in the investigative portion of the complaint. While the investigation continued, it may well have been that a resolution was able to be arrived at had the Respondent participated instead of frivolously disregarding the process almost entirely.

[93] Weighing all of the above facts, I find that the Respondent frivolously prolonged both the adjudication and the investigation. In the circumstances, given the purpose of the Human Rights Code to limit discrimination and promote understanding and mutual respect, the fundamental importance of protecting human rights and the limited circumstances available to award cost pursuant to Section 45(2) of the Human Rights Code, I find that the Respondent should pay costs. Those costs are reduced however by the fact that the Complainant herself was not available on the first day, as aforementioned, counsel for the Commission's comments that the investigation was not seriously hampered by the Respondent's non-participation, and the fact that the hearing proceeded in any event in a timely manner. Accordingly, I order the Respondents to pay the modest amount of $500.00 in costs.

ADDING MR. BLAHY AND MICHAEL BRUNEAU AS PARTIES:

[94] As previously stated, at the conclusion of her arguments, counsel for the Commission asked me to amend the complaint by adding Mr. Blahy and Mr. Bruneau as parties. The basis for her request was that she had been informed shortly before that the Respondent corporation had sold its principle asset, the Gillam Motor Inn, such that she was concerned that the decision I am making might not be enforceable. In his submissions, Mr. Blahy assured me that the Respondent would abide by and comply with any decision I make. The impression I received was that Mr. Blahy was indicating that compliance would occur in short order following the release of this decision.

[95] I enquired with Mr. Blahy as to whether he personally knew about the complaint. He said he did. I enquired as to whether there was anything else that he would want to say or submissions he would want to make on a personal level beyond what he had already submitted on behalf of the Respondent corporation if he was added as a party. He said there were no such submissions. Mr. Blahy advised me that he felt that he had a fair and ample opportunity to say anything he would want to say, both personally and on behalf of the Corporation.

[96] In *Cote v. Manitoba Hydro*, 2015 MBHR 6 (CanLII) I had occasion to canvas the law on adding a party. In that case I found that the following questions were relevant in deciding whether to add a party:

(a) Is there some reliable evidence on which the tribunal could make the finding of liability against the party?

(b) Would the proposed party suffer real and substantial prejudice not capable of being cured?

(c) Does a potential remedy involve the party sought to be added?

(d) Is it in the interest of justice given the remedial nature of the Human Rights Code and the stage of proceedings to add the party?

[97] In addressing these questions, I find that, given Mr. Blahy's anemic response or lack of response to the complaint, it would not only be possible for the tribunal to make a finding liability against him, but likely (as I have). I also find that Mr. Blahy would not suffer any uncureable real

or substantial prejudice if he was added as a party. I further find that the remedy that I am ordering herein does involve the party sought to be added, in that the educational program must involve Mr. Blahy and his partner. Further payment must come from somewhere, and as the ultimate "beneficiaries" of the proceeds of sale of the Respondent corporation (if a share sale), or the Gillam Motor Inn (if an asset sale) are Mr. Blahy and his partner, the potential remedy clearly involves both of them. Finally, I find that it is in the interest of justice given the remedial nature of the Human Rights Code, notwithstanding this stage of proceedings, to add Mr. Blahy as a party (see paragraph 54 of *British Columbia Human Rights Tribunal v. Schrenk*, (*supra*)).

[98] In terms of Mr. Blahy's partner, Mr. Bruneau, Mr. Blahy testified that he was aware of this complaint. Mr. Blahy testified that Mr. Bruneau would ask questions about it from time-to-time, however those were more of a cursory nature.

[99] Prior to deciding whether or not to add Mr. Bruneau, I would like to afford him the opportunity to appear and argue his position if he is opposed to being added as a party. Although it may be that it is appropriate to add Mr. Bruneau, I will adjourn the issue of adding him as a party in order to afford him an opportunity to make submissions before me, if necessary, to address that issue.

[100] Having said that, in the event that the remedies ordered have been satisfied, then the issue of adding Mr. Bruneau as a party may well be rendered moot.

[101] Accordingly, I direct the Commission to serve Mr. Bruneau with these Reasons. I further direct the Commission to set a new date if they wish to proceed with the motion to add Mr. Bruneau, and to serve Mr. Bruneau with notice of that hearing date, as well as Mr. Blahy and the Respondent corporation. In the event that the remedies have been sufficiently satisfied, the Commission may wish to consider if they wish to proceed with that motion and/or the timing of same.

[102] I would ask counsel for the Commission to notify me and the other parties together with Mr. Bruneau if the Commission intends to proceed with the motion. If no date has been set within one year of the release of this decision the motion will be deemed dismissed, unless earlier withdrawn by the Commission.

CONCLUSION RE: MONETARY AWARD:

The Respondents are therefore ordered (in addition to instituting the educational program aforementioned) to pay the following amounts pursuant to the Sections of the Human Rights Code listed below:

s. 43(2)(c)	damages for injury to dignity, feelings, and/or self-respect	$15,000.00
s. 43(2)(d)	exemplary damages	2,000.00
s. 43(2)(b)	financial loss	1,000.00
s. 45(2)	costs	500.00
		$18,500.00

[103] I will retain jurisdiction to deal with any matter, including the implementation of the remedial award as set out herein, that may arise and/or is otherwise specified herein.