HUMAN RIGHTS ADJUDICATION PANEL

IN THE MATTER OF: A complaint by Brandi Richardson v. Kirkwall Properties Ltd. and Wilma Galbraith, alleging a breach of s. 19 of *The Human Rights Code*

AND IN THE MATTER OF: *The Human Rights Code*, C.C.S.M., Chapter H175 as amended

BETWEEN:

BRANDI RICHARDSON,

Complainant,

AND

WILMA GALBRAITH AND KIRKWALL PROPERTIES LTD.,

Respondents.

PANEL: Tracey L. Epp, Adjudicator

APPEARANCES:

The Complainant, in person

For the Commission: Heather Unger

No one for the Respondents.

DECISION

[1] This is a complaint of discrimination based on harassment as defined by Section 19(2) of *The Human Rights Code*, C.C.S.M., C. H175 (the "***Code***"). The Complainant was a tenant of Kirkwall Properties Ltd. ("**Kirkwall**"). At all material times Wilma Galbraith ("**Galbraith**") was the sole director and officer of the Corporate Respondent, it's President and only disclosed shareholder. The Complainant alleges that during the course of her tenancy, Galbraith harassed her on the basis of age, sex, pregnancy, source of income and family status, contrary to Section 19 of the *Code,* and further, that Kirkwall is vicariously liable for such actions.

[2] Kirkwall filed a handwritten response to the Complaint, signed by Galbraith. By interim decision dated June 12, 2020, I ordered that Galbraith be added as a respondent. However, neither of the Respondents appeared at the hearing.

PRELIMINARY MATTERS

[3] I am satisfied that Kirkwall was properly advised of my designation as adjudicator. Kirkwall did not provide an email address for communications and accordingly, all communications were mailed to Kirkwall's corporate address, both by regular mail and either registered mail or personal delivery.

[4] An in-person, pre-hearing conference was conducted on February 7, 2020 at which time Galbraith, on behalf of Kirkwall, attended and agreed to a number of procedural matters including hearing dates. Further, Galbraith personally and on behalf of Kirkwall was given notice that the Commission was considering bringing a motion to add Galbraith as a respondent. Finally, Galbraith, on her own behalf and on behalf of Kirkwall, confirmed one single address for service of all communications and documents.

[5] Subsequent to the in-person pre-hearing conference, the Commission brought forth its motion to add Galbraith as a respondent to these proceedings. I am satisfied that both Galbraith and Kirkwall were given notice of the motion and an opportunity to respond. However, neither chose to respond to the motion.

[6] In June 2020 I issued my interim decision adding Galbraith as a Respondent to these proceedings. I am satisfied that both Galbraith and Kirkwall were given notice of my interim decision. A copy of the decision is attached for ease of reference.

[7] A Notice of Hearing was properly served upon both Kirkwall and Galbraith. Further, the Commission gave notice of the hearing both on their website and by notice in the *Winnipeg Free Press.*

[8] Based upon all of the above, I am satisfied that both Respondents were given notice of the dates set for the hearing of this matter.

EVIDENCE

The Complainant

[9] The Complainant testified at the hearing. I find that the incidents the Complainant alleges to have occurred did occur, and occurred in the manner described by her in her testimony, as summarized below.

[10] At the time of the hearing, the Complainant was 25 years of age and attending Red River College, entering into her second year. She had two children aged 3 and 5, and custody of her 12 year old sister. At the time of the hearing the Complainant's older child was residing with her father.

[11] The Complainant was single, and in receipt of EIA (Employment Income Assistance). She recently worked part-time for a staffing agency. The Complainant previously lived in Ontario, and returned to Manitoba in 2015.

[12] In June 2016 the Complainant was 21 years old, with one small child and her young sister. She was in receipt of EIA at that time and lived on Pritchard Avenue. She wished to move closer to her mother and her child's father. Kirkwood owned and managed an apartment

building located on Henderson Highway in Winnipeg (the "**Apartment Block**" or the "**Apartment**"), which was in the Complainant's preferred area of Winnipeg.

[13] The Complaint says that she called the phone number for Kirkwall and spoke to Galbraith who said she was the landlord. The Complainant says that she did not know Galbraith owned the Apartment Block until she filed the within Complaint.

[14] The Complainant met with Galbraith a few days after her initial call in order to see the Apartment. Galbraith and a woman identified as Jeanette showed her the Apartment. The Complainant told them that she had 1-year-old daughter and was raising her younger sister. She also told them that she was on EIA. Galbraith did not know what EIA was. The Complainant explained that is was welfare. Galbraith then said that people on welfare are junkies and alcoholics. The Complainant told Galbraith that she did not drink or do drugs.

[15] The Complainant says that this conversation made her feel uncomfortable. However, she wanted the Apartment. It was close to her mother, her daughter's father, a park and a grocery store. She said that when on EIA, housing options are limited. She tried to convince Galbraith that she would be a good tenant. Jeanette suggested to Galbraith that she give the Complainant a chance, and Galbraith agreed. The Complainant filled out an application form that included her name, birthday, source of income ("**SOI**"), income level and references. Galbraith asked if welfare would send money directly to Kirkwall to which the Complainant said no, and offered to pay her rent via e-transfer or cash. Galbraith requested that she be paid in cash. The Complainant was not given a copy of her application.

[16] In addition to the above, the Complainant and Galbraith agreed that the Complainant would pay a damage deposit (half of one months' rent) by June 20, 2016. Upon receipt of the damage deposit and first months' rent, the Complainant would be allowed to move into the Apartment.

[17] A few days prior to June 20, 2016, Galbraith telephoned the Complainant to advise that she had changed her mind and did not want to rent the Apartment to the Complainant. When the Complainant asked why, Galbraith said it was because she was "on welfare". However, the Complainant was desperate. She did not renew her lease on the Pritchard Avenue apartment, and had turned down other apartments that she had applied for. She was afraid of being homeless. Galbraith reiterated that people on welfare are junkies and alcoholics. She was able to convince the Respondents to rent the Apartment to her.

[18] Galbraith and the Complainant met on June 20th at which time the Complainant paid the agreed upon damage deposit. The parties signed a Lease and Condition Report that had already been completed before they met. The Complainant then received the keys to the Apartment.

[19] The Lease itself is a one page, handwritten document dated June 28, 2016 signed by the Complainant and Galbraith on behalf of Kirkwall. The Lease made no mention of the deposit, nor of who would be living in the apartment or rules regarding visitors.

[20] The Complainant moved into the Apartment at the end of June 2016. She lived there until May 2017. During her tenancy, the Complainant recommended a friend, "CB", to the Respondents. CB and the Complainant had been close friends in high school. CB moved into the apartment across the hall from the Complainant in August 2016. The Complainant told Galbraith that CB was "like a sister" to her.

[21] The Complainant does not think that Galbraith lived onsite. Jeanette was the contact if there were any problems in the Apartment Building. However, Galbraith attended at the Apartment Building two or three times per week. The Complainant said that she could hear Galbraith screaming at tenants and that was how she knew Galbraith was in the Apartment Building. Galbraith would often leave hand written notes on the Complainant's door. Galbraith personally collected rent from each tenant on the first day of each month.

[22] Within the first month of her tenancy, the Complainant "got into trouble" with Galbraith for being loud when she moved in. She admits that she and her friends were loud and that they banged a few walls. Galbraith also mentioned her kids crying. However, the Complainant said that her child went to bed at 700pm and her sister at 800pm. For the most part they both slept through the night. I accept the Complainant's version of events on this issue.

[23] In late fall or early winter of 2016 the Complainant met "TJ" and Kayla Lawson ("**Lawson**"). Lawson also gave evidence as set out below. The Complainant began dating TJ and soon became pregnant. TJ is a Black man. The Complainant is Caucasian. Initially, TJ visited the Complainant one or two times per week. Once she was pregnant it was up to four times per week. He would often stay overnight. Lawson was the Complainant's friend. She would come to see the Complainant almost daily and they would spend time in the Apartment. The Complainant explained that it was hard to take a one year old out and that is why they stayed in. However, she did leave to walk her sister to school each day.

[24] Accordingly to the Complainant, TJ encountered Galbraith a few times, the first in the late Fall of 2016. She recalled that it had not snowed yet, but that she was already pregnant. Shortly thereafter, Galbraith asked the Complainant who "that nigger'' was. The Complainant responded that TJ was her boyfriend. Galbraith then said that if it were up to her, the Complainant would not be dating that "N". The Complainant said that this upset her. She said the words used were degrading. She said she was hurt. She was not sure if anyone else heard the comments.

[25] The Complainant said that her pregnancy started showing around her third month. Around that time, Galbraith noticed and asked her if she was pregnant. The Complainant told her yes. Galbraith called her a whore. The Complainant was 21 years old, pregnant, the single parent of a small child and raising her sister. The Complainant testified that she was aggravated and may have called Galbraith a bitch. She thinks another tenant may have heard the exchange but was not sure.

[26] The Complainant also spoke of another encounter whereby she and TJ were passing Galbraith in the hall and Galbraith called TJ the "N" word. The Complainant said that both she and TJ heard the comment. This too upset her.

[27] The Complainant said that Galbraith also made comments about her and her baby. In December 2016 or January 2017 Galbraith called the Complainant a whore and referred to her unborn child as a "nigger baby". The Complainant found this particularly distressing, as it was a direct attack upon her unborn child.

[28] The Complainant said that at one point Galbraith came to see her and asked, "who are all the men around"? When the Complainant said that her boyfriend comes to visit, she repeated her comment about "if it were up to me…".

[29] The Complainant testified to Galbraith leaving a number of handwritten notes taped to her Apartment door. She produced a note dated March 31, 2017, signed by "Landlord", advising that the rent would increase to $681.00 effective the next day. The handwriting is consistent with that on the Lease. The Complainant also produced receipts signed by Galbraith, evidencing her payment of rent. Again, the handwriting is consistent with that on the Lease and the March 31, 2017 note.

[30] At some point during the winter of 2016/7, CB was away and arranged for Galbraith to pick up her rental payment from the Complainant. The next month, CB was away on the first day of the month so Galbraith attempted to collect her rent from the Complainant. According to the Complainant, Galbraith was aggressive and rude. As a result, the Complainant left a note, addressed to "Wilma", taped to her door. In the note, the Complainant asked Galbraith to not collect rent from other tenants from her, unless arranged in advance. Galbraith wrote back to the Complainant on the very same note, signed "Upset Landlord". The note said:

> "I understand CB is your sister now you tell me she is not. Your always lieing you never told me one thing thats the truth. I'm really sick of this. Why don't you find a place to live where you will be happy."

[31] Again, the handwriting contained in the note from "Upset Landlord" is consistent with the handwriting in the Lease, the March 31, 2017 note and the rental receipts.

[32] The Complainant explained that when she vouched for CB, she told Galbraith that CB was "like a sister" to her. She opined that Galbraith took that to mean that they were actually sisters. When Galbraith found out that the Complainant and CB were not sisters, Galbraith accused the Complainant of being a liar. The Complainant said that after receiving the Upset Landlord note from Galbraith, she tried to avoid her if she was in the building. She said she could hear her and when she did, she would stay in the Apartment and be quiet. She said it was not a good relationship.

[33] The Complainant testified that the way Galbraith spoke to her was very difficult to live with. She acknowledged that she had vouched for CB and that reflected poorly upon her. She spoke of CB spiraling downward, being loud and partying too much. The Complainant herself reported CB to police in order to break up parties. CB had a five-year-old child and the Complainant reported CB to Child and Family Services. At one point, Child and Family Services apprehended CB's child and placed the child with the Complainant as a place of safety.

[34] According to the Complainant, the tension between she and Galbraith increased. Galbraith would often shout at her and accuse her of being loud. This culminated in Galbraith physically assaulting her. This occurred in the spring of 2017, when the Complainant was five or six months' pregnant. Galbraith shoved her; she was off balance and fell backwards. The Complainant reported the incident to the police, who spoke with Galbraith and told her to stay away from the Complainant.

[35] Around the same time, the Complainant was having problems with her refrigerator. This culminated in her having to call the Residential Tenancies Branch to complain. Ultimately it took a month for her to get a new refrigerator, and she went without one during that entire time. According to the Complainant, the Respondents were purposefully unresponsive to the refrigerator situation in order to drive her out of the Apartment.

[36] Around the beginning of April 2017 the Complainant found a note taped to her door, handwritten and signed by "Very Upset Tenant". The Complainant produced the note which said:

> "To the one that causes trouble. I live here too and I hear you give your landlord trouble call her names, phone human rights police & rentalsman report her she never bothers you you're a lier bitch trouble maker you have all different kind of man running in and out of the building you know what kind of person that is slut. The landlord is a good person live here for a long time no trouble. But you come here and make trouble move away and stop upsetting the landlord you bitch all you do is lie. Move away now. She wants her key's left in the kitchen she said."

[37] The Complainant alleges that Galbraith wrote the "Upset Tenant note". She said it was taped to her door like other notes from Galbraith, was in Galbraith's handwriting, and was in Galbraith's style of writing. This note upset her very much, such that by April 20 she went to see her physician. Her mental health was deteriorating. Her physician recommended that she move out of the Apartment and he wrote a note to that effect. The Complainant gave the note from her physician Galbraith.

[38] I find that Galbraith wrote the "Upset Tenant" note. The note was taped to the Complainant's door, written in handwriting that is the same as Galbraith's, and written in a style of communication consistent with the way Galbraith communicates. I also find that the note was left for the Complainant in order to drive her out of the Apartment Building. Alternatively, if Galbraith did not write the Upset Tenant note, the note was nonetheless designed to drive the Complainant out of the Apartment.

[39] On April 20, 2017 the Complainant received a Notice to Vacate dated the same day. The Complainant believed this note to be written by Jeanette as Jeanette brought the note to her. The handwriting and style are very different from the other documents produced by the Complainant. The Notice to Vacate confirmed the Complainant's agreement to vacate the Apartment by May 15, 2017, and further, that rather than paying two weeks' rent on May 1st, Kirkwall would keep the damage deposit paid by the Complainant in June 2016. This note was signed by Galbraith and the Complainant.

[40] Notwithstanding the agreement reached on April 20th, Galbraith attempted to collect the full rent that she considered due on May 1st. On April 30th Galbraith left a note for the Complainant dated April 17th. This note said "Will pick up balance of rent due to the move on the 15th of May", signed "Landlord". The note also says "I demand of the keys of the apt".

[41] The Complainant thought that Galbraith was trying to collect $681.00 from her on May 1, 2017. As a result, she wrote a note to Galbraith dated May 1st and left it taped to her door. The note said that as per their agreement, she owed no money and would vacate the Apartment by May 15th. Days later, Galbraith knocked on the Complainant's door. Galbraith read a note to her, and then handed that note to her. The note is dated May 5, 2017 and demands payment of full rent for May 2017, that the Apartment be vacated by May 15, 2017 and further accused the Complainant of not allowing Galbraith access to the Apartment so that she could show it. Attached to this note was a Form 8, Notice of Termination by Landlord.

[42] In addition, the May 5, 2017 note referred to the Complainant as a liar – "all you do is lie & lie some more…" signed by "very unhappy Landlord". The Complainant says that while she was reading the note, Galbraith "screamed" at her and belittled her.

[43] As a result of receiving the May 5, 2017 note with Form 8, the Complainant contacted the Residential Tenancies Branch. She provided them with a copy of the April 20, 2017 agreement. The Residential Tenancies Branch advised the Complainant that she could stay in the Apartment until May 15 and did not owe Kirkwall additional money.

[44] Thereafter, the Complainant admits that she did prevent Galbraith from showing the Apartment. She said that Galbraith would show up at her door and she would not answer and would stay quiet. She said that she was afraid of Galbraith. She said that Galbraith made her feel "like crap". The Complainant received a 24-hour notice dated May 1, 2017. It was taped to her door, signed by "Landlord". The noted demanded access to the Apartment the next day at 10:00 A.M., and that the keys be left on the counter. The Complainant admits that she denied the view and did not leave the keys. She says that she moved most of her things out around May 1, but attended each day to clean. She left the keys on the counter on the 15th of May.

[45] The Complainant did not have any further interactions with either of the Respondents. However, she said that she was paranoid that Galbraith was following her. She required medication for her anxiety. She was scared that they would run into each other.

[46] The Complainant incurred expenses in having to move from the Apartment including a U-Haul rental of $150 and storage unit rental of $119/month for two months. The Complainant had to move in with her aunt on a temporary basis and paid her $350.00 in rent.

Kayla Lawson

[47] Kayla Lawson also gave evidence.

[48] Lawson and the Complainant became friends in the Fall of 2016. At that time Lawson lived with her parents outside of Winnipeg, and the Complainant lived in the Apartment. Lawson worked in snow removal in the winter, and landscaping in the summer. She would see the Complainant an average of two to three times per week and once per week would sleep at the Apartment. She said that staying in was easier than going out as the Complainant was pregnant and raising two children.

[49] Lawson says that her first encounter with Galbraith was in the hallway of the Apartment Building. Galbraith asked "who the f*** are you? What the f*** are you doing here". Lawson says she told Galbraith she was there so see the Complainant. She apologized for being there.

[50] Lawson also said that one morning, Galbraith was pounding on the Complainant's door, screaming. TJ was there. According to Lawson she said that "N's were not allowed in her building" and repeated the "N" word. She says this was in either October or November 2016. Lawson said that over the course of the Complainant's tenancy with Kirkwall, she heard Galbraith use the "N" word around ten times. She says that when the Complainant was six or seven months' pregnant, she heard Galbraith call the Complainant a whore and refer to her baby as a "nigger baby". Lawson also heard Galbraith yell at other tenants in the Apartment Building, including CB. Lawson also testified to the Complainant was without a working refrigerator for approximately one month in 2017.

[51] Lawson testified to observing how upset the Complainant was by Galbraith's treatment of her and that it caused the Complainant stress, to fell degraded and unhappy. She and the Complainant remain friends as of the hearing of this matter.

[52] Lawson's testimony was somewhat consistent with that of the Complainant, although in my view, Lawson was prone to exaggeration. Nevertheless, Lawson's testimony illustrated the toxic atmosphere in the Apartment Building created by Galbraith, and further, the effect that toxicity had upon the Complainant.

The Respondents

[53] The Respondents did not attend at the hearing of this matter. However, Kirkwall did file a handwritten reply to the Complaint, signed by Galbraith. This is an unsworn document, unsupported by direct examination and untested by cross-examination. It is therefore of little value. For what it is worth, the Respondents deny the allegations contained in the Complaint and further, attack the credibility of the Complainant. Of more import is that the Reply filed by Kirkwall was signed by Galbraith, and is in the same handwriting and communication style found on and in the Lease, the March 31, 2017 note, the receipts, the Upset Tenant note and the Upset Landlord note.

[54] No other evidence was called.

Conclusion on the Evidence

[55] I find that there were at least fourteen separate occurrences of a harassing nature, which overall provide the evidence of a poisoned tenancy. Those occurrences include but are not limited to two incidents during which Galbraith referred to persons on welfare, of which the Complainant was one, as being junkies and alcoholics; at least four incidents wherein Galbraith referred to the Complainant's boyfriend and unborn child as "niggers" because they were Black; and at least three incidents during which Galbraith referred to the Complainant as a whore or a slut because she was pregnant and not married. Further, I find that the three notes from Galbraith in which she called the Complainant a liar, the physical assault, the refrigerator incident, the Upset Tenant note, and the screaming and yelling, were designed to try and drive the Complainant out of the Apartment Building. I also find that that the final attempt to renege on the April 20, 2017 agreement also constituted harassment of the Complainant.

[56] Further, I also find that the actions taken against the Complainant were as a result of her association with TJ, a Black man, her family status as a single mother, her pregnancy and therefore her sex, and her source of income. While there was no evidence to support the allegation of harassment based upon the Complainant's age, there is likely that her young age made her more vulnerable. Further, the Complaint does not allege harassment based upon race, nor did the Commission argue that the Complainant had been harassed due to her race. Rather, the Commission argued that the harassment suffered by the Complainant was in part due to her association with a Black man, thereby constituting racial harassment. My conclusion in that regard is set out below. However, based upon the foregoing, I find that the Complainant established a *prima facie* case of harassment. Each and every of these incidents were abusive and unwelcome.

ARGUMENT

[57] The Commission made submissions and produced authorities on its own behalf and on behalf of the Complainant. The Commission argued that the prohibition against harassment and its definition is found in Section 19 of the *Code* which reads:

Harassment

19(1) No person who is responsible for an activity or undertaking to which this Code applies shall

(a) harass any person who is participating in the activity or undertaking; or

(b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking.

"Harassment" defined

19(2) In this section, "harassment" means

(a) a course of abusive and unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2); or

(b) a series of objectionable and unwelcome sexual solicitations or advances; or

(c) a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(d) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance.

[58] The Commission reiterated that this section codifies principles which were set out in the Supreme Court of Canada decision in *Janzen v. Platy Enterprises Ltd.* 1989 CanLII 97 (SCC), [1989] 1 S.C.R. 1252 and have been reaffirmed in many cases since then. In any human rights complaint the standard of proof is the civil standard of proof on a balance of probabilities and the standard of conduct the respondent is expected to meet is the civil standard of a reasonable person.

[59] The Commission cited the Nova Scotia Human Rights Board of Inquiry decision of *Miller v. Sam's Pizza House,* [1995] N.S.H.R.B.I.D No. 2 at paragraph 127 wherein it was established that a complainant must prove, on a balance of probabilities, that there a was a contravention of the legislation, and that this involves two parts – proof that the alleged conduct by the respondent occurred, and proof that the alleged conduct constituted prohibited conduct in the circumstances. If the complainant leads evidence that would satisfy these two requirements, then the respondent has an evidentiary burden to respond with some evidence that the acts did not occur or that they did not constitute sexual harassment.

[60] The Commission argued that in this case, the Respondents did not respond with any evidence whatsoever. Given that the Reply was an unsworn document, unsupported by direct examination and untested by cross-examination, that is correct. The Respondents did not respond with any evidence whatsoever.

[61] The Commission also referred to the British Columbia Court of Appeal decision in *Faryna v. Chorney,* [1952] 2 D.L.R. 354 wherein at page 357 the issue of credibility was addressed. O'Halloran, speaking for the court, said:

> "The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness is such case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

[62] The Commission argued that the Complainant was a credible witness, who not only testified in a believable manner, but her testimony was "in harmony" with the preponderance of the probabilities that surrounded the existing conditions.

[63] The Commission argued that the Complainant established that she was a young, pregnant woman on EIA, in a relationship with a Black man, and that she was subjected to harassment by the Respondents contrary to section 19 of the *Code*. The Commission invited me to use an intersectional analysis of discrimination and referred to the Ontario Human Rights Tribunal decision in *Baylis-Flannery v. DeWilde (c.o.b. Tri Community Physiotherapy),* [2003] O.H.R.T.D. No. 27.

[64] In *Baylis,* the complainant alleged discrimination based on a number of grounds. At paragraph 143, the Tribunal wrote that an intersectional analysis of discrimination is a fact-driven exercise that assesses the disparate relevancy and impact of the possibility of compound discrimination. At paragraph 144, the Tribunal noted that reliance on a single axis analysis where multiple grounds of discrimination are found, tends to minimize or even obliterate the impact of racial discrimination on women of colour who have been discriminated against on other grounds, rather than recognize the possibility of the compound discrimination that may have occurred.

[65] The Tribunal gave the example that in *Baylis,* the complainant was not a woman who happened to be Black, nor a Black person who happened to be a woman, but rather, was a Black woman. In *Baylis,* the Tribunal determined that the multiple and serious forms of discrimination that the complainant endured, were intersectional in nature, and caused damage to her physical and emotional well-being.

[66] The Commission argued that much of the harassment endured by the Complainant came as a result of her association with a Black man, and her carrying a biracial baby. The Commission argued that harassment on the basis of association or presumed association with another individual or group is prohibited by section 9(1)(c) of the *Code*. The Commission relied upon the Nova Scotia Human Rights Board of Inquiry decision in *Y.Z. v. Halifax (Regional Municipality),* [2018] N.S.H.R.B.I.D. No. 2 wherein the Board dealt with a complaint alleging discrimination related to race, colour or aboriginal origin, related to persons with whom that complainant was associated. At paragraph 50 of *Y.Z.* the Board cited *Hill v. Misener,* (1997) CarswellNS 590 wherein a complainant was told by her landlord that he would not rent to her if she was going to have people there who were Black. The landlord did not know that the complainant's children were biracial. The Board found that the respondent did not have to have actual knowledge of the complainant's association with persons of colour, nor did the respondent have to have intent, in order for the Board to find discrimination.

[67] At paragraph 51 of *Y.Z.,* the Board concluded that *Meisner* establishes that discrimination on account of association is no more complicated than establishing, first, that the

complainant has an association with someone that falls under a prohibited ground, and second, that the complainant had a burden imposed upon him or her as a result of that association. In the context of *Y.Z.,* the Board concluded that the complainant must prove that he suffered a burden from the allegedly poisoned environment and racial harassment because of his association with his wife and other minorities. Further, as per *Meisner,* "complicating the analysis more than this would not be consistent with the remedial purpose of the Act, which is to be interpreted liberally."

[68] The *Code* prohibits discrimination on the basis of association or presumed association with another individual or group. Counsel for the Commission argued that the Complainant had on a balance of probabilities established the alleged conduct and further, that such conduct constituted harassment. The Commission argued that such conduct was abusive and unwelcome. At paragraph 131 of *Miller,* it was found that crude, humiliating, and demeaning insults together with taunting was held to have created a poisoned work environment that constituted harassment. At paragraph 46 of *Y.Z.,* citing the Ontario Board of Inquiry in *Dhillon v F.W. Woolworth Co. Ltd (1982), 2 C.H.R.R. D/743,* it was found that verbal racial harassment, through name-calling, in itself, is "…prohibited conduct". The Commission argued that Galbraith's comments and actions were crude, humiliating and demeaning, that she taunted or goaded the Complainant to leave, and this constituted harassment as defined by the *Code*. The Commission further argued that Galbraith's name calling of the Complainant was equally objectionable and equally prohibited by the *Code*. Counsel asserted that "derogatory language is prohibited conduct" and that "such conduct created a poisoned housing environment" for the Complainant.

[69] The Commission further argued that a person's home is their safe place, a sanctuary, and that jarring language, degrading comments, volatility all made the Complainant feel unsafe. Further, the Complainant was vulnerable – young, a single parent, pregnant, with limited income. She was not in a position to leave. Citing *Bayliss* at paragraph 126 and *Y.Z.* at paragraphs 42 to 48, the Commission argued that the *Code* offers protection from a poisoned home environment, and requires landlords like the Respondents to provide a harassment free tenancy. The nature of tenancy is the type of context of vulnerability envisioned by the Supreme Court of Canada in *British Columbia Human Rights Tribunal v. Schrenk,* [2017] S.C.J. No. 62 in which at paragraph 48 the Court determined that the structure of the British Columbia Code supports an approach that views employment or tenancy as a context requiring remedy against the exploitation of vulnerability rather than a relationship needing unidirectional protection. Contexts of vulnerability are those in which discrimination may arise.

DECISION

[70] Section 19(1) of the *Code* provides that no person who is responsible for an activity or undertaking to which the *Code* applies may harass any person who is participating in the activity or undertaking, and further, may not knowingly permit or fail to take reasonable steps to terminate such harassment. Harassment is defined as a course of abusive and unwelcome conduct or comments made on the basis of any characteristic referred to in subsection 9(2) of the *Code.*

[71] The principles above were those set out by the Supreme Court of Canada in *Janzen* and have been reaffirmed in many cases since then. In any human rights complaint the standard of proof is the civil standard of proof on a balance of probabilities and the standard of conduct the respondent is expected to meet is the civil standard of a reasonable person.

[72] I accept the Commissions submissions regarding the Nova Scotia Human Rights Board of Inquiry decision in *Miller* at paragraph 127 wherein it was established that a complainant must prove, on a balance of probabilities, that there a was a contravention of the legislation, and that this involves two parts – proof that the alleged conduct by the respondent occurred, and proof that the alleged conduct constituted prohibited conduct in the circumstances.

[73] I have previously found that the alleged conduct by the Respondents did occur as alleged. As set out above and below, I also find that the alleged conduct constituted prohibited conduct in the circumstances.

[74] In *Miller,* the Board of Inquiry determined that once a complainant leads evidence that would satisfy these two requirements, the respondent has an evidentiary burden to respond with some evidence that the acts did not occur or that they did not constitute prohibited conduct.

[75] The Respondents did not attend the hearing having agreed to dates and receiving notice of the hearing. Accordingly, the Respondents did not respond with any evidence whatsoever that the acts did not occur or that they did not constitute prohibited conduct.

[76] The Commission argued and I so find that the Complainant was a credible witness, who not only testified in a believable manner, but that her testimony was “in harmony” with the preponderance of the probabilities that surrounded the existing conditions as envisioned by the Court in *Faryna.*

[77] I also find that the case at hand warrants an intersectional analysis as referred to by the Ontario Human Rights Tribunal in *Baylis.* Reliance upon a single axis analysis where multiple grounds of harassment are found does in some cases tend to minimize or even obliterate the impact of discrimination or harassment. Where appropriate, an intersectional analysis ought to be used in order to recognize the cumulative effect of compound discrimination or harassment. This is reflected in section 43(1.1) of the *Code*.

[78] In this case, the Complainant was not just a woman who happened to be pregnant with a baby whose father happened to be black, and who happened to be on EIA. Rather, the Complainant was a vulnerable, pregnant woman in a relationship with a Black man whose source of income was EIA. As in *Baylis,* the multiple and serious forms of discrimination that the Complainant endured were intersectional in nature, and caused damage to her physical and emotional well-being.

[79] There is no question that the whore and slut comments made by Galbraith towards the Complainant were as a result of her being pregnant, unmarried and a woman. These comments therefore constitute harassment on the basis of sex, pregnancy and family status as defined by the *Code.* Further, the junkies and alcoholics comments made by Galbraith towards the Complainant were as a result of her being in receipt of EIA and therefore constitute harassment on the basis of source of income.

[80] The Commission also argued that much of the harassment endured by the Complainant came as a result of her association with a Black man, and her carrying a biracial baby. I agree with the Commission’s submission that harassment on the basis of association or presumed association with another individual or group is prohibited by section 9(1)(c) of the *Code*. Further, I find that as in the Nova Scotia Human Rights Board of Inquiry decisions in *Y.Z.* and *Misener,* discrimination or harassment on account of association is no more complicated than establishing, first, that a complainant has an association with someone that falls under a

prohibited ground, and second, that the complainant had a burden imposed upon him or her as a result of that association. I find that as in *Y.Z.,* the Complainant proved that she suffered a burden from the poisoned tenancy because of her association with TJ, a Black man. I further find that the comments made by Galbraith were abusive and unwelcome and therefore harassing. Although the Complaint does not allege harassment on the basis of race, it does allege harassment on the basis of family status, and I find that such comments are prohibited, whether related to race or family status.

[81] I further find that as in *Miller* and *Dhillon,* Galbraith's crude, humiliating, and demeaning insults together with name calling and taunting/attempted to drive the Complainant out of the Apartment Building created a poisoned tenancy that also constituted harassment.

[82] I accept the Commission's submission that a person's home is their safe place, a sanctuary, and that jarring language, degrading comments, volatility all made the Complainant feel unsafe. The Complainant was vulnerable – young, a single parent, pregnant, with limited income. She was not in a position to leave. Further, the *Code* offers protection from a poisoned home environment, and requires landlords like the Respondents to provide a harassment free tenancy. The nature of tenancy is the type of context of vulnerability envisioned by the Supreme Court of Canada in *Schrenk.*

[83] In that regard, the Commission submitted that Kirkwall ought to be held vicariously liable for the actions of Galbraith. At all material times hereto, Galbraith was Kirkwall's sole director, officer, President and disclosed shareholder. Galbraith executed the Lease on behalf of Kirkwall, and I find that she was at all times acting on behalf of Kirkwall. I therefore find that Kirkwall must be found vicariously liable for the actions of Galbraith for the reasons set out by the Supreme Court of Canada in *Platy* and *Robichaud v Canada* (Treasury Board) (1987), CanLII 73.

REMEDY

[84] Having found that the Respondents have contravened the *Code*, section 43(2) affords me with discretion to order the Respondents to:

> (a) do or refrain from doing anything in order to secure compliance with this Code, to rectify any circumstances caused by the contravention, or to make just amends for the contravention;
>
> (b) compensate any party adversely affected by the contravention for any financial losses sustained, expenses incurred or benefits lost;
>
> (c) pay any party adversely affected by the contravention damages in such amount as I deem just;
>
> (d) pay any party adversely affected by the contravention a penalty or exemplary damages in such amount, subject to subsection 3, as I consider just and appropriate; and
>
> (e) adopt and implement an affirmative action program or other special program of the type referred to in 11(b), if the evidence at the hearing discloses that a party engaged in a pattern or practice contravening the Code.

[85] The Commission relies upon the decisions in *T.M. v Manitoba,* [2019] M.H.R.B.A.D. No. 13*, Ross v 4888970 Manitoba Ltd.,* [2017] M.H.R.B.A.D. No. 2, *Jedrzejewska v A+ Financial Services Ltd.,* [2016] M.H.R.B.A.D No. 101 *and Y.Z. v. Halifax*, [2019] N.S.H.R.B.I.D. No. 4 in seeking the following order:

i. that the Respondents be ordered to implement non-discrimination and anti-harassment policies in a form acceptable to the Commission;

ii. that the Respondents provide training regarding said policies to all employees of Kirkwall including Galbraith;

iii. that the Respondents post said policies at each location owned by Kirkwall in a conspicuous space where members of the public will see it and further, that copies of said polices be provided to each tenant of Kirkwall;

iv. that Galbraith be ordered to attend sensitivity training at her own cost and in a manner accepted by the Commission;

v. that the Respondents compensate the Complainant for losses incurred related to moving and storage fees;

vi. that the Respondents be ordered to pay to the Complainant damages in the amount of $15,000.00.

[86] Having regard to the cases cited by the Commission and the orders sought by the Commission, I therefore make the following orders:

i. The Respondents Kirkwall and Galbraith shall pay to the Complainant damages for injury to dignity, feelings, or self-respect in the amount of $15,000.00 payable within 45 days of the date of this decision, and the Respondents shall be jointly and severally liable to pay these damages;

ii. The Respondents Kirkwall and Galbraith shall pay to the Complainant special damages in the amount of $388.00 payable within 45 days of the date of this decision, and the Respondents shall be jointly and severally liable to pay these damages;

iii. The Respondents Kirkwall and Galbraith shall draft within 45 days of the date of this decision an anti-harassment and discrimination policy in a form and with content satisfactory to the Commission, and, within 7 days of the Commission indicating its satisfaction, shall

    a. distribute a copy of the policy to every employee of Kirkwall including Galbraith;

    b. distribute a copy of the policy to every tenant of Kirkwall;

    c. post in a conspicuous place of copy of the policy in every location owned or operated by Kirkwall; and

d. provide training regarding the policy and harassment generally to every employee of Kirkwall, including but not limited to Galbraith;

[87] I will retain jurisdiction to deal with any matters arising out of the enforcement of this Order.

Dated: January 4, 2021

Tracey Epp, Adjudicator