

IN THE MATTER of an adjudication pursuant to sections 46, 51, 52, 56, 58, 59 and 62 of the Northwest Territories *Human Rights Act*, S.N.W.T. 2002, c.18, as amended

BETWEEN:

GENEVIEVE SAVAGE

Complainant

-and-

**984239 N.W.T. LIMITED operating as POLAR TECH –and-
COREY DRESSLER
BILLY RYAN**

Respondents

Appearances:

Solicitor for the Complainant: Ms. Kelly Slade-Kerr
Witnesses for the Complainant: Ms. Genevieve Savage; Mitchell Dube; Aaron Halushka; K. Edmund Savage; Sarah Marie Power

For the Respondents: Gord Olsen (Polar Tech); Bill Ryan; Corey Dressler

REASONS FOR DECISION

INTRODUCTION:

On January 19, 2007 Genevieve Savage filed a complaint with the Northwest Territories Human Rights Commission (“Commission”) alleging that between May 8, 2006, her first day of work until January 4, 2007, and her last day of work:

- 1) 984239 N.W.T. Limited operating as Polar Tech (“Polar Tech”) and Corey Dressler and Billy Ryan discriminated against her in regard to her employment or any term or condition of her employment, on the basis of her sex contrary to Sections 7 and 5 of the *Northwest Territories Human Rights Act*.
- 2) Polar Tech and Corey Dressler and Billy Ryan did harass her in matters related to her employment, on the basis of her sex contrary to Section 14 of the *Northwest Human Rights Act* (“Act”).

On March 2, 2007 Gord Olsen, President of Polar Tech, Corey Dressler, Bill Ryan and Sheldon Keenan each filed separate Statements with the Commission in response to the various allegations in the complaint and denied any discrimination or harassment against Genevieve Savage on the basis of her sex.

On April 26, 2007 the matter was referred to the Adjudication Panel by the Director of Human Rights for the Northwest Territories. Pre-Hearing teleconferences were held on preliminary matters and the parties indicated they were ready to and wanted to proceed to a hearing immediately. On November 13, 2007 the Human Rights Commission file was released to the Adjudicator. That file contained statements of the complaint and the responses which became part of the adjudication record. A second teleconference was held on November 20, 2007 to discuss preliminary matters, a Hearing into the matter was held before Adjudicator Joan Mercredi in accordance with Part 5 of the Act in Yellowknife, NWT during December 4 through 6, 2007. Final submissions were held by teleconference on December 10, 2007.

Much time has passed since this matter was adjudicated and I apologize to the parties for the length of time taken to render and file this decision.

THE ISSUES

- 1. Was Genevieve Savage discriminated against on the basis of her sex?**
- 2. Did Polar Tech refuse to employ or continue to employ Genevieve Savage because of her sex or reasons related to her sex such as her size or physical capabilities?**
- 3. Did Polar Tech harass Genevieve Savage on the basis of sex in matters related to employment?**

ANALYSIS

1. Witness Testimony

Over the three day proceedings five witnesses were heard for the Complainant and three for the Respondent. Ten Exhibits were filed by the Complainant. The Respondents did not have legal counsel so Gord Olsen conducted direct examinations of the Respondent witnesses and cross examined Complainant witnesses.

What follows is a summary of the testimony of all of the witnesses. I have used this approach because witness credibility lies at the crux of this case so it is important to have their testimony in context.

a) Witnesses for Complainant

Complainant -Genevieve Savage

Ms. Savage testified that ever since she was a child she was interested in mechanics and when she was in her twenties after working at a couple of automotive shops she decided to pursue a career as a journeyman mechanic. She explained that in order to do this she

would first have to obtain an apprenticeship with an employer who worked on automotives, small engines or heavy duty. She sought apprenticeships with Chrysler, YK Motors and Auto Tech in Yellowknife, NWT but was unsuccessful. She said no one took her seriously.

Hoping to improve her chances she enrolled at the Northern Alberta Institute of Technology in Edmonton, Alberta for the automotive pre-employment automotive mechanics certificate which was an eight month program with one month practicum. She started the program on August 15, 2005 and returned to Yellowknife the end of November and started her practicum with Polar Tech in December 2005. Polar Tech worked on small engines specializing in Bombardier among others and when she obtained the four week position the then Manager did not have a problem with the fact that she was studying automotives. Billy Ryan, Corey Dressler and Sheldon Keenan were the mechanics and a fellow named Kyle was the apprentice. She said although Billy Ryan ignored her for the most part she generally got along with all of them. At the end of the four weeks, Gord Olsen evaluated her practicum and told her she was a pleasure to have around, that she demonstrated pride in her work which he liked. She returned to Edmonton, completed the program and graduated in April 2006 among the top five in her class as evidenced by her transcript and letter of reference from her instructor. (Transcript is Exhibit 2; Reference letter is Exhibit 3).

Ms. Savage testified that Gord Olson telephoned her in March 2006 to ask her if she was interested in becoming an apprentice with Polar Tech because Kyle was no longer with them. She said she was when she completed her course, so after she arrived back in Yellowknife she went to see him on May 8, 2006, they discussed the job, she formally accepted the position and he told her that the shop foreman Billy Ryan would be her immediate supervisor. She said that she was to work on the rental side of the shop in the mornings and on the recreational or repair side in the afternoons. All of the work was assigned by the service advisor Craig Barabonoff and as the apprentice all her work had to be checked and approved before it was let out of the shop. When she worked on the repair side of the shop Billy Ryan was to check it and when she worked on rentals side Corey Dressler who was in charge there would check it. When Mr. Olsen questioned Ms. Savage about who exactly her supervisors were in cross examination, she said that it was always her understanding that Billy whom he (Mr. Olsen) had told her was the shop foreman was her direct supervisor and when she worked on the rental side in the mornings Corey was also her supervisor on that side but it was Billy who supervised everybody. She said that Craig gave out the work orders; he was not Billy's boss.

She testified that she was very happy about her job. She said she had some difficulties with handling the heavier equipment, but the actual work was pretty straightforward and basic like changing oil, inspecting the engines for damage, ensure they were running properly and cleaning them. She said she sometimes got frustrated with herself when she had trouble with a task like loosening a bolt or something and cut herself in the process. She said Craig never complained about her work and kept giving her assignments although Billy would sometimes take one of her assignments saying she could not do the work. When she was cross examined by Mr. Olsen he asked her if when she started at

Polar Tech she knew that there would be as much physical demand on her as there was, Ms. Savage said that she knew that things would be heavy, but she also knew that after doing certain things for awhile she would eventually build her muscles up for those particular things and it would get easier.

She said that during the first few weeks there she was more comfortable going to Sheldon for help than to Billy. She said that she felt that Billy did not enjoy having her around. She said that during her practicum she noticed that Billy and his apprentice Kyle were “like buddies” and “he [Billy] was always showing him [Kyle] what to do and he seemed very patient with him, and I didn’t get that kind of treatment.” She said that at first she felt that Billy only helped her because he had to but eventually he did not appear to have too much of a problem with helping her. This was all during her first three months there.

Ms. Savage testified that during this time there was also some back and forth “teasing and bugging” that some days got her upset. She described an incident that had happened on her first day of work at Polar Tech. She said after she accepted the apprenticeship, Gord brought her down to the shop to tell the guys that she was the new apprentice starting the next day. She said Corey Dressler shocked her when he yelled out “that there was a set of knee pads behind me and that I would be needing them” because she interpreted that to mean she would be on her knees “blowing off the boss”. When asked if she might have misinterpreted Mr. Dressler she said “absolutely not, ‘cause you don’t get down on your knees and scrub the floors, I have never seen anyone scrub the floors or wear knee pads the entire time that I was there.” She said that she only saw Gord wear knee pads once because he has problems with his knees. She said that Mr. Dressler made a comment about the knee pads one other time when Gord had come into the shop - “Corey just yelled out that Gord was coming, that I should go get my knee pads” and she took this to mean the same thing as the first comment about the knee pads. She said that Corey also started calling her “Gord’s number one” which she interpreted as meaning “because I was giving him favors” and which made her “extremely uncomfortable” because Gord’s wife Barb also worked at the shop. She said Corey called her this on a regular basis so after awhile she started to answer “no, Barb is Gord’s number one, not me, and I would appreciate it if you stopped saying that”.

She said another thing that Corey Dressler did that made her uncomfortable was to look down at her chest but she did not take this as him intentionally trying to make her feel uncomfortable because “that’s what guys do”. Later in her testimony she said she had started to wear coveralls all the time. Mr. Olsen asked her in cross examination if her attire was ever an issue at Polar Tech and she said she was never told there was a dress code. When asked if anyone had ever made remarks about her attire she said “no” and that she had already stated that the reason she had changed her attire was “because I felt uncomfortable”.

Ms. Savage said that she also often heard Mr. Dressler talking with the other guys in the shop about his personal dates or other women that he had been with giving them in-depth intimate details. She said he told him it was “nasty, gross, sick”. She also testified that Mr. Dressler would make comments about one of the women who worked in finance

every time she would enter and leave the shop, “Corey would make comments of her behind”. When he cross-examined her Mr. Olsen asked Ms. Savage if anyone had made any sexual advances or propositions towards her at Polar Tech and she said no. She also said that no one there had ever touched her in a sexual manner.

She said she did not talk to any of the other employees about Mr. Dressler’s actions and how she felt about them except to Sheldon once when she had asked him to help her loosen the levers on a piece of equipment she was having trouble with. She said she told Sheldon that she did not understand why the levers were always so tight and Sheldon told her it was because “Corey was purposely tightening them so that I would have to go to him for help.” She said she was not very happy about that because she thought they were “conniving” to make “even more pieces of equipment harder for me to use on my own which forces me not to be independent as much as I would like to”. She said doing as much as she could on her own was important to her.

Ms. Savage testified about one particular incident with Billy Ryan during these first three months. She said that he had returned from Bombardier training school in Montreal and was telling her about a tour that he had done with the other mechanics there. He told her he and the others were looking through a window at some people putting something together and a very pretty girl who was working looked up and smiled at them. He said that one of the guys made a gesture to this girl and she dropped what she was doing and got disturbed by it, and how he had started laughing as it was hilarious. Ms. Savage described and demonstrated the gesture Mr. Ryan showed them. It was putting two fingers up to his mouth and putting his tongue between them and she said that Mr. Ryan said actually showed her the gesture. She said she asked him if they got kicked off the tour, he said no, and she said she found this whole incident “an indication of his sense of humor towards women”.

Ms. Savage then testified that “August 1st was the day where everything just went down.” She said it was a Monday morning and she was working on the rentals side and she and Corey were getting along fine. He was telling her how he had partied the night before and still felt drunk. She went upstairs to talk with the women and on her way down Corey punched her in the arm and took a few steps back and put his fists up to her “jokingly”. She said she responded by putting her fists up “jokingly” and after a few seconds she turned to go back to the shop. Just as she got to the door she said Mr. Dressler put her neck into a chokehold and shoved her down to the ground. Her glasses fell off and she tried to get up but he had he pinned down. She said he reached over into the shop dog’s food dish and “grabbed a few kibbles and tried to shove it into my mouth. And I mean shoving . . . if my teeth wouldn’t have been closed it would have been in my mouth because he had everything pushed up onto my face”. She said she did not know if he let her up but she got up and stepped on her glasses and “went at him”. She said she “punched him as hard as I could, I kicked him as hard as I could, he just laughed at me”. She said she grabbed her glasses and stormed out of the shop and Mr. Dressler followed laughing and she turned and asked him what’s his “F-ing problem” and he “just kept laughing”. She said she quit working on the rentals side that day.

When Mr. Olsen cross-examined Ms Savage about the dog food incident he asked her first if things had been okay before the incident and she said they had been. He asked her if she struck Mr. Dressler before he grabbed the dog food out of the dish and she said she did not because she was pinned to the ground. He asked if there were witnesses and she said there were people standing around. She said that she talked to Billy and one other person who both said they did not see anything so she did not talk to the others and concluded that there were no witnesses. Mr. Olsen then put to her that during this same time frame she was experiencing stresses unrelated to work in that she and Mitch has just bought a house. Ms. Savage said she did not find buying a home very stressful but what she found stressful was the fact that she knew she could not leave her job at the time because of the huge bills she would have to pay.

Ms. Savage testified that the incident happened just before lunch and when she went home she told her common-law spouse Mitch Dube what had happened and he was shocked. She said all she could do was lay on the bed feeling that she had never been so disrespected and humiliated in her life before. She was still upset when she went back to work and when Billy Ryan asked her what was wrong she said she told him what had happened and he seemed surprised so she said "you were standing right there" and he told her he was not paying attention to them. She said "then he came up with the nickname Miss Kibbles and Bits" which he called her the rest of the week and at first she told him to shut up then she ignored him.

Ms. Savage said that at the time of the incident both Craig and Gord were on holidays. Craig came back first later in the week and came to talk to her telling her Sheldon had told him what happened and that he did not approve of that kind of behavior and would tell Gord as soon as he got back. She said that Gord came back on Friday but she did not talk to him until Saturday because she was not in a good mood on Friday as she had an altercation with Billy about work. She said because she could not work with Corey anymore and she wanted to get away from the guys in the shop she had gone upstairs to unpack some boxes in the parts room and Billy had come in and told her to go and clean a boat that he had used on the weekend and gotten all dirty. She said she argued with him and told him it was his personal mess and she should not be paid to clean it up. When Mr. Olsen asked her in cross examination if it was Billy's job to give her duties she said it was but the job that he was asking her to do was personal and not work related.

She said Billy "put up a stink" so she said she would do it and she kept on emptying boxes. She said Billy left and came back a half hour later and yelled that she hadn't started the job yet and she told him she would do it when she was done. He left again then sent up another worker to tell her to come clean the boat, then twenty minutes later he sent up Sheldon and she again said she would do it when she was done. She said about another half hour later Billy was at the stairs yelling and swearing at her that she didn't listen to him and that "whatever I was doing wasn't important and it could wait, which is more important than cleaning someone's personal mess I thought". She said then shortly after that Craig came up and asked me if I could clean the boat and "I told him the whole story and Craig said Billy can clean it himself." She said there must have been "a big stink downstairs" because Craig came back and asked if she could just do it and she said

she would if she could please finish what she was doing first. She said that she was cleaning the boat and “not in a very good mood” about the way things had transpired while Billy was happy and “smirking and laughing” when Gord came in. She said that she knew she would see him alone on Saturday alone so did not talk to him then.

When she talked to Mr. Olsen on Saturday, Ms. Savage said that she told him she could not work with Corey any more and that she had no tolerance for disrespect and that she did not need to work there and be treated like that. She said that Mr. Olsen said that was fine, he heard what had happened and that he would talk to Corey. She said he made excuses for Corey’s behavior telling her that Corey didn’t know any better, was socially dumb and did not know how to properly act around people. She said she was not sure what he said to the guys but the next week when she asked Billy for help “he told me to go and ask my buddy Craig for help.” Another time he told her to “go ask Gord for help” and other times he would tell her he was too busy or to just wait. She said Corey just ignored her. She said instead of getting better things got worse.

Ms. Savage said her enjoyment in her work was gone and she felt so humiliated at what had happened to her (with the dog food) and that everybody knew about it she felt insignificant and the stress began. She said that she had no one to turn to for help when she needed it but Sheldon because Billy was taking Corey’s side and making her feel uncomfortable. She said that they started doing things “purposely” to bother her like leaving the drawer open on the tool box so she would slam into it when she stood up and they would laugh, or taking tools off the wall in her work bay and not putting them back when she asked them too. She said it was a “little game” to them and she never saw them do it to anyone else. When in cross examination Mr. Olsen asked her about hearing laughter when she stood up and hit the tool box Ms. Savage admitted that “they could have been laughing about something else”. When asked about them moving the tools Ms. Savage admitted that the tools belonged to Mr. Olsen and were shop tools so she did not have a problem with them taking the tools. She said what she had a problem with was them purposely putting them in other locations to irritate her. When asked if she was sure they were not putting them in a common tool box for everyone to use she said they were not putting them in a common area. She said she had asked them to please put them back where they got them from and they would just shrug.

Ms. Savage said she was forced to work in the sun although she had told them that she did not want to because she had a mole removed for skin cancer. She said Billy Ryan told her she was in for a big surprise because his apprentice Kyle was coming back to work for him. She said she felt it was almost like he was threatening that she was going to lose her job. Mr. Olsen asked her in cross-examination about this incident and she repeated that she did not think that Kyle was coming back; Billy had said he was and Kyle never did come back. She said she did not like being there anymore but was determined to stick it out to get her journeyman’s ticket and she remembered telling Gord that she felt unwelcome and he reassured her that he was the boss and wanted her around and that was what mattered, that it wasn’t up to any of the other guys.

Ms. Savage testified that in September 2006 a friend of hers came to work with her one day and went into the shop to use the washroom. When she came out her was upset and she told Ms. Savage that in the bathroom there was a drawing of a naked woman with her crotch circled with a big arrow pointing at it that said carpet munchers. Ms. Savage said she went in, had a look and found the drawing on a spare door in the bathroom and flipped it over. She said that drawing had not been there the previous day and it was in the back bathroom that the mechanics used and there was another washroom in the front that the guys out there used. She said she felt the drawing was directed at her and her friend and she said she highly doubted that the guys from the front would have come to the back bathroom just to make that drawing. She said she did not say anything to the mechanics about it nor did she tell Gord because she just didn't see the point of "ratting them out again" because "obviously nobody was listening and it was just making things worse". She remembered Corey once calling her a "snooty bitch" around this time. Mr. Olsen asked Ms. Savage in cross if she had ever called Corey or Billy any rude names in retaliation to name calling going on in the shop and she replied that she "never called Corey anything any time when he called her a "bitch". She said she had called Billy a F-ing asshole if he was insulting her. She said she mostly just told him to F off if he was provoking her by threatening her or throwing stuff at her. She said that she never called Billy a F-ing asshole and that the guys have never called her a "bitch" jokingly.

Ms. Savage testified that October 2006 was when the guys started watching pornography in the shop on Sheldon's laptop and "the person that watched the most porn was Corey". She said although Billy and Sheldon were too busy to watch videos on the computer, there was one day they were all watching and Billy told her to "come over and check out the woman's pussy" and she said "no thanks" and kept working. She said told when Billy got back to his bay he asked her if "I had a baldy" which she understood to mean "if I was completely shaved in a certain area" she said she told him it was none of his business and that she did not think he was joking when he asked her that. She said that the pornography was being watched every couple of days and she could not help but see it because they were open bays and again she did not complain to Gord because she did not want to get them into trouble for watching porn during work hours and at least she was being left alone. Ms. Savage provided a sketch of the Polar Tech shop floor area that indicated where each employees work bay was and where Sheldon's laptop was situated. (Exhibit 10) She affirmed again to Mr. Olsen in cross examination that she did not ever tell him about the pornography. She also said that by this time Corey and she were "civil" with one another. She also said that she helped with the Halloween party and Gord gave her a budget for it and she maintained in cross-examination that she helped with the Halloween party and offered to decorate she did not organize it herself.

Ms. Savage then testified that in November 2006 every time Billy Ryan would burp or fart he would say "excuse my French" while looking at her and she took offence to this because she is French. She said it was also around then that Billy thought it was funny to throw his garbage at her and fill her workspace with his garbage. Mr. Olsen asked her in cross if she had ever thrown garbage in Mr. Ryan's or the others bays without being provoked to break the monotony or in "horseplay she said she did not remember ever doing that. She said in her direct examination that every time she would leave the shop

she came back to find her work bay full of garbage and at first she would just clean it up but later she started to give it back to Mr. Ryan.

Ms. Savage testified that she told Mr. Ryan that if he kept it up she would start throwing her garbage over at him and she had a lot more than he had and he asked her if she remembered what had happened with Corey and if she wanted that to happen again. She said she told him if he ever touched her it would not be her he would have to deal with and he just kept repeating "remember what happened with Corey, you don't want that to happen again" so she dared him to try and do it and that he would be sorry if he did. She said Sheldon jumped in and asked her if she was threatening them and she told him it had nothing to do with him and that Billy was threatening her. She said that Billy looked at her and said "I'm not threatening you Jen, I'm promising you". She said she walked to the front put her work order back in the bin, went back to the shop and her bay was full of garbage again so she grabbed her coat and left for the day. She produced her time sheet to show it was November 8th at 11:30 a.m. (Exhibit 5) that she had left the shop. She said she was so upset she went to her parents and told her mother what had happened. She said the next day Mr. Olson asked why she left work and she was so emotional she could not talk to him and went outside and cried.

Ms. Savage testified that about a week later on a Saturday there was another incident with Billy Ryan. She said that while she was waiting for Sheldon to come and help her with some task she was sitting in her bay reading some personal documents and Billy told her "she wasn't being paid to sit on her ass and read dog shit" so she told him to "mind his own business". She said he told her it was his business and said "if I wanted to be a little f-ing bitch that he could play that game too and he could be a lot worse than me". She said he was not joking and although there was a lot of swearing in the shop she had never heard him, Corey Dresser or any of the others call each other "bitches". She said she was so upset she called Mitch at home and he asked her what was wrong so she told him and he said he was going to come down there and "straighten them out" and she begged him not to because she knew that would only make things worse for her. She said by this time things were really getting to her. All she could think of was her treatment at work and she tried to make herself more invisible there and she was nervous. She said she tried to do as much as she could without asking for help and her hands shook so much she often had to use both to use a screwdriver. She had headaches every day and she started to lose weight. She said she had no interest in everything and did not even want to go out anymore.

She said that after she got off the phone with Mitch, Gord Olsen later came over to talk to her about why she had left work the week before. She told him and said "he just shook his head, and he told me that Billy was used to working in the mines and that's how miners treated one another and that I had to build a thicker skin, that the fact they were getting a rise out of me was the reason that they would keep dishing it out and that I had a really bad temper." She said she admitted she did have a temper but for good reason and she lost it when she was being provoked and that she could not understand why Billy could be like that when he had a wife and two daughters. She said Gord told her he would talk to the guys again and he "assured me that my complaints wouldn't go unnoticed". She said at the time she did not know Mitch had gone and talked to Gord.

Ms. Savage said that the next week she found out Mitch had been in to talk to Gord on Saturday because then even Sheldon “was kind of acting funny with me”. She said she talked to him and he told her Mitch had been in and she got very upset and went up to the lunch room where she was crying when Gord came in. She said she told him she was upset because Mitch had talked to him and now her situation would get worse and Gord told her “not to get so worked up” and started talking about his own personal problems. She said Gord apparently did talk to the guys because after lunch Billy came to her and asked her why she was so upset with him so she told him it was because he had threatened to do the same thing as Corey had done to her and he said she had “misunderstood him”, that he was only threatening to “play fight with me” and she told him he was just “covering his ass”, he said “no”, apologized to her and she said “fine”. She said she did not accept Billy’s explanation because she and Corey never “play fought”. She said things only got worse after that.

Ms. Savage testified that in December 2006, Billy started throwing little pieces of dried up silicone used to seal exhaust pipes at her and would say “Jen here’s a dildo for you”. She said that he did this in front of a new casual employee and she was shocked and humiliated because she felt he was showing the new employee that it was acceptable and funny to treat her like that. She said she did not say anything but the next time Billy did that she told him to keep it because he would probably get better use out of it She said that during this time she was still having trouble physically with heavy pieces of equipment and because Gord had told her he did not want Sheldon overseeing her work she was supposed to go to Billy for help. She said she struggled on her own with the heavy pieces and learned little tricks to assist her with the heavy work. She also described one of these little tricks she had adapted to assist her and how it had caused much friction with Billy Ryan. Ms. Savage description of her adaption trick became much clearer through questions raised in cross examination and in the interest of brevity I only summarize the description here as I understood it based on direct evidence and cross-examination.

Ms. Savage said that Billy had shown her how to do a track replacement on a machine a certain way. He loosened the suspension and held the track up with one arm while he pulled the suspension out with his other arm. She said she could not do that because the track was too heavy for her to hold up with one arm so she used a rubber bungee cord to hold the track up and pulled the suspension out with both arms. She said Billy got very angry at her and said she was not doing it properly, that she wasn’t listening to his directions and that if she couldn’t do it the way he was teaching her not to ask him for help. She said she told him she was still getting the job done with her method and he said that did not matter there was a right way and a wrong way of doing it. Ms. Savage admitted to Mr. Olsen in cross that it did take her longer to do the job than it did Billy adding that “he has ten years experience and I had not even a year”.

Another thing that Ms. Savage testified happened was that Billy started letting the new casual worker use his (Billy’s) work bay and when she came in one morning she found the tools box she had been using moved out of her bay and into Billy’s bay, so she flipped it around so she could use the tools too. The next day the tool box had been

moved again so every time she needed a tool she walked from her bay over to Billy's bay to get it until the casual worker told her he did not have a problem with her moving the box and that it was Billy who had been moving it into his bay. She said that she took this as another sign that Billy did not want her there and she felt so paranoid that they all felt that way that she did not go to the Christmas supper or Christmas party. She said that by Christmas she hated her job and she hated Billy Ryan. Mr. Olsen asked Ms. Savage in cross examination if she knew that at the time Billy was working on a job in Sheldon's bay right next to hers and she answered that he was not because the job Billy was working on was in the casual worker's bay. I note that according to Exhibit 10, the shop floor plan, Ms. Savage's work bay was between Billy's and Sheldon's and the casual worker's work bay was beside Sheldon's.

Ms. Savage testified about an incident that all of the respondents had commented on in their statements wherein they said she had told them to "F-off out of her bay". She said it had started over some work Billy had told her to do. She said that during the summer she had taken apart a packer (a piece of equipment used to pack ground before it is cemented) and it was skidoo season so when Billy told her to put the packer together she knew he did so because she would get into trouble with Gord for doing that kind of job during skidoo season. She said "sure enough Gord walks by and asks her what she is doing and why" and she told him she was putting the packer together because Billy told her to. She said Gord called Billy and Corey over and they all started arguing about whose fault it was and who should know so she piped up and said "I'm sorry, it's my fault. I will take full blame. I shouldn't of been putting it together" and Gord turned around and said "you are the apprentice, it's never your fault" and they all started yelling and arguing again in her bay while she sat on the stool. She said she was nervous so she started cleaning some bolts and Billy looked over at her and said "stop f-ing cleaning those parts and get back to f-ing work". She said she got angry and said "fine, than all of you get the F out of my bay" and Billy said "see what I have to put up with they all left. She said she went back to her bench distraught and Gord came up to her and said "Jen, chill out you're getting too worked up" and she told him "you have no idea what is going on back here" and she left and she went outside behind the building and cried.

Much of Mr. Olsen's cross examination of Ms. Savage focused on whether or not she complained to him about harassment during the time she was at Polar Tech and any measures he took to address her complaints. He first asked her: "Did I try to accommodate you in any way possible when a problem did arise?" Ms. Savage answered "you were okay with me for joining the rec side full-time after August 1st, yes." He also asked her if any complaint she brought to his attention was dealt with in a timely fashion and she answered that he did talk to the guys about it right away but it didn't do anything. Mr. Olsen then asked how many complaints she had brought to him in the course of her employment and she answered that Craig had brought up the dog food incident that she and Mr. Olsen then discussed, and Mitch had gone to see him (after she went home crying) and Mr. Olsen came to talk to her then she and Mr. Olsen had another conversation in the lunch room after she found out that Mitch had talked to him. She then admitted to Mr. Olsen that she had never gone directly to him to complain. She also told

Mr. Olsen that she did not think he knew the extent of the harassment “you knew the big incidents but none of the constant daily little ones”.

Mr. Olsen next clarified with Ms. Savage that she understood that the chain of command at Polar Tech and that he was the final authority that she would bring a complaint to and not Craig. Ms. Savage told him that she went to Craig only because she was comfortable with him. She said that when she told Billy and Sheldon about the dog food incident all she got were insults. Mr. Olsen also questioned Ms. Savage about the day he, Billy and Corey had the shouting match in her bay and asked specifically if she knew who he was disciplining that day and she said “you were disciplining Billy and Corey”. He then asked “why did that upset you so much?” and she answered that she did not get upset with him, she got upset with Billy for yelling at her to quit cleaning which “I was only doing because I was fidgeting because all of you were yelling around me”; she felt “he is getting yelled at by you so he is taking that out on me”.

Mr. Olsen also asked Ms. Savage if every day at Polar Tech after August 1st was a bad day and she answered that eight out of ten days were bad although some had “warmed up”. He then asked her if she would say she had a quick temper and she answered that she was not defensive at the beginning of her employment but as the months went by she gradually became more defensive and aggressive due to the effects/harassment of his employees. Mr. Olsen then asked Ms. Savage: “has anybody ever made comments before you started work at Polar tech about your temper or suggested that you get counseling?” Her answer was: “No, not that I can remember.”

Ms. Savage also testified about the DVD Bombardier Training that was brought up in the respondent’s statements. She said that it was specialized training in small engines that depended on the dealership. She said it was not part of the first year apprenticeship training materials but is part of Bombardier training. Since Polar Tech was a Bombardier dealership they specialized in Bombardier products among other things and Gord wanted both her and Sheldon to complete the Bombardier training before the end of November. She said that she checked with Bombardier and they said that they only required one Bombardier certified technician in the shop, not everyone had to be certified. She said that she thought that the reason Gord wanted her and Sheldon to get certified was because Billy was constantly saying he was going to leave and Billy was the only Bombardier certified technician at Polar Tech. She said she first wrote the exam in May or June and got between 60 and 70 percent. She wrote it again in the shop with Sheldon coaching her and said that she got every answer he helped her with wrong. Then because Gord wanted the exam and DVD’s done by December she wrote the exam at home a third time with Gord present and she passed with 92 percent. She produced the results of this exam called Technicians Progression Report. (Exhibit 6) Her testimony did not change when Mr. Olsen questioned her about the exam and DVD’s in cross examination.

Ms. Savage testified that January 4, 2007 was her first day back at work after Christmas and when she came in she found that a box she had been keeping nuts and bolts and spare parts she had collected over the past ten months in was missing. She said she asked Billy if he has seen it and he told her that he got pissed off so he threw it out. She told him it

was not his to throw out and he assured her that he had gone through the box and there was nothing useful in it. She said she grabbed a flashlight and went out and looked through the garbage and could not find it. She said she was mad so she grabbed Billy's box of nuts and bolts and tossed it into the garbage and he noticed it was gone about a half hour later. She said Billy walked up to her and said "that was really f-ing stupid, you are going to go in the garbage and pick out every single nut and bolt" and she said "sure, right after you do the same". She said about another half hour later Billy came back and they started to argue again and he told her that she would be doing everyone a favor if she just left. She said she told him to go back to Ontario. They continued yelling at each other and Billy told her if she kept it up he was going to send her home and she said "don't bother" and she started locking up her tools and while she was doing that the yard guy came in and started telling Billy a story about some guy who got fired from his job for throwing a pen at a lady. She said Billy looked right at her and said "f-ing women, of course it would be a woman, women are nothing but problems, F-ing women." She said she slammed her tool box shut, locked it and left. She said went straight to Auto Tech where Mitch worked and told him she had just quit her job. She said she wrote out her resignation letter the next day. (Letter of Resignation is Exhibit 7)

Ms. Savage testified that when she went to see Mitch she was in a very emotional state and after she talked to him she went to the Labor Board and then to Human Rights. She said she did this because she knew what they were doing [Polar Tech] was beyond labor standards and against the law. She said she dropped off her letter of resignation and the DVD's and some other books at Polar Tech the following Monday which she thought was January 8th and talked with the woman in the office briefly because Gord was away. She said Gord telephoned her after he returned from Finland and she returned his call on January 13th. She said Gord told her it was unfortunate to lose an employee under the circumstances and said that he was planning to deal with the problem with Billy when he got back then he asked her if she was going to work at another shop and she said "no".

Ms. Savage then testified that her experiences at Polar Tech had a big impact on her. She said although she was at first relieved that she did not have to go back there it was only in the last two weeks or so that she had been starting to feel happy. She said she had lost confidence in herself and had a lot of self doubt especially when she was applying for jobs. She said she was emotional and cried a lot and other times she was defensive and hostile which affected her relationship with Mitch and they fought all the time. And she was very nervous and distant with people, not interested in anything and did not even want to go out in public. She said because she had filed a complaint with Human Rights she was anxious and afraid to run into the guys from Polar Tech fearing they would freak out and make a scene. She said she received their responses in March and it was about two weeks before she could bring herself to read them and when she finally did she got really upset and cried. She said that her complaint was just stating events, incidents, things that were said, facts. She said she was "blown away" by how insulting their responses were. She said they attacked her work ethics, her personality and "just cut me down in every way possible". She said it was especially hurtful when she read Gord's because she had gotten along with him and he had told her what pride I had in my work than I read the complete opposite in his statement. She said she was so upset she called

Human Rights and because she was extremely upset on the phone the person she was talking to suggested she should talk to a counselor.

She said she did go to see a counselor. Her family and friends had also been telling her that she needed to talk to a professional about things, so she went for two sessions which she paid for herself. She said it was good to hear someone other than her family and friends agree that her experience was traumatic and that the counselor taught her techniques in how to deal with anxiety and stress. A letter from her counselor verifying this was entered into evidence. (Exhibit 8)

Ms. Savage testified that she started a new job on March 12, 2007 with a consulting company called SNC-Lavalin ProPac as assistant manager of the Greenstone and RCMP buildings. She said she enjoyed the job and the environment she worked in and that she got along with everyone there. She said she felt it has really helped her “open up again”. She said that she no longer has any interest in pursuing her career goal of obtaining her journeyman ticket. She said she associates it with negativity and misery and she just does not want to go there again and had no idea if she would ever try mechanics again. She said that was a little upsetting to her:

“you know, people that are so insignificant in my life have had such an impact on me and my achievements and my goals, so that’s hard to swallow.”

Mitchell Dube

Mr. Dube testified that he is an automotive technician and completed his journeyman ticket five years ago and has also supervised at least ten apprentices. He said that he has had the opportunity to observe Ms. Savage’s work both at home on her skidoo and when they worked together at Chrysler. He said “she does really well” in her work. He said he was “pretty detailed” in her approach to her work and when he cut corners and she caught him she would remind him how the book said to do it and they would have to redo the work and “do it properly”. He said as an employee she was a hard worker who put in long hours and everyone there [Chrysler}”had nothing but good things to say about her work ethics and how hard she worked”. He said she was always happy and smiling. He said she did not have a temper, even when she was busy dealing with customers and everything else she was always fine with it.

Mr. Dube testified that he had lived with Ms. Savage while she was attending NAIT and while she was at Polar Tech. and he had seen her change in that time. He said she was a very out-going happy girl who loved working on stuff and was ecstatic when she got into NAIT and had always talked of becoming a mechanic. He said she enjoyed her practicum at Polar Tech and was even more excited about getting an apprenticeship there. He said she was happy to go to work every day but things started to change and she started to get grumpy. He said he knew she had “size issues” and could not “lug around snow machines” but there was equipment she could use and develop a lot of different techniques. He said he got the idea there was some “bickering” but did not realize how bad it was until the “dog food incident in August”.

Mr. Dube testified that Ms. Savage told him about it the day it happened and she was very upset, crying and angry and he got so angry when she told him he wanted to go down there but she said it would only make things worse so he did not. He said that after that incident she called him a few times crying and came home crying and he was getting tired of it and he decided to go talk to Gord one Saturday after she had again called him crying and saying they were being mean again. He said that he went into Gord's office and told him that all this "bantering and her being upset and crying has to stop. We agreed that she had a bad temper at that time and that we would try to help. I would try to help Jen just calm down a bit, try to concentrate less on those guys and Gord said that he would talk to the guys and put more of a stop to them". He said he had noticed that Jen's temper was getting progressively worse as she worked at Polar Tech and he thought it would help to talk and try to make things better on her behalf. He also said that after he talked with Gord he did not see any improvement and thought it actually got worse.

Mr. Dube testified that Ms. Savage got "snappy and defensive" and she kind of "moped around". He said she no longer held her head up high and "just kinda slumped". He said during the last six months at Polar Tech she just wanted to sit at home, she never went out, her sleeping habits changed and she was grumpy. He said that even after she quit Polar Tech in January she was still "sliding downhill". He said for two months it was "chaos" then she got a new job and she got a bit better then when she got the statements she was upset and depressed again and the same thing happened when she had the [pre-hearing] teleconferences.

In cross examination Mr. Olsen asked Mr. Dube if he had ever witnessed any shop horseplay and bantering at Polar Tech and he answered that he had seen the guys horsing around but did not see anything directly related to Ms. Savage. Mr. Olsen asked Mr. Dube if he was referring to automotives or small engines when he testified that Ms. Savage was a good first year mechanic. Mr. Dube answered "I would say there is not much of a difference". Mr. Olsen asked Mr. Dube whether he and Ms. Savage argued before she worked at Polar Tech about his relationship with Ms. Savage and Mr. Dube said they did and that the arguments got progressively when she worked at Polar Tech. When asked how bad they got Mr. Dube said she would get very angry and just "shut off and then go somewhere else". He said she could not be reasoned with during these arguments and there would have to be a cool down period. He said she never carried a grudge and that once the argument was over it was over.

When asked if he had ever suggested anger counseling to Ms. Savage he said yes towards the end of her term at Polar Tech. Mr. Dube was asked if in his opinion Ms. Savage could take a joke and he said yes. Mr. Olsen also asked Mr. Dube if he knew whether Ms. Savage had ever made a formal complaint about the dog food incident to Mr. Olsen and Mr. Dube said he thought she had told Craig. Mr. Dube was asked if Ms. Savage had ever talked to him about Billy Ryan's comment to her about "do you want this to happen again" and he said that she had but he could not recall if she had also told him that Billy had apologized to her for it. Mr. Dube was also asked if he knew of any confrontations

between Ms. Savage and persons other than Corey and Billy at Polar Tech and Mr. Dube answered that he did not. He said he mostly heard good things about the other employees.

Aaron Halushka

Ms. Halushka testified that she is Ms. Savage's best friend and has known her for eight years. She said Ms. Savage was positive and out-going, very self-assured and was not afraid to try something new and different but after she started working at Polar Tech she became "insecure and negative and it really strained their friendship". She said they had worked together for awhile in the past and that at work Ms. Savage was always professional and could not recall her ever having a conflict with customers.

Ms. Halushka testified that in September 2006 when she was on a break from her job in the mines and visiting Ms. Savage she went to work with her at Polar Tech one day. She said she was helping her clean the yard and she had to go in and use the washroom. She said that inside the washroom there was an old door leaning up against the wall, it had been there for awhile because there was dust all over it and somebody had drawn a picture in the dust of a naked woman and then put arrows to the crotch area and wrote something like carpet munchers on it. She said she could tell it was recently drawn because the drawing was like fresh fingerprinting on the dust. She said she was offended by the drawing and when she went back outside she told Ms. Savage about it and told her to go and have a look. She said she did not think Ms. Savage did and she thought her reply was "that's nothing compared to what else goes on around here."

Mr. Olsen cross-examined Ms. Halushka about the drawing in the washroom. He asked if Ms. Savage had gone to look at it and she said she could not remember. He also asked her if she knew whether Ms. Savage had reported that incident to anyone at the time and she said she did not know because she had only told Ms. Savage where it was. Mr. Olsen also asked Ms. Halushka if she had ever advised Ms. Savage to report the incidents she told her about at work to Mr. Olsen and she indicated she had. He then asked her if she knew whether Ms. Savage had reported the incidents to him and Ms. Halushka said "she told me that she told". She also said that Ms. Savage told her "nothing was ever really done" but admitted that she did not know for sure that nothing was ever done.

K Edmund Savage

Mr. Savage testified that his daughter Genevieve had been interested in mechanics since she was a little girl when she used to like to give him a hand and ask questions when he worked on his vehicles at home. He said she learned very quickly and she is a person who likes to get things done, "a go-getter" and if she sets her mind on achieving something she will give a hundred percent to make sure it's done the best way it can be done.

Mr. Savage said that when his daughter started working at Polar Tech she was "happy to be in the position where she could learn the trade". He said she told him "finally I got my own bay, now I can do my work, get things done". He said she has started in automatic but now wanted to get the journeyman certificate in recreational mechanic and she was

really looking forward to it. He said he noticed that things started to change but he could not say when because he travelled a lot. He said he saw she was losing weight and complained about stomach aches and he knew there was something bothering her. He said he also noticed that she was not as out-going anymore and became concerned because she looked really stressed out. He said that he tried to talk to her and she did tell him once that the job was not working out the way she wanted it to or the way it should be but she was going to hold on because she wanted her journeyman ticket. He said he only found out about the specific incidents like the dog food from his wife.

Mr. Savage testified that he finally got his daughter to talk to him about the things that were going on at Polar Tech like the dog food incident and he told her she should talk to her boss, or her foreman about it and maybe the problems could be resolved. He said that was when he found out that the foreman was part of the problem. He said that after his daughter left Polar Tech he didn't see a lot of her because she was staying home a lot. He said it was a couple of months before she started to look a bit healthier but she was still very nervous and shaky. He also said "he'd say even now she is not as confident as she used to be".

Mr. Olsen asked Mr. Savage in cross examination if he had ever been to Polar Tech and observed his daughter working and he said he had not. He was asked if his daughter was the kind of person who would ask for help if she need it to which Mr. Savage answered that his daughter would ask for help if she did not understand something. He was asked if he knew whether his daughter had reported the incidents at work to her boss and Mr. Savage said "yes, you were aware of it, you found out about some of the incidents."

Sarah Power

Ms. Power testified that she knew both Ms. Savage and Mr. Olson. She said that she met Mr. Olson through working with him on the celebrity auction for the NWT Council of Persons with Disabilities. She said she had gone to see Mr. Olson on October 13, 2006 to discuss the possibility of him donating a percentage of a skidoo again for the auction in November. She knew the exact date because she kept all her appointments in an agenda book. She said as they were talking about the auction he brought up being interviewed by Up Here magazine and that's when Jen Savage came in to the conversation.

Ms. Power testified that as she was talking to Mr. Olsen the subject of women in trades came up and "he told me that Up Here magazine interviewed him about Jen Savage working at Polar Tech". She said that he told her that "Up Here magazine was interested in Jen Savage because she was a woman working at Polar Tech" and when he said her name I said I knew who she is but I didn't know she worked there. She said he went on to talk about Jen and her work ethics. "He told me that Jen was a quick learner and grasps new concepts quickly. He also told me she was a hard worker and he was proud that she worked at Polar Tech".

She said that Mr. Olson gave her a tour of the shop and she saw Ms, Savage working and they acknowledged one another. She said she saw Mr. Olsen again on November 17,

2006 when he was bringing in the skidoo and when they were looking at the at work in the room he brought up Jen Savage again. She said he told her that “she’s (Ms. Savage) not just talented in the small engines but she’s also a talented artist as well”.

The only question Mr. Olsen asked Ms. Power on cross examination was if he had indicated to her at any time that there were any problems at Polar Tech between Ms. Savage and the mechanics to which she answered “no”.

b) Witnesses for Respondents

Polar Tech - Gord Olson

Mr. Olsen testified as the owner of Polar Tech. He explained that there were actually two companies, the rental company side where Corey Dressler worked as the mechanic and the recreational company side where Billy Ryan and Sheldon worked. He said that Craig was the service writer and it was his job to write up works orders and distribute them to the staff and Billy Ryan over saw the overall jobs and inspected the finished work.

Mr. Olsen described himself as the overall company owner who was an “on site daily worker” and who met with his staff of twelve on a “one-to one basis” to discuss any work related issues involving Polar Tech like customer complaints. In cross examination he also described himself as a “very hands-on personnel manager’ who would promptly address any situation that would require disciplinary action of a staff member. He also said that he set the policies and procedures for Polar Tech although none were written, and he admitted in cross examination that the company did not have a policy about sexual harassment in the workplace.

Mr. Olsen testified that Ms. Savage was first hired for one month as a shop helper to do her practicum and when she showed “ability to be a mechanic and great ambition to be a worker” he hired her as an apprentice in May after she completed her course at NAIT. He said he assigned her to work mornings with Corey Dressler on the rental side and afternoons on the recreational side with Billy Ryan. He said her work on the rental side was “basic first year stuff” like oil changes, spark plugs and tune ups on generators and he thought she did it well. He said “she took direction well”, you only had to show her a task once and “she could carry out that task over and over again without trying to take shortcuts or make mistakes’ unlike other mechanics they had.

He said that Ms. Savage’s training and background was in automotive mechanics and she was at Polar Tech as a “first year small engine apprentice mechanic”. He said, based on his knowledge and experience as a journeyman mechanic, automotive mechanics and small engine mechanics were two different trades although some basic mechanics were the same. He said Ms. Savage had failed the Bombardier exam twice and that she had admitted to him she had not watched the DVD’s that were part of the Bombardier training and that he that he did not see how Ms. Savage could pass her first year apprenticeship without it. Later in cross-examination he admitted that Sheldon Keenan

who had worked for Polar Tech for at least five years had also not completed the Bombardier DVD's and had also had problems writing the exams.

Mr. Olsen also testified that although Ms. Savage was mechanically literate and learning about small engines quickly he thought she did not understand the "physical restraints" involved with small engines. He said that whereas automotive mechanics had devices to lift heavy objects like transmissions and motors, small engine mechanics "have to physically pull motors out by hand". He also said that he knew that Ms. Savage often required help with "heavy lifting and pulling" and although she sometimes had to wait for help because everyone was very busy, as far as he knew "no one had a problem helping her if they were asked". However, in cross-examination Mr. Olsen admitted that sometime in October when it was busier Billy Ryan had complained to him that Ms. Savage "was taking twice as long as the rest" to complete a job and had indicated that she was not physically strong enough to do the job and should be terminated. Mr. Olsen said he did not bring this to Ms. Savage's attention because he was not concerned since that was how it was for a first year apprentice. He also admitted that Billy Ryan had been annoyed with Ms. Savage over this.

Mr. Olsen also testified that after Ms. Savage started in May she was working on the rental company side with Corey Dressler 90% of the time where it was busier when he went on vacation in July and when he came back in August she asked to be moved over to the recreational company side. He said he found out from other employees that Ms. Savage and Mr. Dressler had an "altercation involving dog food" while he was away so he interviewed everyone including Mr. Dressler. He said Mr. Dressler told him that he and Ms. Savage were "play fighting" and she was trying to hit him so he grabbed her and put her down and held dog food up to her with no intention of putting it in her mouth but she was really mad about it. He said the other employees told him that they did not really see anything or did not pay any attention to what was going on. He said he "just took it as a he-said she-said" situation and moved Ms. Savage over to the recreation company side where Billy Ryan was her direct supervisor. Mr. Olsen said "after that, there was nothing ever really reported to me about any more altercations or incidents that I can recall" and described a workplace with a congenial atmosphere and much "horseplay and bantering".

He said that he did recall Mr. Dube, Ms. Savage's boyfriend, coming to talk to him once with concerns about "workplace harassment" and he told Mr. Dube that Ms. Savage had a short temper which he thought the guys "feed off of" so they agreed that he would talk to the guys to have "a little less horseplay" and Mr. Dube would talk to Ms. Savage about her temper. He said he did not remember when this occurred but that because there were never any issues brought to his attention after this he assumed everything was fine. He said Ms. Savage never once reported anything to him and when he asked her how things were she indicated they were fine although she was "short" with him. He said that when he received Ms. Savage's letter of resignation he was "very disappointed" and taken aback by her reasons for quitting because he did not know this was going on.

However, in cross-examination, Mr. Olsen admitted that when Ms. Savage had asked to be moved to the recreational side in August she told him about the dog food incident with

Mr. Dressler. She told him Mr. Dressler had pinned her down to the ground and “was gonna” put dog food in her mouth. He said he did not discipline Mr. Dressler for that because Mr. Dressler had said “it was all in fun”. He said that he “came down hard on Corey and just all around, directly about Jen” and afterwards Ms. Savage had asked him to please not do that again because afterwards she was singled out and ignored by them. Mr. Olsen also admitted that he knew that relations between Ms. Savage and Billy Ryan were not good and that he did recall speaking to Ms. Savage about the garbage throwing incident with Mr. Ryan and that when he approached her she was so angry she had tears in her eyes and said she could not speak to him right then. He said that after she calmed down a day later she told him that Mr. Ryan had threatened to put dog food in her mouth like Mr. Dressler had done. He said he talked to Mr. Ryan privately and Mr. Ryan told him that Ms. Savage had misunderstood him and that he would talk to her about it. He also recalled and admitted the incident where he had a heated discussion with Mr. Ryan and Corey in Ms. Savage’s work bay about having her complete an unnecessary task and how Mr. Ryan had turned, and sworn and yelled at Ms. Savage to quit cleaning bolts and she had yelled at them all to get out of her work bay. He said he was taken aback and thought she had overreacted so talked to her about after she cooled down.

Mr. Olsen also admitted speaking to Ms. Savage after Mr. Dube had come to see him. He said she was so angry she was shaking and again on the verge of tears and that she told him she “was going home to kill Mitch”. He said she also said that she was afraid the guys were going to pick on her more because her boyfriend had come in to stick up for her although he could not quote her exact words. He said that because she had asked this he only spoke in generalities about “too much horseplay, bantering and teasing in the shop” but because the staff knew Mr. Dube had been in they probably knew it was about Ms. Savage.

After much questioning, Mr. Olsen finally admitted in cross-examination that when he received Ms. Savage’s letter of resignation he was aware that there were problems in the workplace for her because she felt picked on because his employees were having difficulty with the line where horseplay crosses into harassment. He also agreed that in his statement to the Commission in response to the complaint he had criticized Ms. Savage’s character and abilities and that this criticism would be hurtful to her. He said he was defensive when he wrote it and did not realize how hurtful it would be until he heard her testimony.

Mr. Olsen also testified that he was not aware that pornography was being watched in the shop and that if he had known he would have put a stop to it. He said that he knew one of the mechanics had a screensaver with nude women on his laptop which he thought might be offensive to Ms. Savage but she had told him she was not offended by pictures of nude women so he did nothing about it.

The first question Mr. Olsen was asked in cross examination was if he agreed that hiring a woman as an apprentice was “a bit novel”. Mr. Olsen did not agree and he testified about how he had gone to school with women and that in his experience there were “a lot of apprentice women out there” so he was used to working with women. He also said that

Ms. Savage was the first woman apprentice mechanic he had hired and that he had not worked with a woman in the shop before. Mr. Olsen was then asked about the interview he had given to Up Here magazine and he said that he recalled it. It was put to him that the interview was about women in the work forces and he answered “no” and that the interview was about him. He then explained that Ms. Power saw Ms. Savage working while they were touring the shop and she asked him “does that girl work for you as an apprentice?” and when he said yes Ms. Power said “wow” and asked if she could interview Ms. Savage some time and “I said you betcha”. Mr. Olsen was then asked “And that’s because it’s unusual to see a woman working in a shop, correct? To which Mr. Olsen answered “yeah”.

Mr. Olsen was then again asked if he agreed that the fact that he had hired a woman was “novel” and Mr. Olsen said “I did not hire Ms. Savage because she was a woman”. He then said he did not understand the word “novel” so was asked if it was “unique” for him to hire a woman as an apprentice and he said “no”. After much debate with Ms. Slade-Kerr Mr. Olsen agreed that would be considered “progressive” for a shop owner to hire a woman as an apprentice mechanic. When he was asked how his employees reacted to the fact that he was hiring a woman as an apprentice mechanic he said “good, we got some help” and as far as I knew she was holding her own.

Billy Ryan

Billy Ryan testified that he was the shop foreman and mechanic at Polar Tech and that he is qualified as a small engine mechanic, a licensed welder and is a certified Bombardier technician therefore certified to work on all of their products. He said that he was not trained in automotives but did not believe that “automotive and small engine equipment go hand –in-hand”. He said that before Ms. Savage he had supervised one other journeyman apprentice – Kyle - who was at Polar tech when Ms. Savage did her practicum but whom he believed had left before she started her apprenticeship. He said that he believed that Kyle was more “mechanically inclined and physically stronger” than Ms. Savage. He said that when she first moved over to the recreational side Ms. Savage would ask for assistance when she was having problems with the equipment and that he never refused to help her.

Mr. Ryan also testified about a conflict he had with Ms. Savage over the methods she used for putting an undercarriage into a track, an incident which Ms. Savage had referred to in her testimony as the “Bill way” of doing things. He said that there was no such thing as the “Bill way” and that he had not used that term to Ms. Savage. He said that there was a “correct procedure” that he had shown Ms. Savage how to do. He said that there was a secure engine hoist that held the rear of the machine suspended it in the air on a waist high bench so that you were not working bent over while loosening the bolts and removing the undercarriage which was the rest of the “correct procedure”. He said Ms. Savage used a bungee cord to hold the track in place while she removed the undercarriage and that this was not “correct procedure”. He said the hoist was “overkill” as it was a two ton hoist holding up a 500 pound snowmobile engine but that this was the procedure he used at Polar Tech and everywhere else.

When he was cross-examined about this incident Mr. Ryan provided more detail. He said that the “correct procedure” to remove the undercarriage was that after you loosen and remove the bolts you need to hold the track up with one hand while you reach in and grab the suspension/undercarriage with the other hand and pull it out. He said the track was “not that heavy” but the suspension weights about 50 pounds and that the hoist was holding most of the weight of the engine. He said that he thought that Ms. Savage should have been able to lift the track and pull out the suspension/undercarriage the way that he did. He said Sheldon Keenan did it that way too. However, when pressed further Mr. Ryan reluctantly agreed that the reason he and Mr. Keenan could pull the 50 pound suspension out with one hand was because they like men in general had more upper body strength than women in general.

Mr. Ryan also testified that Mr. Olsen had asked him about “teasing” Ms. Savage in the workplace and he had told him there was “mutual horseplay”. He gave an example of “horseplay as “a shot at each other or a joke, throwing debris or whatever”. He said that Ms. Savage often “initiated” the “horseplay” and that she did so on the day she ended up leaving work over the garbage tossing incident. He said that he had told her that day “if you can dish it out, make sure you are able to take it”. He said “she stormed out and came back after lunch” and that he did talk to her and “I apologized”. He said she “gave the cold shoulder” and also said that he believed that it was after this incident that they stopped getting along. When cross examined about this incident Mr. Ryan could not remember when the incident took place nor could he remember if Mr. Olsen had talked to him about the incident before he apologized to Ms, Savage and he was not sure what Mr. Olsen had said to him when they did talk. He did not remember what words were exchanged between him and Ms. Savage and later in the cross-examination he said that although more garbage did get into her work bay he did not know how it got there and admitted it was possible he put it there. He said that all he really remembered was her walking out.

Mr. Ryan then testified about the day Ms. Savage quit her job. He said that it was during the Christmas holidays when Ms. Savage was off that he had the yard guy housecleaning and he needed room to fix a motor that was sitting on the floor. He said he checked Ms. Savage’s box and saw that it contained generic parts which they had plenty of so he told the guy to throw the box out to make room for the motor. He also spoke of another time on a weekend when he had to use Ms. Savage’s work bay and tool box to work on an engine and he had left the tool box turned around. He said when she came in “she flies off the handle without asking questions as to why this box is spun around”. Mr. Ryan was cross-examined on both these incidents.

Mr. Ryan was first cross examined about the incident where he had left the tool box in Ms. Savage’s bay turned around. He was told that Ms. Savage believed that he did this to antagonize her and asked if that was true. Mr. Ryan answered that it was December 24 and he did acknowledge moving the tool box around and said he did so because he had to work in Sheldon’s bay because his was full and this was a rush job. He also first

acknowledged then denied that he may moved the tool box again the next day finally admitting that his memory of this or these events was not good. He was then cross examined about the dispute over a box of parts that occurred on January 4, Ms. Savage's last day of work. He was first asked if his memory of this event was clear and he answered "somewhat, yes". Ms. Slade-Kerr started with general questions about mechanics keeping a box of spare generic parts and the purpose of that box of parts and Mr. Ryan basically became argumentative with her until he finally admitted that he got upset when Ms. Savage threw out his box because it contained electrical components. She then asked him what happened to Ms. Savage's box of parts and he told her that he had told the parts guy to throw it out because they were just generic parts of no value to Polar Tech. He said he was trying to make room to store motors that were sitting on the floor so he looked in Ms. Savage's work drawer in her work bay and saw she was not using it for anything else but the box of generic parts.

Although he claimed not to have lost his temper, Mr. Ryan again eventually acknowledged that the altercation between him and Ms. Savage led to raised voices and possibly some swearing. He also agreed that after that day she never came back again. Mr. Ryan was also asked a series of direct questions by Mr. Olsen all of which he answered as follows. Mr. Ryan said he was never informed by Ms. Savage that she had a skin cancer removed; Mr. Ryan denied that he had ever asked Ms. Savage if she had "a baldy"; He recalled going to Bombardier school in September but did not recall telling a story about a girl in the Quebec factory; He denied ever calling her "Ms. Kibbles and Bits"; He denied that he did not return Ms. Savage's tools to annoy her and said that he kept his distance because "she had a bad attitude"; He did not recall a conversation with another employee about a man being fired for throwing a pen at a woman at the airport; He did admit that he would burp and say "excuse my French" to Ms. Savage and said he did it "in good humor" because he was French and they both laughed when he did it.

In cross examination Mr. Ryan was questioned about the dog food incident with Corey Dressler and the statement he had prepared for the Human Rights Commission in response to the complaint was put to him because he had indicated in that statement that Ms. Savage had started horseplay with Mr. Dressler as if he had witnessed the events. He admitted in testimony that he did not witness the events and that what he had written was misleading. He also maintained his denial that he had called Ms. Savage "Kibbles and Bits" but then later reneged somewhat when he said "maybe it was possible" he did say it because he really did not know or remember the event. He also said that he did not remember if Mr. Olsen had talked to the staff about the incident not did he remember telling Ms. Savage to "go see her buddy Craig" when she asked him for help afterwards but admitted it was "possible that I told her to go see Craig".

Also in cross examination, when Ms. Slade-Kerr asked Mr. Ryan about leaving drawers open intentionally, he said he did leave drawers open but not intentionally. He said that he did not recall removing tools out of Ms. Savage's work bay after she had asked him not to. He did not recall working in her bay in August and making her work out in the hot sun. He was asked about throwing pieces of silicone at Ms. Savage and saying to her "Jen, here's your dildo" and he denied that although he said that he like everyone else at

the shop called the pieces of silicone “dildo’s”. He was asked if he ever used any words with a sexual connotation or innuendo in the workplace and he said that he did not know. When he was asked specifically if he could say he never used the word “pussy” in the workplace he said “I can’t say no”, but when asked if he ever said “bitch” he said “no, it’s not in my vocabulary “ but that the word “f’ing” was in his vocabulary. He admitted to watching pornography in the workplace when Ms. Savage worked there. He said it was possible that he and Mr. Dressler and Sheldon had watched pornographic videos in Sheldon’s laptop in Sheldon’s work bay and he confirmed that Sheldon’s work bay was right next to Ms. Savage’s. He also said that he had never invited Ms. Savage to come and watch pornography in Sheldon’s work bay. He was asked if he had ever seen graffiti in the washroom at Polar Tech and he said he had not.

When Mr. Ryan was cross-examined by Ms. Slade–Kerr he agreed that he did not write his Bombardier exams until at least two years after he started his apprenticeship program with Polar Tech. He also agreed that he and Ms. Savage had a strained relationship which worsened and was at its highest level of dislike in December and that some days he did not know if she could take a joke. He admitted that “on occasion” he thought she was overly sensitive and said that he thought it reflected her “frustration” with the job at hand. He said that it “bothered him” when he saw that she was frustrated with something and would not ask for his help or if he offered to help and she would tell him to go away. He agreed that he thought that Ms. Savage was too weak or too small to do the job and that sometimes it took her longer to do a physically demanding job. However, he then denied that he had complained to Mr. Olsen about Ms. Savage’s performance and had that he had told him she should be fired. In fact he said he had no recollection of his conversations with Mr. Olsen.

Mr. Ryan was then also cross-examined on the statement he had prepared for the Human Rights Commission in response to the complaint. He was asked whether he stood by a statement he had written in bold and if he had used bold print to emphasize it and he said “”you betcha”. He read the statement into the record and affirmed that it was his evidence. The statement is:

“Jen was an insubordinate employee. These allegations are in retaliation to Jen’s own failure as an apprentice mechanic.”

Corey Dressler

Corey Dressler testified that he was a mechanic at Polar Tech and that he received a certificate in small engine mechanics from Red Deer College. He also testified that he and Ms. Savage joked around “calling each other assholes”, tossing crushed cans and bottle caps into each others tools boxes and on a couple of occasions he found a tape with feathers left on it “like a headband” with “Tonto” written on it in his tool box.

Mr. Dressler also testified about the “dog food incident”. He said that that it happened just before lunch when Ms. Savage was coming down the stairs and he was at the bottom of the stairs talking to someone. He said that she “did like a flying elbow” to him and “I

did it back and we started boxing”. He said they were “goofing around” and when she hit him he asked her like Clint Eastwood if that was all she had so she hit him harder and he “kinda grabbed her” as one of the guys looked at him and either winked or shook his finger. He said that because he did not want the guy to think that he was flirting with Ms. Savage “I bent down and picked up some dog food and in a joking way said I’m gonna feed this to you and she was mmm-mmm-mmm. And that was the end of it.” He said he put the dog food down and everybody went back to the shop laughing and “there was no tears, there was no crying”.

Mr. Dressler also testified that the comment her made to Ms. Savage about knee pads was because he had to wear them to clean out the trough. He also said later in testimony that he thought Ms. Savage was given special treatment because she “never had to unload or load scaffolding. She’s never had to shovel out the trough.” He said that when it was slow in the shop it was the “low man on the pole” who was expected to do the cleaning up like clean out the trough.

Mr. Dressler also testified that he did refer to Ms. Savage as “Gord’s number one” but was not the only one who did so. He said that it was because she was a new apprentice and had automotive experience. He said she would have excelled past the yard guy and that she was smarter “mechanically” than another apprentice that had worked for him. He also said that as far as her work went “there were times she was good. Just show her once and that’s all you had to do” and that other times he was “not sure if she just wasn’t listening” because he would have to show her on certain machines where the oil level was. He said that Ms. Savage had trouble with heavy equipment and pull starting them and she either flat out refused to lift them or he would see her get frustrated and once when he asked her if she needed help she told him she did not need his help and told him he could do it himself and tossed the machine at him.

Mr. Dressler denied that he had ever tightened a chain sharpener so tight that Ms. Savage could not loosen it. He said that because filing dust got in the threads even he could not loosen it at times. He admitted that he had watched pornography in the shop “after work and stuff”. Mr. Dressler said that although he and Ms. Savage had “buted heads a couple times” he did not hate her and admitted that “she didn’t want to work on the rental side, I guess because of the dog food.”

Mr. Dressler was cross-examined by Ms. Slade-Kerr who first asked him what he had done in preparation for the hearing. He agreed with her that he had met with Mr. Olsen and Mr. Ryan and that the strategy discussed was for him to read his earlier statement to the Commission and to stick with his statement in his testimony Ms. Slade-Kerr then asked him about his comment about Ms. Savage being “Gord’s number one” and suggested it was because Ms. Savage was Mr. Olsen’s “shining star”. Mr. Dressler said that Ms. Savage was better than some of the other apprentices they had and that she was “maybe perceived the one to come out on top or the one to shine brighter than everyone else” because she was smarter than some of the other people and more “gung ho”.

When he was cross examined about the “special treatment” he thought Ms. Savage got at Polar Tech, Mr. Dressler amended his evidence to “treated differently maybe”. However, he maintained that one instance of this special treatment was that “she’s never had to clean out the trough. As far as I know she’s the only one that hadn’t had to do that.” He admitted that Ms. Savage may have loaded and unloaded scaffolding when he was not around but maintained that he had never seen her do it. He also said that he thought that if they were supposed to be working as a team (at Polar Tech) than “everybody should be given the same work”.

Mr. Dressler reluctantly admitted in cross examination that he was the senior person on the rental side and therefore Ms. Savage’s supervisor and that it was not unusual for the supervisor to show an apprentice where things like the dipstick or oil level was on different machines because it was all a part of learning. He said he had worked at Polar Tech since 2003 or 2004 and when Ms. Savage started with them there was no wall dividing the rental and recreational sides of the shop. He agreed with Ms. Slade-Kerr that there was a lot of “banter and horseplay” in the shop. He said he did not know the term “banter” but described “horseplay” as filling someone’s gloves full of grease, crazy gluing their coffee mug to their bench or filling their tool box with Styrofoam chips. He said “stuff to try and lighten up the day”. Then he agreed with Ms. Slade-Kerr that he had watched pornography in the shop on more than one occasion. He said that Sheldon would invite “us” over to watch on his laptop. He also said that there were screen savers on laptops, calendars and a pin-up girl calendar for their timesheet in the shop and agreed that they were of scantily clad women.

Mr. Dressler was also asked in cross-examination about sexual gestures or talk in the workplace. He said that he never saw Mr. Ryan make any sexual gestures or heard him tell a story about a visit to a Bombardier factory but that it was possible these things did happen. He denied ever talking about his own sex life at work. He said once Ms. Savage moved over to the recreational side she was two bays over so he did not hear everything that went on over there. However, he admitted that on occasion jokes about sex were made in the workplace and sexual comments were made about women but that none of those were ever directed towards Ms. Savage. He was asked specifically if the comment about the knee pads that he made to Ms. Savage on the day she was introduced to the shop was “a reference to oral sex”. He said “no, it’s not” and that it was said because she was new and “supposed to be given the dirty jobs, cleaning out the trough, sweeping out the bathroom”. When asked about Mr. Olsen’s comment to him about the knee pads being “right where you left them Corey” he said it was because he (Corey) had to clean out the trough a couple times for putting stuff in there that he should not have and clarified “Gord’s never made any comments of a sexual nature in the workplace”.

Mr. Dressler was also cross examined in detail on the “dog food incident”. He said that he did not remember being out late drinking the night before. He denied giving Ms. Savage a punch in the arm as she came down the stairs and maintained his version of the incident. To summarize, Mr. Dressler was asked if it was possible that he had grabbed Ms. Savage and hugged her harder than he thought and that it had caused her to fall down, knock her glasses off and he said that it was not possible. He said he did not

remember it like that, when asked “you don’t remember any of that?” Mr. Dressler said “I have never forced dog food into her mouth. I’ve never knocked glasses off her faced. And I have never pinned her down to the ground.”

A series of questions were put to Mr. Dressler and his answers described him holding Ms. Savage tightly from behind, noticing someone looking at them and because he did not want them to think her was flirting with Ms. Savage he said he bent down and picked up dog food from the dog’s dish on the floor and waived it in front of her mouth. He said that during the few seconds that this happened Ms. Savage did not struggle, nor did she fall down and Mr. Dressler was 100% certain that no dog food touched her mouth. Mr. Dressler denied that when he let go of Ms. Savage she punched and kicked him and yelled at him and maintained that they “walked through the doors together and everybody was joking, laughing as we walked in the shop”. Mr. Dressler did admit that about five or ten minutes later Ms. Savage left the shop and as she did she called him “something bitch. I can’t remember now”.

Mr. Dressler was asked if he was aware that others were concerned that he had crossed a line and he said that Craig had come to him later and told him “I think you might have went a bit too far because Jen is hurt now”. He said he told Craig he was sorry and had not meant to hurt her. He admitted that he did not tell Ms. Savage that he was sorry. He also admitted that Mr. Olsen had approached him later and told him Ms. Savage was not comfortable working with him so he was going to move her to the recreational side. He said that Mr. Olsen was not mad at him, he was curious about what had happened and he told Mr. Dressler to try and not interact with Ms. Savage anymore so he followed Mr. Olsen’s advise. He was asked if he was mad at Ms. Savage over this and he said “no”. He admitted that he called Ms. Savage a “snooty bitch” a couple of months later in the workplace and said it was “in a joking way”.

Ms. Slade-Kerr had asked Mr. Dressler if he remembered Ms. Savage bringing her friend Ms. Aaron Halushka to work and he said that he did not and that he had never seen Ms. Halushka before she testified. He was later asked in cross examination about a specific incident involving semi-nude pictures of centerfolds which had graffiti on them and which were in a mechanics cupboard. He confirmed their existence, however no one had testified about this incident earlier so I place no weight on this evidence and will not consider it in this decision.

2. Credibility

The principles underlying witness credibility which are fairly well settled in law are clearly enunciated in the case of *Egolf v. Watson* [1995] B.C.C.H.R.D. no 13 (Q.L). To summarize and paraphrase the case holds that:

The credibility of a witness does not depend solely on their honesty. It also depends on their opportunity for exact observation, their capacity to observe accurately, the firmness of their memory, the ability to resist the influence, that’s frequently subconscious, of interests to modify their recollection, their ability to

reproduce on the stand the facts they observed and the capacity to express clearly what is in their mind. The test must also reasonably subject their story to an examination of its consistency with the preponderance of the possibilities that surround the currently existing conditions. All of these are considered in determining what effect to give the evidence of any witness.

In other words when assessing witness credibility triers of fact must also ask themselves *does this witnesses version of events make sense and does it fit within the circumstances? Is the evidence of this witness reliable?* A trier of fact then has the choice to either accept the evidence of a witness in its entirety, or to reject the evidence of a witness in its entirety, or to reject some parts of the evidence in its entirety and accept other parts.

I have assessed the evidence of each witness in this case according to the above criteria in making findings of fact. Those facts will become clear in my analysis of the main issues and applicable law which follows. However, in general, I find the evidence of the Complainant's (Genevieve Savage and her witnesses) to be far more credible and reliable than that of the three Respondents.

The Complainant's evidence was delivered candidly and straightforwardly. The witnesses did not hesitate to answer questions when asked and their version of events was substantially detailed, logical, reasonable and consistent. However I also note that all but one, Sarah Power who was completely neutral, would naturally have Ms. Savage's best interests at heart. That said, there were some minor discrepancies in the Complainant's evidence none of which anything turned on. However, the minor inconsistencies between the Complainant's evidence only enhanced its reliability as it indicated that there was no witness collusion on the evidence.

The Respondent's on the other hand, were vague, evasive and very argumentative in delivering their evidence. This was particularly evident when they were questioned about their evidence. All invariably referred to evidence that had already been given by another witness at the hearing and they appeared to try and adapt their testimony accordingly. They did not seem to want to testify about their recollection of the facts which is what they were there to do. Mr. Ryan and Mr. Dressler were both especially evasive. Another common problem with their evidence was that they often showed a reluctance to accept even basic propositions put to them that were not in dispute. The foremost example being Mr. Olsen's resistance to agree that hiring a woman to apprentice in a mechanic's shop was a novel or unique concept.

Also, the Respondents version of events was fraught with inconsistencies, and they had difficulty recalling events, even those events stated in their Statements filed with the Human Rights Commission which often contradicted their testimony under oath. There was also evidence of collusion in preparing their testimony that was admitted to on the stand by Mr. Dressler, and Mr. Olsen admitted during his testimony that his statement was misleading and that he was defensive when he wrote it out. In short, the Respondents presented at the hearing as if they did not take the events alleged against them seriously. Nor, did they take this entire process seriously.

I find the evidence of the Respondents almost completely unreliable and reject it except in those instances where there is corroboration or it is an admission or statement against their own interest which would make it inherently reliable.

I find the evidence of the Complaint and her witnesses credible and reliable and am able to accept it in its entirety.

THE STATUTORY AND LEGAL FRAMEWORK

1. The NWT Human Right Act (“the Act”)

Briefly, the purpose of the *Act* is to recognize the inherent dignity and worth of every person and to provide for equal rights and opportunity without discrimination.

Subsection 5(1) of the *Act* states:

- 5.** (1) For the purposes of this Act, the prohibited grounds of discrimination are race, color, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, marital status, family status, family affiliation, political belief, political association, social condition and a conviction for which a pardon has been granted.

“Discrimination” is defined in subsection 1(1) of the *Act* and includes conduct described in subsection 7(1) and section 14 of the *Act*. Therefore if the conduct described in either of those sections is proved “discrimination” is also proved.

In addition section 6 of *Act* states that intention is not necessary to prove “discrimination”

Subsection 7(1) states:

- 7.** (1) No person shall, on the basis of a prohibited ground of discrimination,
- (a) refuse to employ or refuse to continue to employ an individual or a class of individuals; or
 - (b) discriminate against any individual or class of individuals in regard to employment or any term or condition of employment.

And Section 14 states:

- 14.** (1) No person shall, on the basis of a prohibited ground of discrimination,
- harass any individual or class of individuals
 - (a) in the provision of goods, services, facilities or accommodation;
 - (b) in the provision of commercial premises or residential accommodation; or
 - (c) in matters related to employment.

- (2) In subsection (1), “harass”, in respect of an individual or class of individuals, means engage in a course of conduct that is known or ought reasonably to be known to be unwelcome by the individual or class.

2. The Parties Positions

The Complainant, Genevieve Savage, submits that the entire course of conduct against her by Polar Tech and her co-workers specifically Corey Dressler and Billy Ryan, was discriminatory on the basis of her sex. And that the discriminatory conduct against her was in matters related to her employment and consisted of a campaign of harassment by Billy Ryan and to a lesser extent Corey Dressler that was based on her gender or was sexual in nature contrary to section 14 of the *Act*.

She also submits that there were also elements of refusal to employ her, or to continue to employ her because of her sex or because of reasons related to her sex such as her size or physical capabilities contrary to subsection 7(1) .

The Respondents deny that they discriminated against Ms Savage on the basis of her sex. In fact the basis of their case seemed to be that they did nothing discriminatory to Ms. Savage, and that everything that happened in the workplace was simply “bantering and horseplay” and not harassment. They claim that Ms. Savage quit because she was upset because she could not handle the demands of job and had a “bad attitude” and that she claimed discrimination in retaliation.

APPLICATION OF THE LAW TO THE EVIDENCE

1. Discrimination and Harassment on the basis of sex- Section 14

In order to prove discrimination on the basis of sex contrary to section 14 the first question to be considered is: ***Was Genevieve Savage harassed in matters related to her employment with Polar Tech on the basis of her sex contrary to section 14 of the Act.***

Section 14 has three requirements for sexual harassment to be proved. First, there must be a “course of comment or conduct” which on its face means more than one incident. Second, the comment or conduct must be “unwelcome or ought reasonably to be known to be unwelcome”. Third, the comment or conduct must be “vexatious” and relate to the prohibited ground of discrimination listed as “sex” in section 5.

Section 14 essentially adopts the well known definition of sexual harassment as set out by the Supreme Court of Canada in the leading case on discrimination and harassment on the basis of sex, *Jansen v. Platy Enterprises Ltd.* [1989] S.C.J. No. 41 (O.L.):

Sexual harassment in the workplace may 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 the harassment. It is an abuse of both economic and sexual power. It is a demeaning practice that

constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self respect of the victim both as an employee and as a human being.

The case also provided examples of forms of prohibited conduct that are discriminatory:

The forms of conduct that are discriminatory run the gamut from overt-gender based activity. Such as coerced intercourse to unsolicited physical contact . . . to more subtle conduct such as gender-based insults and taunting which may reasonably be perceived to create a negative psychological and emotional work environment.

In the present case there are incidents and conduct alleged that run the gamut of unsolicited physical contact - Ms. Savage was physically assaulted by Corey Dressler on August 1, 2006 when he grabbed her from behind, pinned her to the ground and tried to force dog food into her mouth – to more subtle conduct like gender based insults which both he and Billy Ryan engaged in and taunting which seemed to be Billy Ryan’s preferred conduct. For example, Mr. Ryan named Ms. Savage “Ms. Kibbles and Bits” after she talked with him about the assault by Mr. Dressler and then he later told her “remember what happened with Corey, you don’t want that to happen again”. Both men also called her a “Bitch”. Exacerbating the situation was the fact that when Mr. Olsen, owner of Polar Tech learned of actions by Mr. Dressler and Mr. Ryan against Ms. Savage his responses were ineffective and did virtually nothing to discipline or stop the actions of Mr. Dressler and Mr. Ryan hereby effectively allowing the discriminatory conduct to continue.

The actions by Mr. Dressler and Mr. Ryan and the ineffective inaction by Mr. Olsen clearly created a most negative psychological and emotional work environment for Ms. Savage. She testified about occasionally going outside of the shop to cry, wearing coveralls all the time so she would be less noticeable at work to walking off the job after the attack by Mr. Dressler on August 1, 2006, the threat “remember what happened with Corey” from Mr. Ryan on November 8, 2006 and the final confrontation on January 4, 2007 with Mr. Ryan over throwing the parts boxes out when she quit.

Another point about the work environment is that some of the work Ms. Savage did required a certain amount of physical strength (i.e. lifting, loosening levers and screws etc.). In fact it was her physical capabilities that were a major point of frustration for Mr. Ryan. When Mr. Olsen asked Ms. Savage if she was aware of the physical requirements of the job when she started at Polar Tech, she told him that she was and that she expected that with repetition of a task over time she would develop the required strength to do the task. I find her reasoning perfectly logical. Ms. Savage also testified that it was important to her to be able to do as much as possible on her own. Therefore when she learned from Sheldon that Mr. Dressler was deliberately tightening the levers on a piece of equipment to make her ask for help she was upset because she thought this was “conniving behaviour” designed to make her look less independent. Although Ms. Savage did not

confront Mr. Dressler about this behaviour, I find the fact that Sheldon knew about it and why Mr. Dressler was doing it indicates that this was behaviour that could *reasonably be perceived to create a negative psychological and emotional work environment* for Ms. Savage. There were many more instances of that kind of “conniving behavior” while Ms. Savage was at Polar Tech and some were instigated by Billy Ryan.

In any event, Genevieve Savage’s demeanor during her testimony spoke volumes about how her dignity, self respect and generally her life were profoundly adversely affected by the course of conduct she testified that she was forced to endure while at Polar Tech. Although she spoke calmly and clearly as she testified it was evident how difficult the entire process has been for her, her family and friends. When she talked about some of the events that she had experienced at Polar Tech she literally appeared to shrink inside herself and looked broken and beaten. Yet, the only time she was emotionally overcome was when her father testified and she asked to leave the room. It was clear to almost everyone at that hearing that something had happened to Genevieve Savage that had destroyed the upbeat, optimistic and confident young woman she was described as when she started work at Polar Tech in May 2006.

i.) unwelcome conduct

One of the first things to consider in assessing whether Ms. Savage was sexually harassed was whether the alleged conduct was unwelcome. The wording in Section 14 indicates that the test for determining whether conduct is “unwelcome” is an objective or “reasonable person” test: Did the harasser *know or ought reasonably to have known*, taking into account all of the circumstances, *that the conduct in question was not welcomed* by the complainant?

The case of *Dupuis v. British Columbia (Ministry of Forest)* (1993), 20 C.H.R.R. D/87 (B.C.C.H.R.) establishes the principles that must be considered when assessing all of the circumstances in a particular situation to determine whether conduct is “unsolicited and unwelcome”:

The complainant is generally expected to establish that she had expressly or implicitly made it known to the harasser that his behaviour is not welcome. Though a protest is strong evidence, it is not a necessary element in a claim of sexual harassment. Fear of repercussions may prevent a person in a position of weakness from protesting. A victim of harassment need not confront the harasser directly so long as her conduct demonstrates explicitly or implicitly that the sexual conduct is unwelcome. A complainant’s body language or other demeanor may be sufficient to communicate that the conduct is “unwelcome”.

So did Ms. Savage establish that the conduct by both Mr. Dressler and Mr. Ryan was unwelcome?

When Mr. Dressler pinned Ms. Savage to the ground, knocking her glasses off and tried to force dog food in her mouth, Ms. Savage certainly did explicitly let him know his

conduct was unwelcome. She clenched her mouth shut was going “mmm, mmm, mmm” and struggled against him. When he released her she “punched him as hard as I could and kicked him as hard as I could” and yelled at him “what’s your f’ing problem” before she walked out. When she heard Mr. Dressler talking about other women with the guys giving them “in-depth intimate details” she told him it was “nasty, sick and gross” indicating explicitly that this kind of talk was unwelcome.

When Mr. Ryan called her Ms. Kibble and Bits after he learned of the dog food incident Ms. Savage told him to “shut up”. She also told Mr. Ryan to stop throwing garbage in her bay and picked it up and threw it back into his bay. In short there are numerous instances where the respondents ought reasonably to have known that Ms. Savage did not welcome their conduct particularly during the later part of her employment she was often visibly upset. This issue will be discussed further in the section that follows.

However, the Respondents, in particular Mr. Olsen, raised the issue that Ms. Savage did not communicate to Polar Tech directly about the harassing conduct and how she found it unwelcome. Ms. Savage admitted to Mr. Olsen that he did not know about all of the harassing conduct like the pornography for example because she was afraid to tell him about it as things would only get worse. The evidence shows that Ms. Savage’s fears were well founded.

The Complaint submits that *Dupuis* also stands for the proposition that communication to the harasser of the “unwelcomeness” of the conduct does not have to be communicated to the harasser directly by the complainant.

In the present case the evidence is that Mr. Olsen was on vacation when the dog food incident took place and he learned about it from Craig. After Craig told Mr. Olsen about the dog food incident and he talked to the staff about it, whenever Ms. Savage asked for help with anything Mr. Dressler ignored her and Mr. Ryan told her “to go ask her buddy Craig for help” or “go ask Gord for help” and at other times would say he was just too busy. Ms. Savage testified, and I have accepted her testimony, that instead of things getting better they just got worse.

Likewise after the incident with Mr. Ryan when he threatened Ms. Savage “to remember what had happened with Corey” and Mr. Dube came to talk to Mr. Olsen, Ms. Savage testified that things got worse with Mr. Ryan. For example, it was after this that he started to throw pieces of silicone at her saying “here’s a dildo for you”. Also when she was having trouble physically with a heavy piece of equipment she did not want to go to Mr. Ryan for help because of his attitude towards her. She struggled on her own and adapted techniques to compensate for her lack of strength like using a bungee cord to hold up the track while she removed the suspension from a machine. Mr. Ryan made much of this technique, because to him it was “incorrect” procedure.

In his testimony Mr. Ryan compared Ms. Savage to Sheldon Keenan saying that because Sheldon did the job the “correct” way Ms. Savage should have been able to do so too. He then admitted that both he and Sheldon used the “correct” procedure because they had

more upper body strength than Ms. Savage. Therefore they were able to use the “correct” procedure simply because they were men.

Based on the foregoing, I find that Ms. Savage has established that she did *directly* report to Polar Tech that the conduct in the dog food incident by Mr. Dressler was “unwelcome” when it was reported to Craig, another employee, who then reported it to Mr. Olsen as soon as he got back from his vacation. I also find that Ms. Savage did *indirectly* report the unwelcome incident with Mr. Ryan to Polar Tech through Mr. Dube and that the “unwelcomeness” of this incident was reasonably visible to anyone in the workplace who might have witnessed the altercation between Mr. Ryan and Ms. Savage and seen Ms. Savage walk out of the workplace very upset that day. I find this *indirect* reporting does fit within the criterion established in *Dupuis*.

I further find that Ms. Savage has also established that she did not *directly* communicate to the owner of Polar Tech, Mr. Olsen, about the other unwelcome harassing conduct by his employees, her supervisors Mr. Dressler and Mr. Ryan because she *feared further repercussions*. In doing so I adopt the reasoning in *Dupuis* and find that fear of repercussions is an exception to the rule that *the complainant is generally expected to establish that she had expressly or implicitly made it known to the harasser that his behaviour is not welcome*.

On the issue of repercussions and reprisals there is another relevant legal principle to consider which is that *conduct that might not be explicitly sexual or gender based on its face becomes prohibited conduct if it flows from or is tied up with or is related to conduct that does constitute harassment or discrimination on the basis of sex*. In *Baczokowski v. Brown & Sign Post Corner*, [unreported] April 28, 2000, Yukon Human Rights Board of Adjudication, an employer’s decision to terminate the complainant based in part on her reaction to sexual harassment constituted a further act of sexual discrimination on the employer’s part. In *Mottu v. McLeod*, 2004 BCHRT 76 the tribunal found incidents following harassment were a form of retaliation for the original instance of discrimination and that they also constituted discrimination on the basis of sex by the employer. A woman who had complained about being treated differently on the basis of sex was then subjected to comments by other staff such as she was a “poor sport” and “it would be better if she left” was then told by the owner of the establishment that she had “blown everything out of proportion”, so she left the job.

In the present case, there is also evidence of discriminatory conduct that *flows from or is tied up with or is related to* the harassment and discrimination that Ms. Savage has already demonstrated. In this case, the respondents, Mr. Ryan, Mr. Olsen and to a lesser extent, Mr. Dressler all made negative comments about Ms. Savage’s abilities as an apprentice mechanic and her inability to take a joke and blow things out of proportion. Mr. Olsen said that he did not think Ms. Savage understood the physical restraints of the job and that Mr. Ryan had complained that she was taking too long to complete a job. Mr. Ryan agreed that he thought Ms. Savage was “too weak or too small” to do the job and that sometimes it took her longer. All three men said that Ms. Savage had “overreacted” in many incidents. Mr. Olsen said he thought this when she yelled at the three men

arguing in her work bay and he described her as “short with him” when he asked her how things were going; Mr. Ryan talked of Ms. Savage “storming out” and giving him the “cold shoulder” and being able to “dish it out but unable to take a joke”; Mr. Dressler likewise said that he had called Ms. Savage a snooty bitch “jokingly”.

However, there was much contradictory evidence about Ms. Savage’s work abilities so the comments made about her work abilities I find were made clearly in relation to her gender and were in fact attempts to deflect attention from their own harassment and discriminatory actions. I find the same reasons apply to the Respondents comments about Ms. Savage’s reaction to the harassing conduct with one notable exception. The incidents the Respondents acknowledged as indicating Ms. Savages inability to take a joke and blow things out of proportion were the two most egregious incidents of harassment in evidence – the dog for incident with Mr. Dressler and the threat to repeat it made by Mr. Ryan. Therefore based on the principles in *Baczokowski and Mottu*, I find that the comments about Ms. Savage’s work abilities and her inability to take a joke are in fact further incidents of harassing and discriminatory conduct that flow from the original harassing conduct.

ii.) Vexatious course of conduct related to sex

An important legal point to consider in this case is that *harassment and discrimination based on sex may not always be of an explicitly sexual nature*. It can include comments or conduct of a non-sexual nature that are directed at a person because of her gender. The leading case on this distinction is *Shaw v. Levac Supply Ltd.*, (1990) 14 C.H.R.R. D/36 (Ont. Bd. Inq) In this case an employee was harassed over a period of fourteen years and the conduct in question was not sexual in nature. The harasser said and did a variety of things that were designed to vex the complainant and that wouldn’t normally, on their face be deemed as discrimination on the basis of sex or of gender. He would mimic her, parody her, and criticize her unfairly in the workplace to others. He called her a fat cow and when she walked by he would say ‘waddle, waddle’ or ‘swish, swish’ to imitate the sound of her nylons. He made remarks that indicated that a woman should be home looking after her children.

The Board in *Shaw* considered the totality of the harassers conduct in context and concluded that it was reasonable to infer that the conduct was in whole or in part gender-related. Several specific instances of conduct such as his comments about working women evidenced a gender bias or were on their face conduct aimed at the complainant as a woman. For instance the expressions “waddle, waddle or “swish, swish” when the complainant walked by were oblique references to women and indirect evidence of conduct aimed at the complainant as a woman which supported the inference that the harassment of the complainant as a whole was due to her gender.

In the present case I have accepted the Complainant’s evidence in its entirety. However, there is one incident in dispute of which I have a different view than the Complainant. That incident involves the alleged sexual innuendos by Mr. Dressler regarding the “knee pads” that occurred on Ms. Savage’s first day on the job. Ms. Savage testified that Mr.

Dressler had “shocked her” when he yelled out that there was a set of knee pads behind her that she would need. She said she interpreted that to mean that “she would be on her knees blowing the boss”. She said she did not misinterpret Mr. Dressler’s remark because “I have never *seen* anyone scrub the floors or wear knee pads *the entire time that I was there*”. [emphasis added].

When I test Ms. Savage’s evidence on this one incident against the criteria in *Egolf* I have a problem making sense of Ms. Savage’s version of this event in the circumstances. It was her first day at Polar Tech. It was clear from her evidence that she had been at Polar Tech for four weeks in November/December 2005 during her practicum. However, it was unclear from her evidence that any harassment had taken place during the time she had completed her practicum. When Mr. Dressler made the comment to her, it was the beginning of her apprenticeship and she was happy and “gung ho” to be at Polar Tech. Everyone said that. It does not seem logical that she would interpret a remark said that day about needing knee pads to mean that she would be using them to perform sexual acts. However, it does seem logical that she would do so after she had been subjected to harassment on the basis of her sex in the workplace.

Mr. Dressler adamantly denied that his comment about the knee pads was a reference to oral sex. He testified that he only said that to Ms. Savage because she was new and the junior person was expected to do the dirty jobs in the workplace. He said that he referred to the knee pads because he had to wear them when he cleaned out the trough which Mr. Olsen had made him do on occasion. In his statement filed March 2, 2007 Mr. Dressler had said that when he made the remark he meant that “she could start scrubbing the floor because she was a first year apprentice, *not because she was a woman*”. He testified that he felt Ms. Savage was given *special treatment* which he later amended to *treated differently* because *she never had to clean out the trough* or do the other dirty jobs like *sweeping the bathroom*. [Emphasis added] When I test his evidence against *Egolf* and *Shaw* and place it in context, I find that Mr. Dressler’s preoccupation with the knee pads on Ms. Savage’s first day of work was indicative of his true feelings about having a woman apprentice in the workplace.

Therefore on this one incident, I accept Mr. Dressler’s evidence that there was no sexual connotation or innuendo in his remark about the knee pads made to Ms. Savage on her first day at Polar Tech in May 2006. I find that Ms. Savage’s interpretation of Mr. Dressler’s remark about the knee pads on her first day of work was made in hindsight rather than an interpretation of the remark at the time it was said.

I find instead that Mr. Dressler’s remark about the knee pads was a gender based remark alluding to Ms. Savage scrubbing the floors and sweeping the bathrooms and that the remark was made because she was a woman and “scrubbing” and “sweeping” is viewed traditionally as “women’s work”. The remark was meant to demean Ms. Savage and her position in the workplace because she was a woman. I further find that it was his gender bias that lay at the heart of Mr. Dressler’s subsequent campaign of harassment against Ms. Savage. The attempt to put dog food in Ms. Savage’s mouth because he did not want a colleague to think he was “flirting” with her would indicate he was trying to make a

point that she was a “dog” and is therefore an oblique reference to her gender. When Mr. Dressler later called Ms. Savage a “snooty bitch”, it was also a reference to gender. Simply put, Mr. Dressler resented having a smart young woman in the workplace especially one whom he admitted on the stand was “maybe perceived the one to come out on top or the one to shine brighter than everyone else.”

Mr. Ryan’s treatment of Ms. Savage also evidenced an underlying gender bias and supports the Complainant’s contention that he treated her the way he did at least in part because she was a woman. The incident during the first few months Ms. Savage was at Polar Tech where Mr. Ryan related the story about his trip to the Bombardier factory reveals an attitude that demeaning women in the workplace is funny. Mr. Ryan described how he had seen a young woman working in the factory get disturbed and upset by a very rude gesture that had sexual overtones made at her by a man and how hilarious Mr. Ryan had found it. He demonstrated the same gesture and as he did so looked right at Ms. Savage who asked him if they had gotten kicked out after this and he said “no”. When Ms. Savage told Mr. Ryan about Mr. Dressler’s attack with the dog food, he started calling Ms. Savage “Ms. Kibble and Bits” which indicates he found the attack funny.

Mr. Ryan made similar remarks to Ms. Savage in October after the men started watching pornography in the shop. Mr. Ryan asked Ms. Savage one day if she had a “baldy” which she understood as a reference to a certain part of her anatomy and she told him it was none of his business. In November Mr. Ryan called Ms. Savage “F-ing bitch” when they exchanged words after he became annoyed with her for reading personal documents in her work bay. None of the men called one another “bitches”. Calling Ms. Savage a “bitch” and asking her if she had a “baldy” are clearly gender related remarks.

On Ms. Savage’s last day at Polar Tech on January 4, 2007, after the confrontation over the parts boxes they had thrown out and while Ms. Savage was packing up her things she heard the yard guy tell Mr. Ryan about a man at the airport getting fired for throwing a pen at a woman. Ms. Savage’s evidence was that Mr. Ryan, while looking straight at her, said “f-ing women, of course it would be a woman, women are nothing but problems”. These comments were clearly aimed at Ms. Savage as a woman which supports the inference that Mr. Ryan’s harassment of her was due to her gender.

There are other examples of harassing conduct in the workplace some although not all which relate to an evident gender bias and all clearly meant to “vex” Ms. Savage. Mr. Ryan threw pieces of silicone at her and said they were “dildos” for her. Mr. Ryan also deliberately threw garbage into her work bay, took her tools and refused to put them back, moved her tool box around and left drawers open so she would bump into them.

In many instances, Ms. Savage did communicate directly to the Respondents that their conduct was unwelcome and when she did not, her “unwelcomeness” of the conduct was made known to them indirectly. In any event the harassing conduct was so inherently and objectively offensive that any reasonable person would know that such conduct was “unwelcome”.

I further find that Ms. Savage has also established that where she did not *directly* communicate to the owner of Polar Tech, Mr. Olsen, about the other unwelcome harassing conduct by his employees her supervisors Mr. Dressler and Mr. Ryan it was because she feared further repercussions from them in the workplace. I adopt the reasoning in *Dupuis* and find that fear of repercussions is an exception to the rule that *the complainant is generally expected to establish that she had expressly or implicitly made it known to the harasser that his behaviour is not welcome.*

I further find that this entire course of conduct by the respondents did have significant adverse and long lasting effects on Ms. Savage. She has had to receive therapy as a result of her treatment and the most significant effect was that she gave up her aspirations of becoming a certified mechanic.

I find that Ms. Savage has proved that the Respondents did engage in a course of vexatious conduct against Ms. Savage which started with Mr. Dressler's comments about the knee pads on May 8, 2006 her first day on the job and ended on January 4, 2007 when she walked off the job after the confrontation with Mr. Ryan. I find that this course of vexatious conduct was based on Ms. Savage's gender and sex, was "unwelcome" and created adverse job related consequences and therefore contrary to section 14 of the *Act*.

iii.) Poisoned Workplace

The Complainant submits that if individual incidents do not constitute discrimination or harassment, it is open to the panel to find that a workplace is a gender-based poison environment and constitutes discrimination on the basis of sex. In support she relies on the cases of *Algor v. Alcan Inc.* 2006 BCHRT 200 and *Fornwald v. Astrographic Industries* [1996] BCCHRD No. 31 (Q.L.).

In *Algor* the Tribunal found that as a whole the work place was *dominated by gender-based comments and gender based intimidating actions that served to create a poisoned work environment for the woman that worked there.* In addition when the employer did nothing about the discriminatory actions of his supervisors because he did not realize the impact the actions would have on the complainant's work environment the Tribunal found *the employer had perpetuated an environment which was hostile to female employees.*

In *Fornwald*, the Tribunal found that *sexist insults both verbal and written along with throwing crumpled paper in her hair and stuffing her locker full of paper all contributed to poisoning of the complainant's work environment and her sense of harassment by co-workers.*

After reviewing all of the evidence including the numerous instances of harassing and discriminatory conduct that Ms. Savage has proved including the offensive gender based comments that started on her first day on the job and the numerous offensive and intimidating acts, all of which touch on Ms. Savage's identity and dignity as a person, I have no doubt that the workplace at Polar Tech was poisoned.

I also have no doubt that the conduct by Mr. Olsen in response to the harassment and discriminatory conduct in the workplace perpetuated a hostile work environment. He did not discipline Mr. Dressler over the dog food incident. Instead he made excuses for Mr. Dressler's behaviour. He similarly downplayed the threat to Ms. Savage by Mr. Ryan, and told her she needed to "build a thicker skin" and that she had a "bad temper". He said similar things to Mr. Dube all of which makes it apparent that Mr. Olsen blamed Ms. Savage somewhat for the harassing conduct she endured at Polar Tech.

In short, Mr. Olsen's response to the harassment and discrimination in his shop was at worst nonexistent and at best ineffectual. In this sense, the employer Polar Tech perpetuated a *work environment hostile to female employees*.

b.) Liability of the Employer

It is well established in law that employers are liable for the discriminatory acts of their employees. The leading case is *Canada (Treasury Board) v. Robichaud* (1987), 8 C.H.H.R. D/4326 where the court held that *under human rights legislation, employers should be held liable for their employer's discriminatory acts, as long as the actions are work related because the employer is in the best position to remedy the ill effects of harassment and provide a healthy workplace*.

Another source of employer liability is found in subsection 71(2) of the Act which is a deeming provision that codifies what is known in legal terms as the "directing mind doctrine". The section states essentially: *any act or thing done or omitted by an official or agent of an employer, within the scope of his or her authority to act on its behalf, shall be deemed to be an act or thing done or omitted to be done by the employer*.

What all of this means is that when an employee in a supervisory or management position engages in harassing and discriminatory conduct, their acts are deemed to be the acts of the corporate respondent. Liability for the harassing and discriminatory conduct then attaches to the company or corporation.

In this case, the evidence is clear and undisputed that Polar Tech is the corporate respondent as represented by Gord Olsen the owner, and that both Billy Ryan and Corey Dressler, the two individuals who were responsible for the harassment and discriminatory conduct, were both supervisors at Polar Tech. I find that liability for the harassment on the basis of sex and hence discrimination by Corey Dressler and Billy Ryan attaches to their employer Polar Tech.

2. Discrimination on the basis of sex - Subsection 7(1)

The question that must be addressed under subsection 7(1) is: **Did Polar Tech refuse to employ Ms. Savage and discriminate against her during the course of that employment or any term or condition of that employment on the basis of sex?**

I have already found that Ms. Savage has proved discrimination on the basis of her sex contrary to section 14. Although I agree with the Complainants submission that there are “elements” of discrimination and refusal to employ Ms. Savage on the basis of her sex, I do not find the evidence before me sufficient to make a ruling under subsection 7(1). I therefore find that I do not need to consider this issue further.

REMEDIES

On December 10, 2007 the parties made final submissions by teleconference. At that time the Complainant argued that she had proved discrimination and sexual harassment and sought remedies under section 62 of the *Act*. On behalf of the Respondents, Mr. Olsen in his final submissions argued that no discrimination or sexual harassment had been proved and that even if it had that the remedies sought were excessive. Mr. Olsen argued that the Complainants request for punitive damages especially amounted to a “public hanging and a public flogging”. He submitted that if Ms. Savage had brought everything to his attention he would have done more than he did. He said “if you don’t know there is a problem, how can you solve it”.

Since I have found that the Complainant has proved discrimination and sexual harassment, I now turn to the remedies available under subsections 62(3) and (4) of the *Act* . Subsection 62(3) states:

- 62. (3)** If the adjudicator finds, under subsection (1) that a complaint has merit in whole or in part, the adjudicator
- (a) may order a party against whom the finding was made to do one or more of the following:
 - (i) to cease the contravention complained of,
 - (ii) to refrain in the future from committing the same or any similar contravention,
 - (iii) to make available to any party dealt with contrary to this Act the rights, opportunities or privileges that the person was denied contrary to this Act,
 - iv) to compensate any party dealt with contrary to this Act for all or any part of any wages or income lost or expenses incurred by reason of the contravention of this Act,
 - v) to pay to any party dealt with contrary to this Act an amount that that the adjudicator considers appropriate to compensate that party for injury to dignity, feelings and self respect,
 - vi) to reinstate in employment any party dealt with contrary to this Act,
 - vii) where the adjudicator finds that the party acted willfully or maliciously, or has repeatedly contravened this Act, to pay to any party dealt with contrary to this Act an amount not exceeding \$10,000 as exemplary or punitive damages,

- viii) to take any other action that the adjudicator considers proper to place any party dealt with contrary to this Act in the position the person would have been in but for the contravention of this Act; and
- (b) may make a declaratory order that the conduct complained of, or similar conduct, is discrimination contrary to this Act.

(4) For greater certainty, the adjudicator may, under subsection (3), make a finding against more than one party, and may make an order in respect of each such party, including an order that apportions responsibility between those parties to provide compensation.

a) Orders

In consideration of the remedies allowed under the *Act* and the submissions of the parties, I make the following orders:

1. I make a declaratory order that Genevieve Savage was discriminated against and harassed on the basis of her sex contrary to the provisions of the *Human Rights Act* by the Respondents Polar Tech, Corey Dressler and Billy Ryan. [s.62. (3) (b)]
2. I order that the Respondents refrain in the future from committing the same or similar contraventions of the *Human Rights Act*. [s.62. (3) (a) (ii)]
3. I order that Polar Tech pay Genevieve Savage compensation in the amount of \$9,220.33 for lost wages incurred. [s. 62. (3) (a) (iv)] This sum includes \$176 for lost wages during the course of employment and \$8,424 for lost wages from January 4, 2007 to March 12, 2007 when Ms. Savage started a new job as well as \$620.33 for lost wages incurred to attend the hearing into this matter in December 4, 5 and 6, 2007.
4. Ms. Savage has requested an additional unknown sum in compensation to cover additional tax liability as a result of receiving a lump sum compensation payment for lost wages in the tax year 2008 as opposed to 2007. I have only been provided with one legal precedent that speaks to an award of this type. In *Datt v. MacDonald's Restaurant (No. 3)* 2007 BCHRT 324 the BC Tribunal stated that Datt was entitled to some relief in respect of tax liability she might incur as a result of lump sum wage payment and was prepared to order the respondent pay the tax liability. The decision was that if the parties could not agree on the amount of tax liability payable either party could apply to the tribunal within 30 days from the date of the decision for a determination of the amount.

It may be that under subsection 62. (3) I have jurisdiction to make such an award. I remain seized of this issue until such time as the parties are either prepared to make further submissions on this point by teleconference or agree between themselves as to the amount of tax liability payable.

5. I order Polar Tech to pay Genevieve Savage reimbursement in the amount of \$290 for expenses incurred for two counseling sessions she attended with Jodi Hayward Counselling Services to deal with the effects of the harassment. [s.62. (3) (iv)]

6. I order Polar Tech to pay Genevieve Savage the amount of \$1,160 to attend further counseling sessions to deal with the effects of harassment as a means to help Ms. Savage to reach the position she would have been in but for the harassment. [s.62. (3) (viii)]

7. Ms. Savage seeks a general order for Polar Tech to pay to her reimbursement on *disbursements incurred to prepare for and conduct the hearing the amount to be determined by agreement between the parties or with the assistance of the adjudicator at a later date*. However, there is nothing in evidence or otherwise to suggest what these disbursements might be. I am not prepared to make a general order without further information and legal argument that I have jurisdiction to make such an order.

Ms. Savage also asks to address the issue of “costs” stating that she would like the opportunity to speak to costs at a later date. She provided the case of *Mowat v. Canadian Armed Forces* 2006 CHRT 49 (Q.L.) which provides legal authority on the issue of “legal costs”. This is an issue that is worthy of the Adjudication Panel’s consideration. I am also interested to hear what the Complainant views is the difference between “disbursements incurred to prepare for and conduct the hearing” and “legal costs”. I will therefore remain seized of the issues of “disbursements” and “legal costs” and allow the parties the opportunity to speak to these issues at a later date by teleconference unless the parties agree between themselves on an amount in settlement of such “disbursements” and “legal costs”.

8. Ms. Savage seeks damages in the range of \$25,000 for injury to her dignity, feelings, and self respect, payable jointly and severally by all three respondents. Decision makers tend to rely on criteria set out in *Torres v. Royalty Kitchenware Ltd.* (1982) 3 CHRR D/858 (Ont. Bd. Inq.) when considering how much damages to award:

- i) The nature of the harassment, that is, was it simply verbal or was it physical as well;
- ii) The degree of aggressiveness and physical contact in the harassment;
- iii) The on-going nature, that is, the time period of the harassment;
- iv) The frequency of the harassment;
- v) The age of the victim;
- vi) The vulnerability of the victim;
- vii) The psychological impact of the harassment upon the victim.

The NWT *Act* is relatively new and damages awarded in the category of injury to dignity, feelings, and self respect have usually been in the \$2 -3000 range like they have historically been capped at in other jurisdictions. Ms. Savage submits, however, that in the past few years this quantum of damages has significantly increased especially where human rights violations occur in the course of employment. She relies on *Datt v. MacDonald’s Restaurant (No. 3)*, 2007 BCHRT 324. Ms. Datt had worked for

MacDonald's for 23 years and her co-workers and customers were like family to her. When she developed a disability and had to leave MacDonald's, she fully expected to return and perform any duties that would accommodate her disability, instead she was terminated without regard to her feelings or accommodation. She suffered both emotionally and financially as she was denied Employment Insurance benefits and could not find work for almost a year during which she suffered from depression and stress.

In awarding Ms. Datt \$25,000 for injury to her dignity, feelings and self-respect, the Tribunal in *Datt* followed principles adopted in *Toivanen V. Electronic Arts (Canada) (No. 2)* holding that for the complainant Datt as "*for most people, work is one of the 'defining features of their lives'. Accordingly any change in a person's employment status is bound to have far-reaching repercussions*".

Like Ms. Datt, Ms. Savage's work was certainly a "defining feature of her life". I accept her testimony and that of her father and her partner Mr. Dube that since she was a small girl Ms. Savage had wanted to pursue a career in mechanics. She had successfully completed the Automotive Certificate Program at NAIT and received a glowing reference from her instructor. A requirement of the program was to complete a four week practicum and she had done so with Polar Tech in Yellowknife, NWT after which she was given a very good evaluation by Gord Olsen. In May 2006 when she secured a position as an apprentice mechanic at Polar Tech after her program was completed she was excited and happy to be there, until August 1, 2006 when she was physically assaulted by Mr. Dressler. The physical assault I find was most aggressive as it involved physical domination over her. It also had aspects of comparing her to a dog which was very demeaning and it had a very significant impact on Ms. Savage.

I accept the testimony of Mr. Savage, Mr. Dube, and Ms. Halushka who all testified that Ms. Savage was a "positive, out-going, self-assured, high achiever" with a good work ethic and who was not afraid to try something new. Each one also testified how Ms. Savage changed after August 1, 2006. She became increasingly "moody, argumentative, withdrawn, negative and insecure" which created a "strain" on her relationships with them. The strain on her relationship with Mr. Dube was especially notable as he often found her in tears and had gone to speak to her employer about the harassment without her knowing. Things got worse for her then and soon family and friends advised Ms. Savage to seek counseling. She did not go until after she left her job in January 2007. Her psychologist recommended on November 22, 2007 that she receive on-going therapy to help her cope with the emotional impact resulting from the harassment.

The harassment went on frequently - Ms. Savage said at least eight out of ten days were bad - for a significant period, continuously for at least five to seven months. As for her age, Ms. Savage is a young woman with prior work experience but this was an exciting step in her chosen career. A career she faced considerable barriers to break into. Although Ms. Savage appeared to "hold her own" with the men at times in the workplace, she was nevertheless the only female apprentice mechanic and the youngest person in this workplace which placed her in a particularly vulnerable position. Her harassers were her supervisors, the people who were supposed to evaluate her for her apprenticeship and

their treatment had a profound impact on her. So much that she said she had no idea if she would ever try mechanics again. She testified that it was hard to swallow how “people that are so insignificant in my life have had such an impact on me and my achievements and my goals”.

Women like Ms. Savage have a right to engage in traditionally male-dominated careers in a workplace that they can feel comfortable in regardless of whether the workplace is also male-dominated. It is the employers’ duty to ensure that the workplace is not poisoned with harassment and discrimination. An employer who does not do so must bear the consequences. In the NWT those consequences, like everything else here, can be costly.

For all of these reasons I find that Genevieve Savage is entitled to a significant award for the injury to her dignity, feelings and self-respect. However, unlike Ms. Datt who worked for MacDonald’s for 23 years and loved her job and the workplace when she was terminated after she became disabled, Ms. Savage worked for Polar Tech for nine months and hated the workplace when she walked off the job after a huge altercation with her supervisor. These are significant differences between the two cases and I consider these facts when I consider that an award of \$15,000 compensation is appropriate in the circumstances of this case.

The respondents Polar Tech, Corey Dressler and Billy Ryan are hereby ordered to pay to Ms. Savage the sum of \$15,000 in compensation for injury to her dignity, feelings and self-respect.

9. Where a party has acted *willfully or maliciously, or has repeatedly contravened the Act*, an adjudicator may order a party to pay an amount not exceeding \$10,000 as exemplary or punitive damages. [s.62. 3 (a) (vii)] The Supreme Court of Canada has ruled that punitive damages are *penal and exemplary in nature, and may be awarded only where the conduct giving rise to the complaint is found to merit punishment because of its harsh, vindictive, reprehensible and malicious nature. (McKinley v. B.C. Tel, 2001 SCC 38 (CanLII))*; Further punitive damages *should be resorted to only in exceptional cases and with restraint and rationality*. That is when considering the punitive damages *a court should relate the facts of the particular case to the underlying purposes of punitive damages and ask itself how, in particular, a award would further one or other objectives of the law and what is the lowest award that would serve the purpose. (Whiten v. Pilot Insurance Co., 2002 SCC 18 (Can LII))*

In this case there is evidence that the Respondents have either *willfully or maliciously, or repeatedly contravened the Act*. In fact this case exemplifies some of the most reprehensible, malicious and vindictive acts of sexual harassment and discrimination that I have ever heard as perpetrated in a workplace.

On her first day of work Ms. Savage was subjected to a demeaning act by Mr. Dressler when he threw knee pads at her and told her she would need them implying that because she was a woman she would be expected to scrub floors on her knees. A few months later, Mr. Dressler than physically assaulted her and tried to force her to eat dog food,

another act intended to degrade her. When his boss found out about his assault on Ms. Savage, Mr. Dressler's behavior towards Ms. Savage turned vindictive.

During her first three months at Polar Tech, Mr. Ryan subjected Ms. Savage to a consistent pattern of offensive conduct that began with the story about his trip to the bombardier training in Montreal laced with sexually offensive gestures. His conduct towards her grew progressively worse. Mr. Ryan not only verbally abused Ms. Savage he mocked her after the assault by Mr. Dressler and called her "Ms. Kibbles and Bits". He used his authority over her to make her stop a job that she was doing to clean his personal mess that he had made on a boat during his time off. Although as her supervisor Mr. Ryan clearly had the authority to direct her work, this act was clearly designed to put Ms. Savage "in her place" and as such an abuse of authority. When Ms. Savage once argued with him Mr. Ryan threatened her with physical harm by telling her she should remember what had happened with Mr. Dressler. He threw pieces of plastic at her and yelled at her that they were her "dildos", and he arbitrarily threw her box of accumulated parts out. Mr. Ryan's actions, in particular, from November 2006 until the day Ms. Savage quit in January 2007 were an especially mean-spirited and transparent attempt calculated to drive Ms. Savage out of the workplace which he succeeded in doing.

During the entire time that she was at Polar Tech, Mr. Ryan and to a lesser extent Mr. Dressler, acted recklessly and without regard for the impact on Ms. Savage in pursuit of a persistent pattern of offensive conduct subjecting her to pornography, crude sexual remarks, name calling, and other things designed to aggravate her like moving her tools and throwing things into her tool box and work space. All of these actions were willful and malicious in the sense that they were deliberately done to demean and humiliate Ms. Savage, either as retribution for her reaction to previous instances of harassment or for the purpose of driving her out of the workplace.

The ineffective actions or inaction of Polar Tech in the way that Mr. Olsen handled the harassing and discriminatory conduct of his employees against Ms. Savage helped to perpetuate the discrimination and enabled repeated contraventions of the *Act* by both Mr. Dressler and Mr. Ryan.

The actions of all three respondents, Polar Tech, Corey Dressler and Billy Ryan, in the manner in which they responded to the human rights complaint were a further example of demeaning conduct to Ms. Savage. By their actions they effectively perpetuated the harassment and discrimination and exacerbated its impact on Ms. Savage, thereby constituting repeated contraventions of the *Act*.

I agree with the Complainant that the events that occurred at the Polar Tech workplace have all of the aspects of what one is not supposed to do when they have a female employee. The physical assault and threat of another one, the pornography, the gender-based offensive comments and gestures and the concerted campaign of harassment to drive Ms. Savage out of the workplace are harsh, malicious actions with many of them vindictive and all so reprehensible that they must be denounced.

In consideration of the case law on punitive damages and the aforementioned actions of the Respondents, I the make the following orders pursuant to my authority under subsection 62. (3) (a) (vii) and 62. (4) of the *Act*.

a) Billy Ryan – I order Billy Ryan to pay Genevieve Savage the amount of \$5,000 in exemplary or punitive damages for his blatant sustained willful and malicious campaign of harassment against her all of which he blames her for and which he confirmed under oath that he still does: *Jen was an insubordinate employee. These allegations are in retaliation to Jen’s own failure as an apprentice mechanic.* There is nothing in the evidence that substantiates Mr. Ryan’s position. The evidence in fact confirms the opposite – Ms. Savage received excellent evaluations both from her instructors and Mr. Olsen and the preponderance of evidence about her work ethic and capabilities on the job were all positive. I find that Mr. Ryan’s statement is just another harsh, mean- spirited and vindictive attempt to continue to denigrate Ms. Savage. Furthermore, Mr. Ryan’s actions, in particular, the threat of physical harm –“remember what happened with Corey” - is by itself especially *willful, malicious* and vindictive if not actionable in another forum.

b) Corey Dressler –I order Corey Dressler to pay Genevieve Savage \$2,500 in exemplary or punitive damages for his *willful, malicious and repeated acts of sexual harassment* many of which were vindictive because she had reported him for assaulting her. The assault with the dog food was particularly malicious because it was an application of physical force which was definitely actionable in another forum.

c) Polar Tech – I make no order for exemplary or punitive damages against Polar Tech. Although Mr. Olsen’s attempts to discipline both Mr. Dressler and Mr. Ryan were ineffective and therefore enabled the harassment and discrimination to continue repeatedly, Mr. Olsen nevertheless did act as soon as he had knowledge of their conduct towards Ms. Savage. As she confirmed in cross examination when Mr. Olsen asked her if he had handled her complaints in a timely fashion – “You did talk to the guys about it right away”. I find that Mr. Olsen did nothing that could be deemed *willful, malicious or vindictive* towards Ms. Savage. Given these facts it would be neither just nor *rational* to penalize Polar Tech by imposing exemplary or punitive damages against the company.

10. I order post-judgment interest at the current rate(s) allowable under the *Judicature Act* of the Northwest Territories on all amounts ordered herein from the date of this decision; the cumulative total of which is \$33,170.33.

Dated this _____ day of November, 2008.

M. Joan Mercredi, Adjudicator
Human Rights Adjudication Panel