

Sexual Harassment at the University of Calgary Food Court

By: Linda McKay-Panos

Case Commented On: *Pham v Vu's Enterprises Ltd.*, [2016 AHRC 12 \(CanLII\)](#)

On some occasions, there is an Alberta Human Rights Tribunal (AHRT) case where the respondent may have been far better off settling the complaint in private, instead of steadfastly denying discrimination occurred, or refusing to settle even after an investigation, thereby experiencing what should be embarrassing publicity inherent in a reported AHRT decision against them. This may be one of those cases. The Director of the Alberta Human Rights Commission (AHRC) had carriage of the complaint before the AHRT (at para 6), which indicates that the AHRC had previously determined that the complaint had merit and that the parties were unable to settle or unwilling to accept the terms of a proposed settlement.

The complainant was Thu Hien Pham (Pham), and she was employed by La Prep (formerly La Pasta) owned by Vu's Enterprises Ltd., which operated in the University of Calgary Food Court. She filed a complaint with the Alberta Human Rights Commission on October 9, 2012, alleging Mr Son Vu (Vu) discriminated against her on the grounds of gender (sexual harassment) contrary to s 7(1)(b) of the *Alberta Human Rights Act*, [RSA 2000, c A-25.5 \(AHRA\)](#). Pham alleged she had to quit her job due to "sexual harassment that included jokes, comments, physical touching and threats" (at para 1). The respondent Vu stated in his defence that he and Pham had a consensual sexual relationship away from the business and that she was paid for sexual services over a two-year period (at para 2). Pham testified that she did not have a relationship with Vu outside of the business (at para 36).

As a preliminary matter, the Director of the AHRC noted that the respondent company was actually solely owned by Vu and his spouse. The Director applied to have Vu added as a party to the complaint in his personal capacity (at para 13). Section 28 of the *AHRA* allows the AHRT to add a party in order to provide effective remedies to the complainants and to attach liability to the people who have contravened the *AHRA* (at para 21). It should be noted that under human rights law, employers and owners are statutorily liable for the conduct of their employees in the course of their employment (*Robichaud v Canada (Treasury Board)*, [\[1987\] 2 SCR 84 \(CanLII\)](#)). In the human rights setting, the preferable situation from the complainant's perspective is to obtain systemic remedies against the employer (e.g., an order that a sexual harassment policy be implemented, reinstatement, etc.), as well as personal remedies against the person who discriminated against them (e.g., an apology, damages for pain and suffering, etc.). Tribunal Chair Jean Munn allowed Vu to be added as a personal respondent (at para 27).

Pham testified through a sworn interpreter (at para 28). She had worked for Vu since 2007 at La Pasta, which closed and re-opened as La Prep in October 2011. She prepared food and was the cashier. She provided a number of examples of sexual harassment. For example, Vu followed

Pham into the storage room, manoeuvred her into a corner and touched her breast and buttocks (at para 31). She told him to stop, pushed him away and ran out of the room. There were other similar incidents recalled by Pham. In addition, Vu made comments to Pham about paying prostitutes, having sexual relations with his wife and his sexual medication (at para 33). He proposed sex to her a few times, and the last time he did, she quit. She left her employment in September 2012, and made her complaint the next month (at para 33). She testified that she did not quit after the incident in the storage room because she needed the job. Her husband was ill and was not working (he later passed away) (at para 34). She also testified that she was only with Vu outside of work two times, when she and her husband attended a wedding with Vu and his spouse, and when she and her husband attended the Vu's home for dinner (at paras 36 and 37).

Vu testified that Pham had attended alone to his home in addition to the times she attended with her husband. He said that on August 29, 2010, Pham went to his house and had consensual sex with him for \$1,000 (at para 43). He denied all incidents of sexual harassment at the workplace (at para 48). He sometimes characterized the relationship with Pham as a boyfriend/girlfriend relationship (at para 49), but also denied that same relationship (at para 47).

Tribunal Chair Jean Munn relied on the leading case of *Janzen v Platy Enterprises*, [1989] 1 SCR 1252 (CanLII) (*Janzen*) to hold that sexual harassment is a form of gender discrimination (at para 51). She noted that the onus is on the complainant to prove discrimination on a balance of probabilities, and indicated that the complainant had made out her case of *prima facie* discrimination, demonstrating she had suffered adverse effect and that her gender was a factor in the adverse effect she experienced (at para 52). She also noted that the credibility of the complainant and the respondent was central to the determination of the issues in the case (at para 56). She held that there were significant internal inconsistencies in the testimony of the respondent (at para 68).

Thus, the complaint was made out against both Vu personally and the corporate employer. Because the case was “particularly egregious”, both respondents were held jointly and severally liable to pay the complainant \$15,000 (at para 76). Munn indicated she would have been inclined to award more, but \$15,000 was the amount requested by the Director (at para 76).

It should be noted that Vu no longer owns La Prep (at para 9). It is perhaps ironic that such an example of sexual harassment could occur in a private business located at an institution that has sexual harassment policies and works very hard to educate staff, students and faculty about rights and responsibilities in this area. This is, again, a case that the respondents should have settled in private. It certainly must be very difficult for Vu's spouse to know that the facts (and the details of Vu's defence) are in the public realm.

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