

Date Issued: January 18, 2024

File No. CS-003130

Indexed as: Ms. L v. Clear Pacific Holdings Ltd. and others, 2024 BCHRT 14

IN THE MATTER OF THE *HUMAN RIGHTS CODE*,  
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before  
the British Columbia Human Rights Tribunal

BETWEEN:

Ms. L

**COMPLAINANT**

AND:

Clear Pacific Holdings Ltd., Whitehawk Investments Ltd., and Sydney Richard Hayden

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member:	Devyn Cousineau
Counsel for the Complainant:	Sara Hanson and Afifa Hashimi
For the Respondents:	No appearance
Date of Hearing:	August 22 – 23, 2023
Location of Hearing:	Via videoconference

## I INTRODUCTION

[1] I caution the reader that this decision discusses sexual assault and violence.

[2] Ms. L worked as a personal executive assistant to Sydney Hayden and his companies, Clear Pacific Holdings Ltd. and Whitehawk Investments Ltd. During her employment, Mr. Hayden sexually assaulted and harassed Ms. L, withheld her wages, emotionally abused her, physically assaulted her, and abandoned her in a foreign country. He exploited her disability, a substance use disorder, to maintain control over her.

[3] In this decision, I find that Mr. Hayden's conduct was discrimination based on Ms. L's sex and disability in violation of s. 13 of the *Human Rights Code*. I order the Respondents to pay Ms. L \$100,000 as compensation for injury to her dignity, feelings, and self-respect, \$61,541.90 for wages lost because of discrimination, and \$8,699.84 for expenses incurred because of discrimination.

[4] The Respondents have not participated in this process. I am satisfied they had notice of the complaint and the hearing: letter decision dated July 27, 2023. The hearing proceeded without them: Tribunal Rules of Practice and Procedure, Rules 8 and 32.

[5] This decision, and the Tribunal's file, is subject to an order limiting publication of information that could identify Ms. L or members of her family in connection with this complaint: letter decision dated April 27, 2023.

## II ISSUE AND DECISION

[6] The issue I must decide is whether Ms. L experienced adverse impacts in her employment with the Respondents connected to her sex and disability: *Moore v. BC (Education)*, 2012 SCC 61 at para. 33. Though the Respondents did not participate in the hearing, Ms. L still bore the burden of proving the facts to support her complaint. She did this through her own oral evidence, as well as substantial documentary evidence including contemporaneous written communications between the parties which corroborates her

account. She submitted expert evidence from a psychologist and testimony from her father about the impact that the events of this complaint had on her. I have found all this evidence to be consistent and reliable and have relied on it to make my decision. My findings are consistent with the separate findings of the Employment Standards Branch and WorkSafeBC.

[7] This complaint arises out of a 21-month employment relationship poisoned by sexual, economic, emotional, and physical abuse which I detail below. I have no difficulty concluding that this abuse constitutes an adverse impact in Ms. L's employment connected to her sex and substance use disorder.

[8] Throughout Ms. L's employment, Mr. Hayden subjected her to sexual comments and innuendo, unwanted touching, and unwelcome flirtation. He required her to remove her clothing, and exhibited jealousy when she spoke to other men. In March 2018, he sexually assaulted her by getting her intoxicated and sexually touching her without consent. Sexual harassment and sexual assault are sex discrimination, rooted in an abuse of power: *Janzen v. Platy Enterprises Ltd.*, [1989] 1 SCR 1252; *Ms. K v. Deep Creek Store*, 2021 BCHRT 158 at paras. 71-73.

[9] In addition to the overtly sexual conduct, I am satisfied that Mr. Hayden's other abuses were connected to Ms. L's sex and substance use disorder. Mr. Hayden leveraged his gendered and economic power over Ms. L, and exploited her dependency on cocaine, to maintain control in the relationship and keep her dependent on him: *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 [**Schrenk**], at paras. 43-44; *PN v. FR and another (No. 2)*, 2015 BCHRT 60 at para. 68; *Loiselle v. Windward Software Inc. (No. 3)*, 2021 BCHRT 80 at para. 30; *Ms. K* at para. 102. He withheld wages from Ms. L, humiliated and subjugated her, used her connection with his dog to play on her guilt, blamed her for the abuse, and intimidated her. In October 2019, triggered by jealousy over Ms. L's interactions with other men, he physically assaulted Ms. L in Mexico and left her stranded there with no money. Throughout the relationship, he maintained the power dynamic with reminders of the gendered power imbalance, for example calling Ms. L a "good girl", forcing her to call him "sir", and asserting that he "fucking owns" her: *Sales Associate v. Aurora Biomed and others (No. 3)*, 2021 BCHRT 5 at para. 116. He ensured

that Ms. L was reliant on him for cocaine and money. None of this conduct can be extricated from Ms. L's sex and disability, and I find it is all discriminatory.

[10] I am satisfied that all the Respondents were in an employment relationship with Ms. L. From January 2018 until April 2019, Ms. L worked exclusively for Mr. Hayden as a personal assistant. In April 2019, he incorporated the two respondent companies: Clear Pacific Holdings Ltd., a holding company for Mr. Hayden's business ventures, and Whitehawk Investments Ltd, also a vehicle for Mr. Hayden's business ventures. Mr. Hayden is the sole director in both companies. Ms. L did most of the work required to incorporate the companies and other work related to their administration as required. From April 2019 until the end of her employment in October 2019, some of her wages and expense reimbursements were paid by Whitehawk Investments.

[11] I am also satisfied that all the events in this complaint are within this Tribunal's jurisdiction, including those that took place outside BC. They all arose in an employment relationship with a sufficient connection to BC: *MacLeod v. Ravenspur Developments and Watson*, 2008 BCHRT 306; *Des Roches v. Hardt*, 2009 BCHRT 300 at paras. 6-8. Specifically, the employment relationship formed in BC. The Respondent companies are each registered in BC. Ms. L's usual places of employment were Mr. Hayden's house and then his yacht, which were based in BC. Ms. L only travelled outside BC with Mr. Hayden to work as his personal assistant. Her job duties included making travel arrangements and transporting his dog out of the province. She retained her residence in BC, and the plan was that she would return home to BC every couple of months to attend to Mr. Hayden's personal affairs with his lawyers and bankers. In short, though some of the discrimination occurred outside the province, I am satisfied that it all relates to an employment relationship that "is a British Columbian one", over which this Tribunal has jurisdiction: *DesRoches* at para. 6.

[12] The impact of the discrimination on Ms. L steadily increased throughout her employment. She has been diagnosed with Post-Traumatic Stress Disorder [**PTSD**] which was initially triggered by the sexual assault in March 2018, and then increasingly exacerbated by the constant stress of sexual harassment and exploitation. Her substance use disorder was

aggravated as she used substances to cope with her employment conditions. The final physical assault in October 2019 exacerbated her PTSD to the point that she could not work, socialise, leave her home, or move around freely. She is now a completely different person than she was before the discrimination. I set out this growing impact below, and return to it in my assessment of remedy.

[13] In the sections that follow, I set out the circumstances of this discrimination in more detail. I conclude by explaining the basis for my remedial orders.

### **III DETAILS OF DISCRIMINATION**

[14] Ms. L is a creative, resourceful, hardworking woman. She has had a varied career in several industries, including as a personal and executive assistant at the highest levels of successful companies. Before she ever met Mr. Hayden, she had survived gender-based physical and sexual violence and had a substance use disorder related to cocaine.

[15] Ms. L met Mr. Hayden in around 2014 while she was walking her dog. He is 17 years older than her. She saw him once again in 2014, on a boat ride where he misled her to think there would be others joining them and then – at his insistence – he photographed her in a bikini. Ms. L felt uncomfortable. In 2016, Mr. Hayden began messaging her again, ostensibly with questions about selling his house. He asked her to model for a photograph where a woman is shown from the neck up, seemingly naked, in a clawfoot tub. She declined. In September 2016, he offered her a job helping him to renovate his house. In May 2017, he reached out again asking if she could manage his residential property while he was abroad. She told him she was interested in executive assistant or officer manager work. He continued to message her to ask if she was interested in various types of work, including for another unnamed person. At this point, Ms. L was interested and looking for work and answered his questions about salary expectations and availability. In these messages, Mr. Hayden repeatedly sent her superfluous pictures and information about his wealth – for example, a receipt for \$8,000 worth of liquor, a property listing showing his house listed for \$3.2 million, and a new

motorcycle. In hindsight, these early interactions, predating the employment relationship, were harbingers of what was to come.

[16] In 2018, Mr. Hayden's messages shifted to concern the prospect of Ms. L working for him. At that point, Ms. L was actively looking for work. She was also involved in an expensive court proceeding with her ex-husband, who was refusing to pay spousal support – a fact she shared with Mr. Hayden.

[17] On January 19, 2018, Ms. L went to Mr. Hayden's house for an interview. She began working for him as a personal executive assistant on January 22. They agreed on a wage of \$37.50 per hour for 40 hours per week. Initially, Mr. Hayden paid her wages in cash, then personal cheques. After Clear Pacific Holdings and Whitehawk Investments were incorporated in April 2019, he sometimes paid her from the Whitehawk account. Ms. L was responsible to track and report her hours, as well as any work-related expenses she incurred. Mr. Hayden never paid her wages in a regular or consistent way; instead, he would give her partial payment at irregular intervals that she was also responsible to track and account for. This manipulation of her wages kept Ms. L dependent on Mr. Hayden because he almost always owed her money, and she was required to keep coming back to him to collect it.

[18] Ms. L's role was to help Mr. Hayden prepare his house for sale and to do various tasks around the home, including meal preparation, cleaning, and caring for his dog Capone. Her workplace was his home, where they were often alone. Mr. Hayden was inappropriate from the beginning. For example, on Ms. L's first day of work, she sent Mr. Hayden a message and concluded by sending "cuddles and kisses to Capone". He responded, "Just Capone?? "Sniff"".

[19] When Ms. L began working for Mr. Hayden, she was dependent on cocaine. After she disclosed this to him early in her employment, he encouraged her to use his "safe supply" at his house. She began to use cocaine at his house. Mr. Hayden was often drinking and would ask her to sit with him and listen to his stories. He made her feel uncomfortable. For example, during the winter he kept the house extremely hot so that she would wear less clothing. He would get her wet, by splashing her with water, so that she would have to change into his clothes while

her clothes dried. He made her play truth or dare, making her do sexualized and humiliating dares, like bending down or kneeling in front of him or wearing his robe. He asked her to tell him her “price” to take off her clothes as he piled stacks of money in front of her. He made her kneel in front of him and ask him to be her mentor. He was “handsy” and would sit too close. Ms. L says Mr. Hayden’s behaviour was “gross” and she felt “overwhelmed”: “It was **a lot** working for him”.

[20] On March 8, 2018, Mr. Hayden sexually assaulted Ms. L.

[21] That day, Mr. Hayden was drinking most of the day, and insisted Ms. L join him. Ms. L got a headache and Mr. Hayden gave her some medicine for her head. They kept drinking. Ms. L took some of Mr. Hayden’s cocaine, which she says was “off”. It clouded her head, and she felt terrible. She told him that, and he encouraged her to have another drink. She did that and used more cocaine. She started to feel really sick. She was worried the cocaine was laced with fentanyl. She asked Mr. Hayden to call her a cab so she could go home, but he would not. She raced to the bathroom and tried to make herself throw up. Mr. Hayden was banging on the door and would not leave her alone. She opened the door. He gave her more pills, and told her to take them. He told her they were morphine, to make her throw up. When she questioned this, he asserted that he was a former paramedic, and she should trust him. She took the pills. It was not long before she began to feel very woozy, and worse. He tried to get her to go to the bed, but she resisted and ended up on the floor. Mr. Hayden then brought over a bucket and a long round tube. He forced it down her throat, ostensibly to help her throw up. While he was doing that, he made comments about how much Ms. L could take in her mouth.

[22] Ms. L felt herself passing out. Mr. Hayden picked her up and put her in the bed. He began filming her, saying that she was refusing to go to the emergency room – something that he had not offered her. He then stopped recording, and stood over her on the bed. He began touching her breasts, and putting his hands between her legs. Ms. L says that, inside her head, she was screaming at him to stop, but no voice was coming out. She felt out of her body, and could not even move her hands. Mr. Hayden took her hands, and wrapped them around his penis, forcing her to stroke him. Eventually, she was able to scream and he dropped her hand.

She asked him again to please let her go home and call her a cab. He left the room for some time. When he came back, he said she had to stay there. She insisted that she wanted to leave, and so eventually he drove her home.

[23] The next day, Ms. L returned to Mr. Hayden's house because she needed her wages. She did not stay long. Their interactions were uncomfortable. As usual, he did not pay her in full – just gave her whatever cash was on hand. They did not discuss the night before. Ms. L was still in shock and still trying to process what had happened. It had brought her back to earlier sexual assaults. She tried to push her feelings down. She questioned her own response, including whether she was overreacting. In the days following, she became very sick and went to the hospital, where she was diagnosed with bronchitis.

[24] On March 15, Ms. L emailed Mr. Hayden. She explained that she felt her sickness was “a direct correlation of last Thursday's accidental molesting incident”. She went on:

... Sadly, I can't seem to get the images out of my mind. I was so blackout and beyond sick at that late hour with the morphine dose and the ephedrine and pain pills I was on earlier. Damn it sure made me very sick and out of my mind like I was there but not I could hardly move and yet all I see and feel are the horrible images of what transpired... it deeply saddens me and makes me feel so sick inside. It's hard for me to even close my eyes. Especially with my history of abuse and rape and my major trust issues. I'm still in such disbelief that it happened to me and I've been trying my best to get better and put this gross misconduct out of my mind. You promised you'd take care of me and I could trust you and the world was my oyster. I believed you. I cared so much about you and was proud to be your person and trusted [confidant]. I'm so distraught and very confused as to where things go from here. I feel trapped and misled and truly hurt to my core. I feel we should really talk. But it would need to be in a public setting preferably nearby my home. We need to discuss how we can move forward or come to a mutual agreement or arrangement...

If I'm not knocked out on meds and painkillers I'm consumed with the times you've touched me inappropriately and I can hardly breathe. The other albeit tests of my character but they were still so wrong on every level. You said you'd never do it again....



I have no money to my name at this time and focusing all my energies on getting my health back in order so I can live again and be a part of society and enjoy the sunshine too...

Mr. Hayden responded later that day:

I'm not doing well at all. I feel bad about the misunderstanding that betrayed your trust. I'm actually disappointed in myself.

I haven't left the house since I got home on Saturday. So Capone [the dog] hasn't been for a walk.

Not fair on him.

Also haven't done much on the house either.

Hearing that I hurt you emotionally hurts me more than I can express. I felt bad about it since Thursday night, now I feel worse. That was never on my agenda.

I apologize from the bottom of my heart

I would like to find a way to move forward, but that is totally up to you.

My offer to help you was sincere, and still is.

Let me know what you want to do.

[25] In the days that followed, Mr. Hayden texted Ms. L to ask if she was feeling better and whether she would return. Ms. L did not see these texts right away. She went to the emergency room with chest pains and hives all over her body. In the meantime, Mr. Hayden still hadn't paid Ms. L all the wages he owed her, and she had missed two weeks of work. On March 20, Ms. L emailed Mr. Hayden outlining her desperate circumstances and asking him to e-transfer her wages and some sick pay. She told Mr. Hayden he had touched her in a sexual way without her consent, and sexually harassed her. On March 22, Ms. L sent Mr. Hayden a long text, expressing that she was "very distraught and stressed over this entire situation" and had been breaking out in hives and unable to sleep. She said she was "desperately in financial need as I can't even feed my dog or myself". She expressed that it was not fair that he was "seemingly attacking my dignity as an employee and human being because you have the economic power. This is breaking me down hard". She said she was scared, in a nightmare, and

“can’t even function”. She had “never felt so alone and vulnerable”. She could not talk to anyone about the situation or see afford to see a therapist. She begged him to help her financially “so I can eat and see a doctor and move forward from there”. Mr. Hayden did not immediately respond.

[26] Ms. L was in a very bad situation. A friend dropped off food for her dog, but Ms. L was still weak. She was using sleeping pills to curb her appetite and sleep as much as possible. On March 26, Ms. L followed up with Mr. Hayden again, begging him to pay her. She asked that they meet in a public place and offered several options near her home. When Mr. Hayden eventually responded, he claimed that parking near her home would be “impossible” and asked her to come to his house. Ms. L said she was still too weak and “hanging on by a thread”. She asked him to send her money. He agreed to come to her neighbourhood and give her “something for you to get through till tomorrow”. He brought her \$200 cash, with a promise of more after they met and he could “understand [her] agenda” to find a “win win situation for both of us”.

[27] When they did eventually meet, Mr. Hayden told Ms. L he had met with his lawyers. He showed her a written apology on his phone. Ms. L later took a screenshot of the apology, which acknowledged “I fucked up” and explained “Alcohol makes me stupid and see things that aren’t there”. Mr. Hayden would later recycle this same apology after he assaulted Ms. L in October 2019.

[28] Ms. L tried to establish healthy boundaries with Mr. Hayden, and warned him that if he ever touched her again she would leave. Mr. Hayden, in turn, expected Ms. L to keep the assault confidential. He said he did not need her to sign a non-disclosure agreement because, if Ms. L ever went back on her word, everything was “with his lawyer”. Ms. L interpreted this as a threat to “ruin” her. She did not know what videos or pictures he had of her.

[29] After this, Ms. L went back to work. She says she felt confident that Mr. Hayden would not assault her again. Initially, he did respect her boundaries and it was a better work environment. However, this did not last long.

[30] In the summer of 2018, Mr. Hayden began sending Ms. L sexually suggestive memes, including pictures and jokes about sex, penises, and a comedy routine about “how to make your sex tape”. The rest of the employment relationship was marked by pervasive sexual harassment. He asked her to call him “sir” and would compliment her work by saying “good girl”. He continued to steer their messages towards flirtation and inuendo, which Ms. L politely and consistently deflected. He commented on her underwear. On Mr. Hayden’s birthday, he insisted that Ms. L go skinny dipping and threatened to fire her if she refused. She did it, though it made her feel disgusted. Mr. Hayden eventually started touching Ms. L again, putting his hands on her lap or around her shoulders and telling her “I’m the best boss ever”. He hugged her, asked her to kiss his cheek, and insisted on rubbing in her medicated back cream. He called her beautiful. He frequently photographed her, and tried to catch her in unflattering poses to make fun of her. He asked her to bring her personal items for him to photograph, including heels, “panties”, skirts, and bikinis. He messaged her at all hours of day and night, frequently expecting her to come over to his house. Throughout 2018, with Mr. Hayden’s encouragement, Ms. L was relying heavily on cocaine and drinking a lot – more than she ever had.

[31] In the spring of 2018, Mr. Hayden was in the process of selling his house and buying a yacht, which he called the “Waterfront Poverty”. Ms. L was helping to get the yacht set up. She was working 14 or 15 hours a day, but would only be paid for up to 10 hours per day. In November 2018, Ms. L’s dog died. This was devastating. Her dog was a longtime companion, who Ms. L says had saved her life many times. After this, she poured herself more into work. She also took comfort in her relationship with Mr. Hayden’s dog Capone.

[32] In early 2019, Mr. Hayden was planning a sailing adventure, and wanted Ms. L to join him. Initially she resisted and said she would not go with him. He continued to press her, offering her a five-year contract and arrangement where she would work on the boat for one or two months and then return to BC for one month. In April, he spoke to her parents and promised that Ms. L would have access to her own money to come home at any time for any reason. He promised to keep her safe. Ms. L’s father says that they had some concerns, which were somewhat assuaged with Mr. Hayden’s assurances that he considered Ms. L “like a

daughter". After this, Ms. L agreed to join Mr. Hayden on the sailing trip, and preparations began in earnest.

[33] As the trip approached, Ms. L's anxiety escalated, and her health deteriorated. In March 2019, Ms. L had a panic attack after taking too much cocaine. She went to the emergency room. She said things were coming "to a head" – she had lost her dog and was working for a "monster". She was always on call, and never truly alone. Mr. Hayden showed up at the hospital while she was there. He was concerned about what she would tell the staff. He kept touching her. He asked her to tell the staff he was her husband so he could be in the room when she was examined. She refused. He led her to understand that he had connections in the hospital and could access her records. This prevented Ms. L from sharing with hospital staff what was truly going on for her – at this time or in subsequent visits.

[34] After this, Ms. L tried to quit cocaine. She asked Mr. Hayden to stop supplying cocaine and stop keeping it on his boat, which he eventually did. To cope, she increased her alcohol consumption.

[35] In April 2019, with Ms. L's help, Clear Pacific Holdings Ltd. and Whitehawk Investments Ltd. were incorporated. Mr. Hayden was the only director in each of them. After this, some of Ms. L's wages and expense reimbursements were paid by Whitehawk Investments.

[36] Ms. L visited the emergency room again in June and August 2019, after panic attacks with chest pains, a racing heart, and faintness. She says she felt like she was having a "nervous breakdown" because of work, and was anxious about the upcoming trip. This time, she was referred to a clinic for mental health supports. She was not able to access these supports before leaving the province.

[37] The trip began on August 29, 2019. Mr. Hayden sailed to San Diego and Ms. L drove to meet him there with his dog. On September 15, they set sail for Mexico. When Ms. L arrived at the boat that day, Mr. Hayden was yelling at her that the captain was angry she was late. Someone commented that this is why women should not be on a boat. She was then required

to stay inside the main cabin with the dog for the duration of the journey. This was humiliating and upsetting.

[38] They docked in Mexico. Ms. L stayed in hotel room at the marina, and continued to work long hours. As the days passed, she found some time for herself, and enjoyed meeting other people. At the same time, Mr. Hayden continued to sexually harass Ms. L, sometimes with his friend, including sending her a picture of his groin with the caption “we have food for you”.

[39] Mr. Hayden was jealous when Ms. L interacted with other men. For example, when Ms. L was invited to go to an event with a man, Mr. Hayden forbid her from going, saying that he did not like the way the guy had looked at her. Another time, a man asked for Ms. L’s opinion about some video footage. They agreed to meet the next day to work on it, but when the man arrived Mr. Hayden stood in front of Ms. L and told the man, “you’re not needed, go downstairs”. This behaviour humiliated Ms. L, who felt like a “servant”, who was “no good”, with no voice, no opinions, and nothing of use to contribute.

[40] On October 22, 2019, Mr. Hayden physically assaulted Ms. L.

[41] Mr. Hayden was in a bad mood all day. They spoke about Ms. L’s request that she be paid for her wages to date. He proposed to write a cheque, but Ms. L asked for immediate payment. He authorized her to e-transfer herself a partial payment, which she did.

[42] Mr. Hayden asked Ms. L to join him at dinner, which she did. Dinner turned into drinks with others. Ms. L was tired and wanted to get to bed. She was excited about plans she had made for the next day to go out with some women she had met. At 11:00 pm, she texted Mr. Hayden to ask when she could leave. He responded “Now”, “When I leave the situation you leave”. They left together 15 or 20 minutes later. They walked back towards the boat with two other men. The men offered them a nightcap on their vessel. Mr. Hayden accepted the invitation. He told Ms. L to go and take the dog out, then join them. She did that. When she returned to the boat, Mr. Hayden had a drink in hand. A man asked what she wanted to drink, and she said wine. As soon as the man handed her the drink, Mr. Hayden yelled at her that they

were leaving **now**. He threw down his drink and got off the boat. Ms. L was shocked and apologized to the men. As Ms. L was leaving the boat, Mr. Hayden came back with his dog, ferociously barking. He was yelling “horrible” things to the men. He grabbed Ms. L’s arm and dragged her towards his own boat, yelling at her “I fucking own you. When I leave you leave. **You** are in service to **me**, not the other way around.” He told her “You should go fuck [the other man]”.

[43] When they were onboard Mr. Hayden’s boat, he suddenly lunged at her. He grabbed her neck and punched her. She fell back. He continued to punch and kick her, and tripped her when she tried to stand. He threw her down the stairs. He commanded his dog, Capone, to attack her. Capone, who loved Ms. L, would not attack. He was panting and “freaking out”. This made Mr. Hayden angrier. Ms. L managed to crawl into a bedroom and lock the doors. Mr. Hayden was banging on the door and swearing. He kicked the door open, and pinned her on the bed, hitting her. Ms. L was fighting, screaming as loud as she could. She thought that Mr. Hayden was going to kill her. She was fighting for her life. To this day, she believes that if the boat had not been docked, she would have been killed.

[44] Eventually, the men from the other boat heard the screams. They came to the boat and asked what was going on. Mr. Hayden told them to mind their “fucking business” and go home. While he was talking to them, Ms. L texted Mr. Hayden’s friend, “Sydney just punched me and attacked me hard... I cant breathe... help me... he hit my elbow and throat and face punched me”. The assault ended when marina security arrived and boarded the boat. They helped Ms. L to gather her things and carried her off the boat. She was shaking, hyperventilating, and struggling to breathe. The marina staff took photographs of her injuries, which are in evidence, and guarded her hotel room for the rest of the night.

[45] After the assault, Ms. L was terrified and had extreme anxiety. She could not settle down, sleep, or close her eyes. She could not comprehend what had happened: “This person ... has been entrusted to care for my safety and my life, and had promised my parents and promised me. And it’s my employer, I’m supposed to be safe. I’m supposed to just go to work and do my job.”

[46] Mr. Hayden texted Ms. L the next day, saying he had “lost it” because his doctor had given him “2 years” to live. Ms. L responded that was not a “warrant granting you permission to abuse and punch your PA your employee your confidant”. He agreed. They exchanged a few more texts. Mr. Hayden also communicated with Ms. L through others, asking if she would be returning to work and promising to pay her wages.

[47] The marina paid for Ms. L’s room on the night of the assault, and then asked Mr. Hayden to pay for the room after that. He eventually paid for two nights, but refused to pay for any food. Ms. L would be in Mexico for another eight days.

[48] At this point, Ms. L had almost no money. For various reasons, none of her bank accounts were accessible to her. She had very little cash, which she rationed. Mr. Hayden owed her nearly \$8,000 in unpaid wages. He had persistently put off his promise to set her up with a savings account she could access abroad, and never did it. Even after the assault, he kept promising to send her money and pay for things. On October 23, he promised to pay her nearly \$20,000 that day. He asked if there was anything he could say or do to change her mind about leaving. He did not pay her that day and kept stringing her along. On October 25, he asked again whether she was sure she did not want to return to work for him, suggesting that she should decide “before I go to all this effort” of paying her. He continued to play on Ms. L’s emotions by mentioning the impact of the events on his dog. Around October 26, he left the marina. On October 30, he emailed Ms. L again to confirm that he had sent her partial payment of her outstanding wages and expenses, to an account she could not access. He also advised he had consulted with two different law firms, and would be “following their instructions”. He said he had “charter a flight and will be traveling back to [BC] so I can be present to address the other issues you have” [as written].

[49] Without money, Ms. L had to rely on the kindness of strangers for basic supplies including food and water. She was scared to leave her room, and paranoid that she was being watched. Eventually, the hotel asked her to leave the room which had not been paid for. She moved onto a stranger’s boat and then a stranger’s trailer. During this time, Ms. L says she was “scared” and “out of my mind, thinking of doing terrible things”.

[50] One of the women Ms. L had met introduced her to a lawyer, who agreed to help her. She stayed in Mexico with the understanding that the lawyer could help her get her wages and press criminal charges related to the assault. Through the lawyer, they agreed that Mr. Hayden would pay Ms. L \$79,000 and, in exchange, she had to sign a written statement “waiving everything that had happened” and give him all the photos from her phone. Mr. Hayden never paid her this amount, and their deal never materialized. In this time, Mr. Hayden sent Ms. L a vaguely threatening message with instructions about how to leave Mexico.

[51] Eventually, Ms. L determined that there was no point in staying in Mexico any longer. She did not have money to pay the lawyer, and Mr. Hayden was not keeping his promises. She shared a ride with another boat captain back to San Diego. Mr. Hayden said he would leave travel money for her in San Diego to get home, but did not.

[52] Once she was in San Diego, Ms. L called her parents. They helped her to book a flight home. Ms. L flew home on November 1, 2019.

[53] At home, Ms. L’s parents made her go to the hospital. This was scary for Ms. L, who still understood that Mr. Hayden had access to her medical records. Her interactions with the doctor, who was accompanied by a group of medical students, was not positive.

[54] In the meantime, Mr. Hayden continued to contact Ms. L. On November 3, he emailed her to ask if they could “put Mexico behind us?”. He again invoked his dog, saying “Capone misses you so much”. On November 5, he switched tactics. He wrote her an angry email blaming her for the assault and suggesting that he had saved her from a dangerous situation. He suggested she should apologize for taking his glasses (which he had broken while assaulting her). He told Ms. L she had two options:

- 1, The choice to put Mexico behind you and return to work.

Chalk it up to stupid drunken behaviour, and very poor judgement on both our parts. Continue with the adventure that we planned and started. Get the social media up and running. Then work on your clothing line.

- 2, Go find a job



On November 17, Mr. Hayden wrote to her again trying to justify his behaviour, telling her again that the dog missed her and he would be happy to have her back. He copied and pasted his same apology that he had read to her after the first sexual assault, removing only one line. Ms. L's responses to all these communications continued to focus on trying to get him to pay her the money he owed, an obligation he continued to evade.

[55] Ms. L stayed with her parents for about one month. She attempted to move back into her own place, but that "derailed quickly". She did not feel safe, and used cocaine again for the first time in several months. She continued using until she overdosed one night alone in her apartment. She managed to reverse the overdose with naloxone. On December 2, she went to the emergency room after experiencing a panic attack. From there, her parents picked her up and brought her back to their home. In a clinical note dated December 11, 2019, the doctor reported that Ms. L was experiencing nightmares, hypervigilance, anxiety, and was scared and easily triggered. She was having panic symptoms three times a day, occasionally waking her up from sleep. She was not sleeping well, and had low energy and concentration.

[56] The months following these events began the slow process of healing. Ms. L began physiotherapy for her physical injuries from the assault, and received some counselling. She could not work. Around June 2020, she successfully applied for income assistance as a person with disability.

[57] On January 11, 2021, a psychologist issued a Psychology Assessment Report for WorkSafeBC. This report was submitted as an expert report in this proceeding. The psychologist concluded that Ms. L was exhibiting severe anxiety symptom and PTSD. Her PTSD symptoms were most intense for the 10-11 months following the assault, and only beginning to improve when she had access to regular counselling. The psychologist opined that the PTSD arose initially from the sexual assault in March 2018 and ongoing sexual harassment after that, with the major aggravator being the October 2019 physical assault. Her stimulant use disorder and alcohol disorders were in sustained remission. I will return to this report below in my discussion of remedy.

[58] On February 16, 2021, WorkSafeBC found Ms. L was entitled to wage loss benefits for the mental and physical injuries she sustained in the assault, specifically aggravation of pre-existing PTSD, contusions and strains/sprains to her left elbow, shoulder, neck, upper back, lower back, jaw, left eye, and right knee. Ms. L counts this as a “true blessing”. She was finally able to get immediate and consistent counselling, and treatment for her soft tissue injuries. She had access to benefits which paid for her medications and “kept me living”.

[59] On November 22, 2021, WorkSafeBC determined that Ms. L’s PTSD had stabilized into a permanent condition. She was referred to vocational rehabilitation to help her to return to work in a different vocation. Through that program, she has been taking courses to pursue a different career. She can never return to work as a personal executive assistant.

[60] As I said at the outset, Mr. Hayden’s behaviour throughout Ms. L’s employment was discriminatory. All of his abuses were connected to her sex and substance use disorder, which were foundational to the power imbalance that allowed him to continuously sexually harass and humiliate her, manipulate her emotionally, and withhold her wages. The physical assault, triggered by jealousy about Ms. L’s interactions with other men, was the ultimate manifestation of his dominance over her, and was inherently gendered: *Loiselle* at paras. 273-274; *Ms. K* at paras. 102-103. I find that the Respondents violated s. 13 of the *Code*, and that Ms. L is entitled to remedies.

#### **IV REMEDIES**

[61] I have found that the Respondents discriminated against Ms. L in her employment based on her sex and disability, in violation of s. 13 of the *Human Rights Code*. I declare the conduct set out in my decision to be discrimination, and I order the Respondents to cease the contravention and refrain from committing the same or similar contraventions: *Code*, ss. 37(1)(a) and (b).

[62] In addition to these orders, Ms. L seeks compensation for injury to her dignity, feelings, and self-respect, wages lost because of discrimination, and expenses incurred by discrimination. I consider each in turn.

### **A. Compensation for injury to dignity, feelings, and self-respect**

[63] A violation of a person's human rights is a violation of their dignity. The primary way that the *Human Rights Code* addresses this violation is by giving the Tribunal discretion to order compensation for injury to a complainant's dignity, feelings, and self-respect. The purpose of these awards is to compensate the complainant, and not to punish the respondent.

[64] To determine an appropriate award, the Tribunal generally considers three broad factors: the nature of the discrimination, the complainant's social context or vulnerability, and the effect on the complainant: *Torres v. Royalty Kitchenware Ltd.*, 1982 CanLII 4886 (ON HRT); *Gichuru v. Law Society of British Columbia (No. 9)*, 2011 BCHRT 185 at para. 260, upheld in 2014 BCCA 396. Ultimately, the amount of injury to dignity damages is "highly contextual and fact-specific": *Gichuru* at para. 256. While the Tribunal may consider awards in other cases, the exercise is not to identify a "range" established in other cases. Rather, it is to try to compensate a complainant, as much as possible, for the actual injury to their dignity: *University of British Columbia v. Kelly*, 2016 BCCA 271 at paras. 59-64; *Francis v. BC Ministry of Justice (No. 5)*, 2021 BCHRT 16 at para. 176. In this case, Ms. L seeks an award of \$100,000. I agree this amount is appropriate.

[65] To begin, the nature of the discrimination was extremely serious. It was ongoing over a 21-month period and included sexual and physical assault, as well as rampant sexual harassment, and emotional and economic abuse. This Tribunal has frequently recognized that sexual assault by a supervisor is "at the extreme end of the spectrum" of sexual harassment: *Ban v. MacMillan*, 2021 BCHRT 74 at para. 39; *MP v. JS*, 2020 BCHRT 131 at para. 196. Physical assault is in the same category. The discrimination ultimately resulted in the loss of Ms. L's employment and – for some period – her ability to work in any capacity. Because of the significance of employment to a person's dignity, cases which involve the termination of

employment have often attracted the top end of this Tribunal's awards: see e.g. *Senyk v. WFG Agency Network (No. 2)*, 2008 BCHRT 376 at paras. 463-470; *Basic v. Esquimalt Denture Clinic and another*, 2020 BCHRT 138 at para. 194.

[66] Next, Ms. L was uniquely vulnerable to the impacts of Mr. Hayden's conduct. In using the term "vulnerability", I am mindful that the causes of this vulnerability are rooted in systemic social inequality and not factors endemic to Ms. L as a person: *Nelson v. Goodberry Restaurant Group Ltd dba Buono Osteria and others*, 2021 BCHRT 137 at para. 35; *Ms. K* at paras. 139-140.

[67] The power imbalance between the parties was profound. Some of that imbalance was inherent to the relationship. Ms. L was vulnerable as an employee: *Ms. K* at para. 143. She had a history of traumatic sexual assault and domestic violence: *Araniva* at para. 135. When she began working for Mr. Hayden, she had an active substance use disorder and was engaged in expensive court proceedings with her abusive ex-husband over his refusal to pay spousal support. Mr. Hayden was 17 years older than Ms. L, and positioned himself as her "mentor" and caretaker. Most of Ms. L's work took place in the isolation of Mr. Hayden's home or boat: *Basic* at para. 202; *Araniva*, at para. 134; *JS* at para. 156.

[68] Mr. Hayden then leveraged these power dynamics to his advantage. His conduct exhibited many of the markers that the Tribunal outlined in *PN*, which allow abusers to maintain power and control in a relationship: para. 68. He intimidated and threatened Ms. L, for example telling her that he had access to her medical records and had given his lawyers incriminating evidence about her. He denigrated and demeaned her, infantilized her by calling her a "good girl" and making her call him "sir", took unflattering photos to embarrass her, and treated her like a servant that he "owned". He manipulated her connection to his dog to make her feel guilty and beholden to him. He blamed her for the abuse, isolated her from her friends and family by constantly monopolizing her time, and controlled who she could interact with in Mexico. He justified his actions by his jealousy and concern for her, and his health problems. He exerted economic power over Ms. L by ensuring that she was dependent on him for money and drugs. He knew about Ms. L's struggles with money. He put Ms. L in the position to constantly

have to be asking for her wages. He encouraged and exploited her dependence on cocaine by encouraging her to use cocaine from his supply. He gave her drugs and alcohol and then assaulted her.

[69] In this context, the impact on Ms. L was profound. I have set out some of that impact already. Here, I do not intend to repeat myself but rather to identify some of the most significant considerations. In determining the award, I have considered all the impact set out in this decision.

[70] According to the psychologist's expert report, the March 2018 sexual assault caused Ms. L to develop PTSD. It triggered memories of earlier sexual assaults and made her feel like she was being "raped again". Her PTSD was exacerbated over the following months by the ongoing sexual harassment. Over the period of her employment, Ms. L required medical attention multiple times, including for panic attacks, drug overdoses, and other stress-related symptoms. Her symptoms escalated in the three months prior to the boat trip, including panic attacks requiring medical attention. Before the trip, she was exhibiting "hypervigilance, intrusive memories, cued emotional and physical distress, negative emotional state and social detachment" because of the conditions in her workplace. Her functioning was declining "from the chronic stress from working with [Mr. Hayden]". She increased her substance use to cope, and her health declined further. The 2019 physical assault then aggravated Ms. L's PTSD to the point she could no longer work or engage in many of the activities of daily living. Her symptoms were most intense in the 10 or 11 months immediately after the assault, and only began to improve slightly when she had access to some counselling.

[71] Both Ms. L and her father testified about how Ms. L is a "completely different person" after the events in this complaint. Before meeting Mr. Hayden, and especially before the final physical assault, Ms. L was active and energetic. She loved life and adventures. She was confident and outgoing, the light in any room. She was detail- and people-oriented, and could "organize anything". She was socially active and a "self-made person". She loved exploring her city and being outside with her dog. She was a "VIP" and a "boss". Mr. Hayden took this from her.

[72] In the years since these events, Ms. L has struggled to regain her health and wellbeing. It took many different trials and errors to find the right balance of medication for her physical and mental conditions. She still feels that most days are a “rollercoaster” of emotions. She is paranoid, emotional, and moody. She gets easily stressed and overwhelmed, and breaks out in tears. She hardly goes out except to see the various specialists who are supporting her. She cannot be out in a crowd, including for grocery shopping or other daily tasks. She has nightmares, and trouble falling and staying asleep. She is easily panicked. Her father described a “scary” occasion when he made a noise opening a window and Ms. L screamed and dropped to the floor in the fetal position, having a panic attack. I witnessed a similar episode when there was a sudden noise during the hearing. She is hypervigilant and fearful nearly all the time. She no longer sings or takes long showers. She relies on a strict schedule and requires advance notice and preparation to go out. She has almost no social life and has lost many of her friends. There are parts of her city that she used to love, where she still cannot go. She has difficulty concentrating, can no longer multitask, and is “scattered”. She is slow and feels “dumb”. She has lost her previous vocation and is now training for work in an entirely different field which she hopes will meet her numerous job-related restrictions.

[73] With hard work and perseverance, Ms. L has made some gains. Four years after the assault, she can go across the street to the pharmacy and can use the bus. She can check her mail. Her father says she is starting to be able to relax and enjoy herself with her family. However, there is still a long way to go. The impact on Ms. L will be lifelong.

[74] Considering all these factors, I agree with Ms. L that an award of \$100,000 is appropriate. I acknowledge that this award is the highest that the Tribunal has awarded for sexual harassment and assault: see e.g., *Basic* (\$25,000), *JS* (\$40,000), *Ms. K* (\$45,000), *Araniva* (\$40,000), and *PN* (\$50,000). In my view, the increase is justified, first, by the nature of the discrimination, which lasted longer than other cases, pervaded almost all aspects of Ms. L’s employment, and included physical and sexual violence. Second, Ms. L has presented evidence of a lifelong impact on all aspects of her life. This is similar to *Francis*, where the Tribunal awarded \$176,000. Finally, the award is consistent with the upward trend of the Tribunal’s

awards, and with awards made in Ontario: see e.g., *AB v. Joe Singer Shoes Limited*, 2018 HRTO 107 (\$200,000); *G.M. v. X Tattoo Parlour*, 2018 HRTO 201 (\$75,000); *O.P.T. v. Presteve*, 2015 HRTO 675 (\$150,000 and \$50,000); *NK v. Botuik*, 2020 HRTO 345 (\$170,000).

[75] I order the Respondents to pay Ms. L \$100,000 as compensation for injury to her dignity, feelings, and self-respect, as well as post-judgment interest on that amount in accordance with the *Court Order Interest Act*.

## **B. Wage loss**

[76] Section s. 37(2)(d)(ii) gives the Tribunal discretion to compensate the person discriminated against for wages lost by the contravention. The object of an award for wage loss is to put the person in the position they would have been in had the discrimination not occurred: *Gichuru* at para. 300.

[77] In this case, Ms. L seeks awards for past and future wage loss, totalling \$61,541.90. This amount represents the difference between what Ms. L would have earned if she had continued working for the Respondents, and what she has received from WorkSafeBC, social assistance, and the Canada Pension Plan.

[78] I am satisfied that Ms. L has lost wages because of the discrimination: *Gichuru* at para. 302. The connection is simple and direct: the discrimination led to the loss of her employment. It also disabled her to the point that she has been unable to return to work and has been required to retrain for a different vocation. As in *Benton*, Ms. L not only lost her job but also her ability to mitigate her damages by looking for other work: *Benton v. Richmond Plastics*, 2020 BCHRT 82 at para. 90. But for the discrimination, I am satisfied that she would have continued to work as a personal assistant earning wages and supporting herself, as she had for the many years before.

[79] I am also satisfied that Ms. L has proven that this loss will extend to December 2024. In the immediate aftermath of the final assault, Ms. L was completely disabled from working. In 2021, WorkSafeBC determined that her PTSD had plateaued and she could never return to work

as a personal assistant. She began her vocational rehabilitation, which has entailed a rigorous schedule of classes that she is working hard to successfully complete. She anticipates completing her retraining in December 2024. WorkSafeBC has approved her retraining benefits until October 13, 2024, following which Ms. L is required to complete a three-month unpaid practicum. After that point, Ms. L's expectation and hope is to return to work in a different field which can accommodate her disabilities caused by the Respondents' discrimination. In this context, the future loss is not speculative and is compensable as a direct consequence of discrimination: *Francis* at para. 126.

[80] I calculate the total loss as follows:

- a. Ms. L's average annual salary for the Respondents was approximately \$78,000 (\$37.50 per hour, 40 hours per week). From January 2019 to December 2024, she would have earned \$468,000.
- b. From this amount, I subtract:
  - i. The amount Ms. L earned in 2019 before leaving her employment (\$54,073).
  - ii. The amount of wages that Ms. L recovered through Employment Standards Branch, including compensation for length of service (\$6,337.50).
  - iii. The amount Ms. L received in 2020 from social assistance benefits (\$30,234).
  - iv. The amount Ms. L received in 2021 from WorkSafeBC as permanent disability benefits and, beginning in October 2021, vocational rehabilitation planning benefits, as well as benefits from CPP (\$128,710).
  - v. The amount Ms. L received in 2022 from WorkSafeBC and CPP (\$64,405).



- vi. The amount that Ms. L is projected to receive in 2023 from WorkSafeBC and CPP (\$65,767).
- vii. The amount that Ms. L is projected to receive in 2024 from WorkSafeBC and CPP (\$59,931.60).

[81] The total is **\$61,541.90**. I order the Respondents to pay Ms. L this amount, as well as pre- and post-judgment interest in accordance with the *Court Order Interest Act*.

### **C. Expenses**

[82] Section 37(2)(d)(ii) empowers the Tribunal to make an order to compensate Ms. L for expenses incurred by the Respondents' discrimination. The purpose of such an order is to, as much as possible, place the complainant in the position they would have been in but for the discrimination: *Gichuru* at para. 388.

[83] Ms. L has proven that she was required to incur medical expenses to recover from the impact of the discrimination, including the PTSD from the ongoing discrimination and final assault, as well as the physical injuries sustained in the assault. This has included chiropractic services, trigger point injections, acupuncture, homoeopathic services, counselling, and osteopathy/cranial therapy. The total amount is \$5,466.35.

[84] Ms. L has also proven that she was required to incur disbursement expenses from discrimination, in the amount of \$3,233.49. These expenses including courier services, BC Registry searches, obtaining clinical records, trust administration fees, and photocopies. I am satisfied that these expenses, incurred through her legal counsel, were reasonable given the complexity of issues in this case: *Francis* at para. 229.

[85] I order the Respondents to compensate Ms. L for **\$8,699.84** as expenses incurred because of discrimination, as well as pre- and post-judgment interest on that amount in accordance with the *Court Order Interest Act*.

## V ORDERS

[86] I have found Ms. L's complaint to be justified. I make the following orders:

- a. I declare that the Respondents' conduct contravened s. 13 of the *Code*: *Code*, s. 37(2)(b).
- b. I order the Respondents to cease the contraventions and refrain from committing the same or similar contraventions: *Code*, s. 37(2)(a).
- c. I order the Respondents to pay Ms. L **\$100,000** as compensation for injury to her dignity, feelings, and self-respect: *Code*, s. 37(2)(d)(iii).
- d. I order the Respondents to pay Ms. L **\$61,541.90** for wages lost because of discrimination: *Code*, s. 37(2)(d)(ii).
- e. I order the Respondents to pay Ms. L **\$8,699.84** for expenses incurred because of the discrimination: *Code*, s. 37(2)(d)(ii).
- f. I order the Respondents to pay Ms. L pre- and post-judgment interest on compensation for lost wages and expenses, based on the rates set out in the *Court Order Interest Act*.
- g. I order the Respondents to pay Ms. L post-judgment interest on compensation for injury to her dignity, feelings, and self-respect, based on the rates set out in the *Court Order Interest Act*.

## VI FINAL WORD

[87] The last question that Ms. L's lawyer asked her during the hearing was "what are you proud of?" She answered:

I never thought I would be able to get to today and be able to do this. This is for me like taking back my power and being able to tell my truth. My parents have seen a lot of changes in me over the four years but I am

really hard on myself ... they're not fast for me and I don't see those changes like they see them. But I am very thankful that I am drug free and smoke free and, from that aspect, living a clean life. I am thankful for all the support that I have received with the counsellors, with you, with victim services, everybody that's been a part of seeing me get through this and help me... whether that's even just like walking out in public, going into a store, getting on a bus. Those small things. But everybody has played a role in getting me to that and it's been years. I still have a lot of work to do but I have a lot of people rooting for me. I know now. So many people just want to see me be me again... I want to have joy. I want to be me again, I do. I'm hopeful.

I commend Ms. L for the strength it took to pursue this process to its end, and I wish her all the best.

Devyn Cousineau  
Vice Chair