

IN THE MATTER OF AN APPEAL TO AN ADJUDICATOR PURSUANT TO SECTION 3-54 OF  
*THE SASKATCHEWAN EMPLOYMENT ACT, SS. 2013, Chapter S-15-1*

BETWEEN:

TOWN OF REGINA BEACH

AND

JENNIFER COREY

AND

Director, Occupational Health and Safety, Ministry of  
Labour Relations



Appellant

Respondent

Respondent

Decision Appealed from: Occupational Health Officer Decision dated May 22, 2019.

Date of Hearing – October 30 and 31, 2019

Adjudicator -

Marlene Weston

For the Appellant, Town of Regina Beach

Merrilee Rasmussen, Q.C.  
Rasmussen, Rasmussen & Charowsky LP  
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For the Respondent, Jennifer Corey

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2398 Scarth St.  
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For the Respondent, Director, OH&S

no representation

## DECISION

### I INTRODUCTION

[1] The Town of Regina Beach has appealed the Decision of an Occupational Health & Safety Officer dated May 22, 2019, including Notice of Contravention Report No. 1-00005676 pursuant to Sections 3-53 and 3-54 of *The Saskatchewan Employment Act (the Act)*. The matter has been referred to an Adjudicator. Marlene Weston has been appointed as Adjudicator to hear this matter.

[2] The Town of Regina Beach, the Appellant, is appealing the conclusion reached by the Occupational Health and Safety Officer that the Appellant had taken discriminatory action

against the Respondent, Jennifer Corey, an employee of the Town. The Respondent alleged that the Appellant had terminated the Respondent's employment on April 9, 2019 without providing good and sufficient reasons for such termination contrary to Sec. 3-35 of *The Saskatchewan Employment Act*.

[3] The Respondent then filed a complaint with the Occupational Health & Workplace Safety Branch on April 17, 2019 alleging that the Appellant had taken discriminatory action against the Respondent in terminating her employment. The complaint was investigated and an Officer's Report was issued on April 26, 2019.

[4] On May 22, 2019 a Notice of Contravention was issued by two Occupational Health & Safety Officers requiring that the Appellant reinstate the Respondent in her position, that she be paid all wages that the Respondent would have earned had she not been wrongfully discriminated against, and that the employer remove any reprimand or reference to the matter from any employment records.

[5] The Appellant then filed a Notice of Appeal with the Director of Occupational Health & Safety appealing the decision of the two Occupational Health & Safety Officers that the "removal of Jennifer Corey after raising health and safety concerns and being "terminated" at this worksite is an unlawful discriminatory action pursuant to section 3-35.

[6] Pursuant to section 3-53(1) and 3-54(1) of *The Saskatchewan Employment Act*, the appeal was referred to the Registrar of the Labour Relations Board and an Adjudicator was appointed to hear the appeal.

## II BACKGROUND

[7] At the request of the Ministry of Labour and Workplace Safety, the Appellant compiled a chronology of information from their files regarding the employment history of the Respondent. The document was filed with Susan Boan on May 9, 2019. Below is a summary of the contents of that document:

- Jennifer Hoffman, was hired by the Appellant, Town of Regina Beach, as a temporary labourer to fill in for seasonal requirements. On May 10, 2017, the Respondent was made a full time contract offer of employment with the Town.
- There were several periods of time off during the summer of 2017 when the Respondent was involved in court proceeding against Trevor Hoffman. On January 1, 2018, the Respondent became Jennifer Corey.

- The Respondent was away from work on January 3 to 10, 2018 on an unscheduled absence.
- In March, 2018, the Respondent was made a full time permanent employee with a three month probationary period on April 1, 2018. Due to ongoing absences, the probationary period was extended from July 1, 2018 to October 1, 2018. The Respondent became a permanent employee on October 1, 2018.
- There were a number of absences from work following the Respondent's appointment as a permanent employee:
  - October 25, 2018 – one week due to medical reasons
  - December 11, 2018 – work accident at the Town shop requiring one day off for treatment.
  - December 13, 2018 – absent to pick up an unwell son.
  - December 28, 2018 until March 1, 2019 – foot injury.
- The Employment Report also detailed a number of public complaints against the Respondent, some of which were anonymous.
- In addition there were several incidents involving other employees. The Respondent lodged with the Applicant the following complaints of sexual misconduct/harassment by one of the employees, Quincy Grohs:
  - March 1, 2019 – a verbal complaint
  - March 18, 2019 - a handwritten statement
  - April 8 and 9<sup>th</sup>, 2019- 2 handwritten statements

**[8]** On April 9, 2019, a decision was made by the Appellant to end the Respondent's employment relationship with the Town of Regina Beach. A letter prepared by the Town's Manager of Public Works and Utilities addressed to the Respondent was delivered during the meeting with Mr. Beachey and Mr. Willfong the Respondent's employment was terminated.

**[9]** On April 15, 2019, the Respondent filed a complaint with the Occupational Health & Safety Branch of the Ministry of Labour and Workplace Safety. A Discriminatory Action Questionnaire was filed by the Respondent on April 17, 2019. In the Questionnaire she completed, the Respondent claimed that the complaints that were made by her to the Applicant were a factor that lead to her termination without cause or notice.

**[10]** The claim was investigated and as a result of that investigation, a letter was issued by Jon Paradowski and Susan Boan, Occupational Health & Safety officers with the Harassment and Discriminatory Action Prevention Unit of the Ministry of Labour and Workplace Safety dated April 26, 2019. The employer was required to provide written documents to OHS (Occupational Health and Safety) identifying the reasons for the termination of Ms. Jennifer Corey from the Town of Regina Beach by May 10, 2019.

[11] The Appellant filed a response to the letter from Occupational Health and Workplace Safety dated May 9 2019. The response was a chronology from the employment files of the Respondent.

[12] A further investigation of the matter was conducted and as a result of interviews conducted on May 15 2019, a Checklist - Discriminatory Action was completed and signed by the OHS Officer and Manager on May 22, 2019.

[13] As a result of the investigations, on May 22, 2019 a Notice of Contravention was issued to the Appellant stating that the Appellant had failed to provide good and sufficient reasons for the termination of the worker, Jennifer Corey. The OHS Officer found that the employer had taken discriminatory action against the employee after she had filed the complaints against her co-worker. The Notice of Contravention stated the Compliance Required of the employer as set out under Act 3-36 (2) of *The Saskatchewan Employment Act* was as follows:

- a) cease the discriminatory action.
- b) reinstate the worker to his or her former employment on the same terms and conditions under which the worker was formerly employed.
- c) subject to subsection (5) pay any wages the worker would have earned if the worker had not been wrongfully discriminated against; and
- d) remove any reprimand or other references to the matter from any employment records maintained by the employer with respect to that worker.

[14] The Appellant then filed a Notice of Appeal. The Notice of Appeal filed with the Adjudicator on June 5<sup>th</sup>, 2019 contained a request for a stay of all or a portion of the effect of the Notice of Contravention pending the outcome of the appeal. Materials in relation to the request for a stay of proceedings were filed on September 9<sup>th</sup>, 2019 by Appellant.

[15] In relation to the Motion re Order for Stay of Proceedings, the Adjudicator set a conference call for October 20, 2019 to hear arguments from the solicitors for the Appellant and the Respondent. The Respondent filed materials in support of the Respondent's position on October 20<sup>th</sup>, 2019. Arguments were heard by the Adjudicator and the Adjudicator reserved her decision.

[16] The Adjudicator issued her decision on October 28, 2019. In regards to the tests set out in *RJR Macdonald Inc. vs Canada (attorney general)* [1994] 1 S.C.R. 311 the ruling was based on the parties' responses to the three sections of the test:

- a. **serious issue to be tried** - There is a serious issue to be tried, and that is the matter of whether the termination was discriminatory in regards to the harassment



complaints lodged by the Respondent. The appeal is neither vexatious or frivolous as it relates to the future state of the safety, health and welfare of the workplace.

- b. ***irreparable harm*** - As the Respondent will be re-instated and fully compensated for wages lost if the hearing finds that her termination was discriminatory, she will not have suffered irreparable harm. However, if the Appellant reinstates the Respondent into a poisoned work environment temporarily without a resolution of the matter through the hearing process, it will have jeopardized its responsibility under *The Saskatchewan Employment Act* as employer to ensure insofar as is reasonably practicable the health, safety and welfare of all its employees.
- c. ***balance of convenience*** - As argued by the Appellant, there is no irreparable harm to the Respondent if the appeal is dismissed as she will be compensated for time lost and reinstated. In the event that the appeal is upheld, the Respondent will be in the same position as she is currently. Her position that she did not apply for other employment because she was expecting to be reinstated was a choice that she made which should not be weighed in the balance.

[17] The Adjudicator issued an Order for a Stay of the Proceedings on October 28<sup>th</sup>, 2019 set out in the Decision and Notice of Contravention Report No. 1-00005676 issued by Occupational Health & Safety Officers, Jon Paradowski and Susan Boan, dated May 22, 2019.

[18] On October 28, 2019 The Respondent requested that two subpoenas be issued to compel Corey Szackas and Jim Gatske to appear at the hearing to be held on October 30, 31 and December 1, 2019. The subpoenas were issued. The Appellant also provided the Adjudicator and the Respondent with a list of witnesses to be called during the hearing.

[19] The matter then proceeding to Hearing.

### III EVIDENCE

#### Agreement on Process Direction

[20] The Hearing commenced on Wednesday October 30, 2019 in Regina, Saskatchewan with representatives for the Appellant and Respondent other than the Director of OH&S present. The Adjudicator's authority was confirmed by the parties.

[20] After introductions the Adjudicator referred to the Process Direction document that she had sent to the parties to set the process for the hearing. The Adjudicator asked if the parties had any preliminary objections to raise and none were raised.

**[21]** The Adjudicator and the parties discussed logistics and the following points were agreed upon:

- a. A book of documents was prepared and agreed to by the solicitors for both parties. The evidentiary documents were presented and received in evidence by the Adjudicator.
- b. Process Schedule:
  - Order for presentation of evidence and statements will follow normal procedure for court trials.
  - There would be no closing arguments. Final written submissions by each party to be submitted by November 12<sup>th</sup>, and then response by November 18<sup>th</sup>. If there are no responses, notification that no reply will be necessary.

## **Opening Statements:**

### **Opening Statement by Appellant**

**[22]** The Appellant stated that this Opening Statement is to lay out the framework of this proceeding regarding the Appellant's position:

- To emphasize that the onus is on the Employer not to establish that the Respondent was dismissed for just cause, and that the Respondent was not dismissed because she made a complaint.
- That the Respondent was difficult to get along with. Regina Beach is a small town. There is a small group of employees. The nature of work is outdoor work where it is necessary to have employees work in pairs for safety reasons. They have to work as a team. When employees don't work properly the whole town knows it. They are ambassadors for the Town.
- That although the Respondent does the job, it is the work environment. Employees are afraid to work with her for fear of what she will report.
- That complaints from citizens of the Town were investigated and found unsubstantiated.
- That the decision to dismiss without cause was considered in March for other reasons, not in response to complaints that she filed on April 8<sup>th</sup> and 9<sup>th</sup>, 2019. The decision was made on April 8<sup>th</sup> and provided to the Respondent on April 9<sup>th</sup>. The Appellant was not aware of the complaint made to Occupational Health and Workplace Safety on April 9<sup>th</sup>, 2019.

[23] In conclusion the Appellant emphasized that the reasons for dismissal have nothing to do with complaints of harassment. The reasons were:

- The other employees cannot work with her, and
- she is a poor representative of the Town.

#### **Opening Statement by Respondent**

[24] The Respondent stated that she was not making much of an opening statement. Her party has not seen the evidence of the conclusions that were reached.

[25] As far as rebuttal of the reasons for dismissal they are as follows:

- As far as the Respondent making allegations, that is her right.
- The complaints being investigated not been substantiated by the Applicant. There is a harassment procedure, and conclusions should be made on those procedures. Some of the allegations are unfounded. Regarding the decision was made on April 8<sup>th</sup>, there was no knowledge of the complaint being made to OHW.
- Regarding the allegations that Ms. Corey does not get along with her fellow employees, evidence will show that she is not the only person in that regard. It is happening in multiple facets of the job. She may have been the one that was chosen to be terminated. Why was my client chosen to be terminated , as opposed to other employees who do not get along?

#### **Appellant's Witnesses**

##### **Examination in Chief of Quincy Groh by Appellant**

[26] Question: *How long have you lived at Regina Beach?* Response: The witness testified he has lived in Regina Beach since Nov. 1, 2015.

[27] Question: *What is your current position?* Response: I am employed by the Town of Regina Beach and am a member of the staff in the Public Works and Utilities. Before I was working in Regina. Previously I had been Maintenance Foreman for the Town of Dysart. I was interviewed by Claude Seguin and Jim Gatzke for my position and started the 2<sup>nd</sup> week of October, 2015. The Applicant reviewed the Application and Resume.

[28] Question: *What is the work schedule?* Response: Hours of work for the position are 7:00 am to 4:00 pm. Everybody starts at the same time. Jim Gatzke assigns the work each day. If need be, depending on the project, you are assigned a team member – cutting trees needs a partner, operating equipment like mowers does not need a partner. Mr Grohs had worked with the Respondent many times.

[29] Question: *Referring to Accident/Incident Reports Tabs 3, 5, 6, 8, 10. In Tab 10, He had admitted that the neighbour's son was driving in the initial investigation, but when reporting, said that the neighbor was driving as son did not have a license.* Response: There was no damage to the Town's vehicle. *In Tabs 1 and 12 there were reports of altercations between the Supervisor for Public Works and the employee but there was no discipline.* I was asked to apologize for the altercation before the staff and students.

[30] Question: *When the Respondent applied for the position at the Town, she asked you for a reference.* Response: I had agreed but did not get a phone call asking about the reference .

[31] Question: *How was your working relationship with the Respondent?* Response: The Respondent was hired, and we worked well at first. Then she told lies about the staff, pitting one against the other. Examples of situations that arose:

- **Garbage Bag issue** - Corey and Frankie had put bags in garbage bins. Ms Corey and he had just laughed about it as silly. Then she told Corey Szackas and Frankie Varsanyi that I had complained about it for about an hour. They told me and I said I had not talked about it for very long.
- **Tab 24 Cat Piss issue** – Respondent. wanted to change her pants because she had got cat urine on them. She didn't ask for a ride home, but told Jim Gatske that I had refused to give her a ride home. I was mad. I asked Jim to do something about her. I wanted to be switched out.
- **Tab 24 – 5<sup>th</sup> page** – The Respondent said I had threatened to punch her. She gave me a belly bump. She said she was going to 'pop' them.
- The Respondent said that I had anonymously phoned her. I testified that I have never called her. I have not spoken to her since March.
- The complaint she made about my touching her hair, I was trying to make her laugh, and just touched a curl.
- There were many lies and when the Respondent was confronted about the lies, she would get mad. There was an incident where we were both fighting and Jim Gatske told us if they could not work together to go home. We left and I only was paid for 3 hours. Tab 49. It is in the complaint under tab 24, last page which started 'Today..' March 18, 2019.
- Marty Tannahill asked the witness to come to see about the Respondent stealing crusher dust. They went to her place to take pictures of the tires of her truck. The Respondent came in to the Town Office to complain about the witness taking pictures of her truck. The witness was at first suspended on April 12, but then was paid for the day. Suspension did not happen when Quincy explained to Jim what happened. Letter of reprimand placed on the witness' file was taken back.

- Another incident involving me was when the Respondent brought the garbage truck around from the back. When I got in to drive, the Respondent was really mad. She wanted to drive, and said that I told her to 'f---k' off.

The Appellant asked Mr. Grohs what he thought would happen if she is returned to the workplace. He replied that the other employees said they would not work with the Respondent and will resign. They said they could not trust what she will say.

[31] The Appellant had no further questions.

### **Cross examination of Quincy Groh by Respondent**

[32] Question: *Regarding the incident re SGI, do you often misrepresent the facts on government documents?* Response: No, it was him that was at fault. *Did you not tell the Employer that the son was driving? Did the Employer get the SGI documents because the Employer's vehicle was not damaged?* No Response.

[33] Question: *When Jennifer chest bumped you, were you being aggressive? Were you disciplined?* Response: No. Follow up Question: *Did the supervisor, Jim see i?* Response: He told us to go into the office and work it out, The two of us went into the office and hugged.

[34] Question: *You never actually went to work at the water plant?* Response: I was hired and was working at Public Works when I was offered this job. *You didn't want to work at the water plant because you would have to work with Rod LaSalle?* Response: Yes

[35] Question: *In the document at Tab 12 – you banged on the table because you were angry. Did you flip the table or yell back?* Response: No I did not flip table and only yelled back because I was being yelled at.

[36] Question: *Did you ever tell the Respondent to 'Fuck off'?* Response: They all use that language. *Call her a 'lying cunt'?* Response: He could not remember. *In the Cat Litter incident did you use a raised voice? Did you swear at her?* Response: No

[37] Question: *When people confront you, do you normally get angry? In the scenario with Claude, it was not his fault, and he was being yelled at in front of other people?* No response.

[38] Question: *In the document at Tab 40 you said you had never touched her inappropriately.* Response: I did not feel that was inappropriate.

[38] Question: *Did you ever comment on the jeans she was wearing?* Response: I do not remember. She tells everyone the kind of jeans she is wearing.

[39] Question: *Regarding the March 12<sup>th</sup> incident you went back to the shop. The Respondent told Corey that you had refused to give her a ride home. You were very angry because she was lying. You kicked the chair beside you because Jennifer sits there and it was empty. Do you get upset when something happens in the workplace that makes you angry?* Response: Sometimes

[40] Question: *April 9<sup>th</sup> you were told that you were working with Jennifer. She brought the truck around. Is it a general regulation that whoever does the circle check runs the equipment? Was her stuff on the driver's side? Did you touch her stuff?* Response: She had it in the arm rest – phone and smokes. I never told her to 'Fuck off'. I told her I was driving and she had a hissy fit and left.

[41] No further cross examination.

[42] No redirect.

#### **Examination in Chief of Frank Versanyi by Appellant**

[43] Question: *I understand that you have a long connections with the Town of Regina Beach.* Response: For 49 years we have had a Family cabin. For the last 20 years I have had a permanent residence. I am a Plumber – pipe fitter by trade. I have worked in a number of projects, oil refineries, potash mines, etc. I am now working at Town of Regina Beach – started June 18<sup>th</sup>, 2018. I took a 2 months leave of absence to work at the shut down of the Co-op Refinery where I worked as a pipe fitter for 25 years. I have a job at Regina Beach as a Labourer Level 4. I started out as a Level 3, but now have my Bob Cat ticket. I have a contract position with Regina Beach. Regina Beach contracts with employees for specific jobs. Level 4 does maintenance, landscaping, construction, pot holes cutting trees, fixing water breaks, painting, etc. Work gets allocated at the shop to various people according to their qualifications. Jim Gatzke is the Foreman.

[44] Question: *Did you work with the Respondent?* Response: Yes, I found her difficult to work with. We had some arguments. *Did she threaten to kick you or punch you?* Yes on 2 separate occasions:

- 1) They were cutting trees. She said she was going to punch me in the face, I responded 'ooh, shiver me timbers'. Respondent did not take it kindly.
- 2) In the shop, Respondent. threatened to punch me in the face. She was sick and I told her she was paid for sick leave and she should go home. She threatened me with a punch in the face. She was visibly angry and swore at me. She did a lot of swearing so I was not offended by it as I worked in construction and heard and said a lot of swearing.

[44] Question: *Were there other instances?* Response: I refused to work with her last fall because I was concerned about guilt by association. If I was with her and something happened

it would be my fault. She had a bad work ethic – bossy, disagreeable. She was unprofessional. She also used language in public in the stores instead of loud vulgar words just while she was on the job. When you are on the work site and there is no public around, that is different. Work is Work. You should not be saying things about people when you are working because it is a small town.

[45] Question: *Explain about the garbage can incident, the idea about putting garbage bags as liners in the garbage bins.* Response: Ms. Corey told Frankie that Quincy had complained about it for quite a while.

[46] Question: *Were other people threatened that you witnessed?* Response: Yes, Marty Tannahill. She told Marty she would ‘pop’ him. He said he would have a ‘coke’.

[47] Question: *Would he work with her again?* Response: No

#### **Cross Examination of Frank Varsanyi by Respondent**

[48] Question: *Did you ever report the threats from Ms. Corey to anyone?* Response: Yes to Jim Gatzke when I refused to work with her.

[49] Question: *Is there anyone else in the workplace that you refused to work with?* Yes, Quincy. It was the same thing - gossiping, hitting, don’t see eye to eye, guilt by association.

[50] Question: *Did you ever witness an altercation when the Respondent bumped Quincy?. Whose temper got high first?* Response: The Respondent’s temper got high. *Did Quincy threaten the Respondent as well?* Response: Quincy was acting aggressively in that scenario as well. I did not witness any of the incidents that led up to her termination. The events I saw happened quite a while before the termination.

[51] No redirect from Appellant.

#### **Examination in Chief of Marty Tannahill by Appellant**

[52] Question: *How long have you been working with Regina Beach?* Response: I have been working 6 and a half years with Regina Beach. I started in 2013. I am an Operator. I am also the Mechanic, small engines. I do a lot of work is in the shop, but also some outside. I am the replacement for Jim Gatzke when he is away. I read a job list prepared by Jim. I started working before either Quincy or the Respondent.



[53] Question: *How have you gotten along with Quincy?* Response: There have been no altercations and no fights. *How does he get along with Respondent.* Response: She told him she was going to 'pop' him. Can't remember what it was about. I heard her say the same things to Frank and Quincy - one was the garbage truck incident. I heard the fight.

[54] Question: *Did she frequently get difficult with other people?* Response: It was uncomfortable – like walking on egg shells. I observed that things were good between Quincy and the Respondent but things started to deteriorate. It was the lies – but I didn't hear anything.

[55] Question: *What about the chest bumping?* Response: Quincy told her repeatedly to get away from him. He walked into it and then he left. I can't remember things they were fighting over. Seems like there were fights going on often. I was present for the hair touching incident. She said don't touch me. He may have said that it was just a joke.

[56] *What about the chair incident?* Response: I didn't see the chair incident.

[57] Question: *What about the stock pile issue?* Response: There were smaller tire tracks in the stock yard. I was looking for Jim to report it. Quincy jumped into his truck to go with me to confirm that the tire tracks may have been the Respondent's. I told Quincy not to take a picture at the Respondent's house and that Jim would look after it. Respondent came into the shop with her camera that had caught Quincy taking a picture of her truck. Respondent went to see Jim and said that 'you better figure this out'.

[58] Question: *If she was brought back to work, how would the workplace be?* Response: Very tense. *How would you feel?* Not very good.

[59] No further questions.

#### **Cross Examination of Marty Tannahill by Respondent**

[60] Question: *Did you ever have any altercations with Quincy?* Response: No Never. There were little things, but never major issues. Response: *Did you report the altercation with Respondent that she would pop you?* Response: I said I made a statement I would have a root beer.

[61] Question: *Were you there when the hair touching incident occurred?* Response: I made a statement that I had never seen Quincy harass anyone in the workplace. Tab 39, dated May 2.

[62] Question: *You said it would be awkward if she came back. It would be awkward with Quincy?* Response: Yes and with the others with what is happening.



[63] Question: *Do you feel that you have to testify a certain way?* Response: I am not happy dealing with this. *Do you feel pressured by your employer to testify?* Response: No. I just want this to be over with.

[64] Question: *James said that the Respondent had said that Marty had given her shit because there was a child riding in the bucket.* Response: The incident didn't happen the way she said. I told James that If you have a problem, go to the office and report it. I wasn't even there that day. The lie was that she had stopped two people and freaked out because they had 2 children in the bucket of a Bob Cat.

[65] Question: *Did Quincy every comment on the Resp.'s jeans?* Response: She was always telling everyone about her jeans – they were Silvers. Quincy asked her why do you have such expensive jeans? Why are there holes in them?

[66] No more questions.

#### **Examination in Chief of Jim Gatske by Appellant**

[67] Question by Appellant: *How long have you been working at Regina Beach?* Response: 7 years. I am the Lead Hand – I give out the work orders, prioritize what needs to be done, dispatches workers. *Do people work alone?* No, they work in groups for safety reasons. There are 4 full time workers, 2 contractors and student workers. Contractors are seasonal – full time during the summer and winter 2 days per week. The seasonal workers are laid off but need to file with EI. The four Full times are Jim, Marty, Quincy and Jennifer. I have been there for the full time that Quincy and Jennifer have been.

[68] Question: *How have they worked together?* Response: At first awesome, but then it deteriorated. Then they did not work together so I scheduled them to work with others, but because there were only a few employees.

[69] Question: *What about the Cat litter incident?* Response: Jennifer texted because she wanted to change. Jennifer said Quincy wouldn't take her home to change. I phoned Quincy to take Respondent home. Quincy said she had not asked him to take her home. *And the Chair Incident?* I walked into the shop when I heard the chair go.

[70] Question: *What about the Hair Incident?* Response: They got into a big argument and pushed each other. I told them to go into the office and sort this out. They weren't allowed to leave until they had sorted it out. They hugged at the end, and then Quincy gave her a big bear hug outside the office. This happened before Quincy hurt himself in 2017.

[71] Question: *What happened about the crusher dust?* Response: I got a call from Marty that someone had been in the stockyard and taken crusher dust. Marty and Quincy then took pictures of the Respondent's Bob Cat. Dave called Sask Energy and they said they had given her permission.

[72] Question: *Garbage Incident?* Response: I wasn't there when the garbage incident had occurred so I can't testify.

[73] Question: *What happened after the last incident?* Response: Dave, Richard and I sat down to discuss the matter. We talked about the personality clashes, etc. He said that they have to get rid of the bad apples. I said 'all of them'.

[74] Question: *What if she came back to work?* Response: If she came back to work, Quincy, Frank and Corey would not work with her. I would have problems juggling workers again. There would be too few people to do the work.

#### **Cross Examination of Jim Gatske by Respondent**

[75] Question: *Do you have an Occupational Health & Safety Committee?* Response: Yes I am on the OH&S Committee. They just brought it in a year ago. As a Committee member, when they have safety meetings, I bring the safety concerns to Management. *Did you ever bring concerns to the OH&S meetings?* Response: No because they were handled in-house – we would talk it over and then it would be done.

[76] Question: *What is the practice when you want to leave work?* Response: Standard procedure is to get permission to go home so the Respondent could leave. That is why she phoned me.

[77] Question: *As far as the chair incident did you see any belongings on the floor?* Response: Yes, vest and beanie.

[78] Question: *What would happen if the Respondent comes back to work?* Response: It would be tense if she comes back. Others may refuse to work with Respondent as a result of these hearings. *Is Quincy difficult to work with? Has anyone else refused to work with him?* Response: Yes – Frankie and Corey Szackas.

[79] Question: *Regarding Tab 24 – Did Quincy ever talk about Respondent's jeans?* Response: Quincy asked about her wearing Silvers to work. *Did anyone prompt him to tell him to ask her?* No.

[80] Question: *Regarding the hair incident in Tab 38 you made the statement that Quincy did not touch the Respondent inappropriately. Didn't think this was inappropriate?* Response: He didn't touch her anywhere else.

[81] No further questions.

### **Redirect by Appellant**

[82] Question: *On Tab 24, last page, the Respondent said she handed the statement to Dave.* Response: I said I had received a copy.

### **Examination in Chief of Dave Wilfong by Appellant**

[83] Question: *What do you do?* Response: I am the Manager of Public Works & Utilities since Sept. of 2018. I supervise the Public Works and the Water Plant. Tab 48 - shows Dave's resume' – trained as a Civil Engineer. I came back to work on the family cabin and joined the community. I had managed businesses of various sized and a business that I had started.

[84] Question: *Did you hire the Respondent?* Response: The Respondent was already working when I was hired. Letter of Employment for Respondent included a probationary period. The probationary period was extended. There was discussion about whether the probationary period was successfully completed. She was full time, no longer on probation in October, 2018. On the recommendation of the Lead Hand, Claude Seguin, she was hired. Then she was on short term disability in December, 2018.

[85] Question: *On Tab 24, page 7 the Respondent said she submitted her complaints about Quincy to Dave on March 18<sup>th</sup>.* Response: After that, I talked to others and it was decided not to put the two of them together.

[86] Question: *Tab 50 – at the bottom is written – "DW position is dismissal without cause. Pay severance." It is not clear if it was Quincy or Respondent that was to be dismissed without cause.* Response: We could not come to a conclusion what the facts were re arguments between Quincy and Respondent after interviewing the witnesses.

[87] Question: *What about public comments?* Response: An anonymous email was received against the Respondent. There were some complaints from the community, but things get started and spread.

[88] Question: *What about the crushed dust incident ?* Response: I asked the Respondent about the crushed dust when it was reported to me. She said she had approval. I then had a

terse conversation with both Quincy and Jim about process. They should have told me first. Not sure about discipline taken.

[89] I discussed the situation with Richard, the Chief Administrative Officer. Richard drafted the termination letter to terminate the Respondent and brought it to me to look at. The letter was based on coming in late, taking time off, and troubles between Quincy and Respondent.

[90] I met with the Respondent on April 9. I called the meeting. She came in with 3 pages of complaints, hand written and dated. *How did you inform her about the meeting?* I can't remember. The purpose of the meeting was termination – without cause. Severance was discussed. Richard did the talking. I was not very verbal. I was not aware that she was recording the conversation. I just found out this week.

[91] Question: *What do you think would happen in the workplace if she came back to work?*  
Response: It would be very uncomfortable – same people, same work. Dynamics in juggling that workforce would be quite a juggle considering the small number of staff and coordinating their various skills.

[92] No more questions

## **32. Cross Examination of Dave Wilfong by Respondent**

[93] Question: *What resulted when the document in Tab 24 (Complaint 1) was received by you on March 18<sup>th</sup>.* Response: The Respondent delivered it and I said I would look into it. I was able to contact Quincy the next day. No notes were taken at the meeting. Asked Quincy about the cat litter incident. I asked him what was going on? He talked about what had happened. Trying to substantiate a claim was difficult. I talked to Quincy and told him I did not want to see this happen again. The Respondent handed the complaint in. Investigation was only to ask the staff, and most times they said they didn't see anything. I investigated the items as the Respondent. brought them to me. I only talked to Quincy about the cat litter situation.

[94] Question: *Did you investigate the claims? Did you make a conclusion about the complaint?* Response: No, I did not come to a conclusion. There was not a final report. Referral to the Harassment Policy. Tab 41.

[95] Question: *When did you become aware of the incidents that were happening? What action was taken?* Response: Written warnings were given to Jim and Marty.

[96] Question: *You, Richard and Jim had a meeting. What was discussed?* Response: We discussed many workplace maladies. There was no documentation of the meeting. We did not take minutes. *When was the meeting? Was it before March 18<sup>th</sup>?* At that time, the decision to terminate was based on the Respondent's lateness and leaving early. *Was Jennifer ever warned*

*about being late or leaving early?* I did not know as she reports directly to Jim so he may have dealt with this.

[97] Question: *At Tab 50 – dated March 18<sup>th</sup>, Quincy complained about the Respondent and used foul language. Do you always allow your EEs to use foul language?* Response: No.

Question: *When did you interview Jim and when did you interview Quincy?* Response: The Chronology is set out in Tab 41 after harassment policy.

[98] Question: *Did you speak to the Respondent about the anonymous emails?* Response: No because I could not put credence in anyone who would not put their name to the text.

[99] Question: *Regarding the recording of the meeting, did you notice that her phone was recording?* Response: No

[100] Question: *Did you provide Quincy with a letter saying reprimand without pay?* Response: Tab 30. There is not always a record of formal reprimand on his watch. The time cards would show when he was sent home without pay. *Was Quincy reimbursed when he was sent home without pay?* Response: There were two dates when he was sent home without pay. I cannot remember, but if Quincy was reimbursed, then I would have to have authorized it. *Had you ever have done that in the past?* Response: Yes

[101] No more questions from the Respondent

#### **Redirect for points of clarification by Appellant**

[102] Question: *Re the reimbursement for Quincy, both were sent home on March 18<sup>th</sup>, Quincy was sent home early and docked pay on that date. On April 18<sup>th</sup>, is the second incident where they were sent home without pay, but Quincy said he was reimbursed.* Response: Still did not jog my memory about the reimbursement.

[103] Question: *About the chronology in Dave's compilation of notes for OH&S Committee.* Response: No further clarification.

[104] No more questions.

**Hearing adjourned for the day.**

**The Hearing resumed at 9:00 am on October 31, 2019**

**Examination in Chief of Richard Beachy by Respondent**

[104] Question: *What is your position with the Town of Regina Beach?* Response: My position is CAO – Acting Chief Administrator Officer. My Curriculum Vitae is at Tab 47. It shows an extensive career in Administrative positions. It was in Ontario mostly since 1986. I started in June of 2016 in Town of Regina Beach before the Respondent was hired. Claude and Jim were the staff that hired the Respondent. They needed to hire someone to fill in for a permanent employee who was on sick leave so it was supposed to be a temporary position.

[105] Question: *What was the hiring practice?* Response: Temporary positions were hired by myself, Jim and Claude, but anything over the four permanent positions would have to go to Council. The Respondent was hired into a contract position. The employee that the Respondent replaced was a permanent position, and he had retired so she was hired into that position. She was hired May 10 with a 3 month probationary period. Usually the probationary period was 6 months, but she had been working there already. There were no sick leave and no benefits according to hiring letter on Tab 15. Tab 16 was same letter but probationary position was extended to October 1 because there were absences and leaving early that had caused work not to be completed. There was no documentation of the exact incidents. Claude had left so could not be asked. *Were there discussions with Dave who took over?* There were no discussions because there appeared to be no issues. The Respondent was off for an injury to her eyes, during the period during Oct 1 to Dec 31. No work issues were brought to Richard's attention.

[106] Question: Regarding incidents that occurred that have been talked about? I was not a witness to any of them, but I did experience the issues from the public. The man from Home Hardware came in without an appointment. He said one of his staff had been accused by the Respondent of having a child in the bucket. He said Marty had sent him in. I was concerned about that.

[107] Question: *What about the review of incidents on Tab 24?* Response: They were brought to my attention. but no discussion was held with Dave regarding them. I asked Dave about what was being done. Dave said he was handling it. He was notified about the cat litter incident. Shop is 3 blocks away from the Town Office. He would not have heard any of the incidents..

[108] Question: *What about after the day that both Quincy and the Respondent were sent home on March 19<sup>th</sup>?* Response: I was concerned about the possibility of future violence in the workplace. Dave and I had a discussion regarding who should be fired. Severance for a longer term Employee would be more expensive. How were they going to do the termination without having enough employees to do the work? Finding employees is very difficult. The Town is at

the end of the road. There is a problem with keeping temporary season employees coming back. Jim said to get rid of them all. Do we contract out the services out? We still need to provide services.

[109] Question: *How did they reach the conclusion to terminate the Respondent ?* Response: On April 9<sup>th</sup> they did the termination. Safety in the workplace was a real concern. I thought that someone was going to get a shovel in the back of the head. They would be in a different court and facing fines. I was advised that Marty and Quincy had taken pictures at the Respondent's house.

[110] Notice of Termination was prepared at the end of April 8<sup>th</sup> and delivered on April 9<sup>th</sup>. I did a draft and wanted to sleep on it. I had had the visit from a member of the public. I met with Dave and then the Respondent. I advised the Respondent that the purpose of the meeting was to terminate her without cause. The Respondent responded that they could not do this. They offered severance to her – 4 weeks pay was paid to her. The meeting was recorded by the Respondent. He did not know it was being recorded. We did not get into any of the complaints about the Respondent. I did not put credence in the anonymous texts. People should 'get a life'.

[111] Question: *What do you think would happen if she came back?* My concern is that she would be at home being paid because of the possibility of violence in the workplace. Also I was concerned that the other employees would also resign. Council could fire them all! Even though the staff say they would quit, I feel that none of them would be able to find work because none of them have a high school diploma. So I was more concerned about workplace violence.

#### **Cross examination of Richard Beachy by Appellant**

[112] Question: *The Respondent said that she had learned that Richard had stated he was not aware of issues. The Respondent was trying to get a sense of Richard's involvement in employee issues in the workplace.* Response: When Claude was there Employees would come to Richard, but once Claude left, the employees went to Dave.

[113] Question: *Were you directly approached by another Employee about Employee issues? Was there anything about the Respondent? Up until December, 2018 were you aware of any violence in the workplace?* Response: The first time was March, 2018. What I was told by Dave was that there was an incident throwing chairs around in the shop. I was not aware that there were any threats of violence by the Respondent until yesterday. I had not seen the concerns in Tab 24 until later. I was concerned when I heard about the chairs incident that someone would get hurt.



[114] Question: *Did you hear from anyone about concerns about workplace violence from other Employees?* Response: I knew that there were concerns but I had not seen the Respondent's complaint. On May 2, 2019, I was mad at Marty for creating a difficulty in the workplace that was not necessary. Marty had been concerned about losing his job after the incident.

[115] No further questions.

[116] No redirect.

[117] No further witnesses for the Appellant.

[118] The Appellant requested that the Subpoena which was issued for Corey Szackas to attend be quashed. The Adjudicator granted the request and quashed the Subpoena.

#### **Examination in Chief of Jennifer Corey by Respondent**

[119] Question: *I am going to start with employment prior to being employed by Regina Beach July 2014.* Response: I left my job at Iron Workers to take the Regina Beach job to be closer to her family. My daughter was falling into depression. I notified the Iron Workers that I was no longer going to take jobs so I could be with my family.

[120] Question: *Now on to being hired by Regina Beach.* Response: I was hired middle of October, 2016 for garbage position Mondays and Tuesdays. Claude was the only one who was involved in the hiring. I did not get a formal contract, only a letter. It was probationary so no benefits or Earned Days Off. That was not the position I had when I was terminated. Jim needed help in the winter so I was offered a temporary permanent position. May 10, 2017 I was offered a full-time permanent Operator 1 position. Tab 15. 2<sup>nd</sup> letter was the same but for the probationary period which was extended. Claude talked with me about watching my time at work – no verbal or written reprimands. He explained my absences from work were a problem for distributing the workload as there were only 4 full time permanent workers. I asked for a new contract when my probationary period was done. Dave had no problems. I started bringing in my documents to show support for my absences. As long as they had sufficient notice there was no problem. Short notice that I wasn't coming in was less acceptable. Question: *Were you spoken to about any absences after the probationary time was over?* Response: Yes after the first probationary time was over and the probationary time was extended.

[121] Question: *Was there a problem with Quincy?* Response: It started in Sept /Oct 2018. Quincy started to talk to her boyfriend's previous girlfriend. Quincy then started to 'pick' at her. In the chest bumping episode, we were starting to scream at each other. Jim told us to go into the office and work it out. We were going to be sent home unless we could settle this matter. We hugged in the office and then in the shop Quincy bear hugged me in front of



others. I refused to work with Quincy after I came back after my foot injury because he started to give me problems.

[122] Question: *What about not working with others?* Response: I would not work with Quincy. I would not work with Marty. *What about you saying that you would hit others?* Nothing happened, there were no reprimands, and no reports. Tab 24 – list of incidents:

- garbage incident – Marty and Corey designed a platform so the garbage bags don't go so far in and would not get as full.
- cat incident – when I called Richard instead of asking Quincy for a ride, Quincy was mad. When I went home to change, I got back when Quincy had thrown chairs around. *Was there also your personal stuff that was thrown?* Yes
- I did not go into work on March 12<sup>th</sup>, 2019 because I was afraid of Quincy.
- There were a number of anonymous complaints. I was not interviewed about these incidents.
- touching of hair - I do not like anyone invading my private space. I told Quincy and he got annoyed.
- After I handed in Tab 24, there was no acknowledgment of the incidents, no investigation. There were other incidents about violence. This is a small area, everyone has their issues. There would be a chain reaction of everyone being in a bad mood. Quincy has knocked over chairs, Jim throwing cups, Quincy breaking tables. Nothing was said to me, nothing was done.

[123] Question: *Through your time of working there, were there other complaints other than those listed in Tab 24?* Response: Regarding Claude there was a leak in the trench at the water works, I was asked to go into the trench. I complained about this to Claude but nothing came of it.

[124] Question: *Were you ever given a formal reprimand?* None, before or after.

[125] Question: *Explain the truck driving incident about Quincy driving the garbage truck.* Response: We argued and I picked up my stuff and went home. I complained to Dave on the phone. (Tab 51, a text sent by Respondent to Dave was not in the book.) I was asked to see Dave. When I went in to see him, Richard had explained that they were going to fire me without cause without reason. Only answer was that they were going to decide to part ways with me. I started the recording as soon as I realized I was getting fired. I recorded the conversation. Nobody but me knew that it was going to be recorded. The phone was sitting on the desk but you could see that voice recording was happening on the phone.

[126] Question: *Explain the Statement about the Home Hardware incident.* Response: James' mother owns the Hardware. Her son Ethan was hanging on to the bob scat and riding his bike along beside. I worried about a safety concern but did not report it to the police.

[127] Question: *Explain about Tab 35 – letter about benefits paid through Great West Life.*

Response: I was overpaid and had to pay benefits back. The letter was dated April 23.

[128] Question: *Explain Tab 42 .* Response: I contacted WCB and they told me to contact Fred Bayer. I was investigating wrongful dismissal. He told me I could go to OH&S and lay a complaint.

[129] Question: *As far as the workplace, if you went back tomorrow how would that work?*

Response: I would work with anyone but Quincy.

[130] Question: *Was It was brought up about her language and how she presents herself in public?* Response: I do not use the 'f' bomb when working in public. Dave and I talked about her using the language. She was not reprimanded for the language. Never reprimanded. Everybody in the shop uses the language.

#### **Cross Examination of Jennifer Corey by Appellant**

[131] Question: *To clarify you started working in October, 2016 .* Response: I was working at K&S Legacy Potash Mine. I gave notice that was my last job. I was dispatched from there. I quit before the job was over.

[132] Question: *What about taking leaves?* Response: Marty took time off before his EDO, and Quincy took time off randomly, once for a truck. He took time off to buy the truck. I don't know if they were disciplined, officially, but the staff all talk and they did not talk about getting disciplined.

[133] Question: *What about the ex-boyfriend's girlfriend giving information to Quincy?* Response: I think she is responsible for anonymous texts to the CAO. She relayed a lot of personal information to Quincy. Quincy told me that the woman was giving information to him about my personal life and that was when the relationship between Quincy and me went downhill.

[134] Question: *About the incidents:*

- *You had a fight with Quincy about driving the garbage truck?* Response: He was yelling and I was yelling too.
- *What about the chest bumping situation?* Response: Quincy raised a fist to me and was threatening to hit me. I said I would not let him hit me – I would not let another man hit me.
- *What about the tree cutting incident?* Response: Frankie and I were cutting trees and I made a threat to Frankie and he said 'shiver me timbers'. I have been

working with men all my life. I am a welder so I use the same language that the men working in the trades use. I have worked with Evraz.

- *As for Marty?* Response: With Marty I said my feeling were hurt. Marty asked if I needed my booboo kissed. I said I would 'pop' him.
- *Re the Garbage incident ?* Response: I and Corey were talking and we were doing garbage details. *Why did you say to Corey that Quincy and you thought this was a stupid idea?* Response: I don't know why I said that Quincy thought that the idea was stupid. I said it because I trust Corey so I could tell him. My judgement about what is right or wrong is my judgement. I can say it if I think it is right. I was telling a friend about what had happened
- *Cat litter Incident?* Response: I did not say that Quincy had refused to take me home. Tab 24 – page 3 lower on the page, I went home to change my clothes. I walked in at 9:45 am and Corey told me in the garbage truck after the break what happened with my stuff.
- *What about the anonymous complaints?* Response: My belief regarding the anonymous complaints is I am sure the ex boyfriend's girlfriend did the anonymous emails because of the wording, but this is just speculation.
- *Could you work with Quincy?* I could work with Quincy as long as I did not have to talk to him.

**[135]** Question: *These are questions about some of your testimony:*

- Kim Becker, member of the town council, met with me when I was picking up garbage. She said that everyone should watch their asses because someone is on the chopping block.
- February 19, 2019 I got very depressed because my father had passed away. I had difficulty getting along with anyone at that time.
- *There were no repercussions with Jim throwing cups?* I do not know if he was disciplined or not.
- *About getting down into the trenches?* There was no egress, no proper harnesses so I brought my own. I complained.

**[136]** Question: *When you met with Richard what happened?* Response: I talked to Richard as to why I was being fired without cause. Richard said that I was being paid out. He said it was not wrongful dismissal where you have to prove that the person was dismissed with cause. I talked to my husband who was a RCMP, and he said it was legal to record the conversation as long as I knew about it. *Did you know that wire taping is a criminal offence?* As long as I know about it her boyfriend thought it was OK.

**[137]** No further questions by Appellant

**[138]** No redirect by Respondent.

[139] It was requested by the parties that there would be no closing statements presented to the Adjudicator at this time. The parties would present written submissions to the Adjudicator by November 12, 2019. Once the opposing submissions have been received by the parties, rebuttels would be due by November 18<sup>th</sup>, 2019.

The Adjudicator granted the request.

The hearing was adjourned

#### **IV SUMMARY OF ARGUMENTS**

The Appellant and Respondent provided Written Submissions containing their arguments in support of their positions to the Adjudicator subsequent to the proceedings.

##### **Brief of Law on behalf of the Appellant**

[140] In her submission, the Appellant outlined the Issues that had been identified as arising in relation to this appeal:

- 1) Did the actions of Quincy Grohs that are complained of constitute harassment as defined in the Act?
- 2) Did the Town dismiss Ms. Corey because she made the complaints about Mr. Grohs outlined in the evidence?

##### ***Issue 1 – Did the actions of Quincy Grohs constitute harassment?***

[141] The Appellant submitted at Page 14 of the Brief that:

“... None of the allegations relating to Mr. Grohs constitute harassment as that term is defined in *The Saskatchewan Employment Act*. None of them are based on any of the prohibited grounds listed in clause 3-1(1)(l)(i). There is no evidence that any of the events described in these allegations adversely affected Ms. Corey’s physical or psychological well-being. There is no evidence that Mr. Grohs knew or reasonably ought to have known that these events would cause Ms Corey to be humiliated or intimidated. Nor do the allegations constitute “repeated” conduct as described in clause 3-1(4)(a) or a single “serious” event that had a lasting effect on Ms Corey. As a result, the complaints she made were not complaints of “harassment” as defined in the Act and do not become “harassment” because she has labelled them that way. (*Christine Racic, Appellant, vs Moose Jaw Family Services, Respondent & Government of Saskatchewan Director of Occupational Health and Safety* 2015 CanLII 60882 (SKLRB), at para. 30) Thus, even if the

Town dismissed her because she made these complaints, which is not admitted but denied, this would not have been a contravention of section 3-35 because if the conduct.

[142] The Appellant argued that what constitutes harassment in the legal sense is different from what might be popularly meant by the use of the term. The definition of the term “harassment” in The Saskatchewan Employment Act is very specific so in order for conduct (The Act actually refers to “conduct, comment, action or gesture”. For ease of reference the word “conduct” is used to represent all of these) to amount to harassment it must meet all the criteria set out in the statutory definition. The burden of proof in this regard lies with Ms Corey. (*Crescent Pointe Energy Corp vs, Tyson Kochan*, SKLRB File 111-15at para. 18.) The conduct must:

- be inappropriate AND
- be based on prohibited grounds (This is a list of grounds set out in para 3-1-(1)(l)(i)A which is the same as the list set out in *The Human Rights Code*.) OR
- be repeated AND adversely affect wellbeing AND the alleged harasser must know or reasonably ought to know that the conduct would be humiliating and intimidating AND
- constitute a threat to the worker’s health or safety

[143] The Appellant’s argument in regards to the conduct complained of in this case states that it is not based on any of the prohibited grounds listed in 3-1(1)(l)(i). The conduct that Ms Corey appears to claim is that these incidents are based on the fact she is female. However, the Appellant argued that the complaints she made all involve situations that she set up for conflict. Examples were listed as follows:

- She told Frankie that Mr. Grohs said his idea about the garbage bins was “stupid” when Mr. Grohs did not, and then wonders why Mr. Grohs would be angry. She couldn’t see why it would have been more appropriate to say nothing to Frankie, even if it were true that Mr. Grohs had called the idea stupid, because that would have been the more appropriate, diplomatic course. Instead, she preferred to provide unwelcome information to a person she considered her friend because she’s “entitled to her opinion”.
- She told Jim Gatske that Mr. Grohs would not drive her home to change her clothes when he said no such thing and wonders why that would make him angry.
- She threatens to “pop” co-workers.

[144] The Appellant noted that Ms. Corey candidly admitted she has a “vulgar mouth” and she uses it without hesitation. There is no doubt that this is a tense and difficult workplace, but Ms Corey shares the burden of responsibility for making it so. If anything, she has been treated as an equal in this workplace.

[145] Relating to the second criteria for conduct that is not based on prohibited grounds under the Act the Appellant argued conduct can be harassment if it is repeated and adversely affects the worker's psychological or physical well-being, but only if the alleged harasser knows or ought reasonably to know that the conduct would cause the worker to be humiliated or intimidated. The Appellant argued it is clear that:

- there have been several arguments in the workplace between Ms Corey and Mr. Grohs. Neither of them could recall what any of them were about, except for the argument on the morning of April 9, 2019. They both yelled and swore at each other and made threats to each other.
- The argument is that there is no evidence of any adverse effects of the conduct complained of, other than Ms Corey's assertions that she was "stressed". However, the legislation requires that her psychological or physical wellbeing be adversely affected, not just that she be stressed. Some evidence of Ms Corey's mental state should have been provided, but there is none other than she was 'stressed'.
- Nor is it established that Mr. Grohs knew that his conduct would cause Ms Corey to be humiliated or intimidated. Indeed, the evidence is to the contrary. Ms Corey was certainly not humiliated. It is submitted that according to testimony she was not intimidated either because she continued to tell other employee's untrue things about what Mr. Grohs said, thus fanning the flames of dissension in the workplace, and she initiated the chest-bumping incident that ended with the two of them in Jim Gatzke's office. As part of this argument, it is noted by the Appellant that Ms Corey's Workers' Compensation Board claim for psychological injury due to a traumatic event was rejected by the Workers' Compensation Board because the investigation found that there was no confirmation of any sexual harassment occurring in the workplace while she was employed with the Town (Tab 12).

[146] For the above reasons, it was submitted by the Appellant that the complaints Ms Corey made were not complaints of 'harassment' within the meaning of the Act and the termination of her employment cannot therefore be because she complained of harassment.

***Issue 2 – Did the Town dismiss Ms. Corey because she made complaints about Mr. Grohs?***

[147] Regarding Issue 2, the Appellant submitted at Page 14 of the Brief that Ms. Corey was not fired because she made these or any other complaints. All of the complaints she made were investigated and addressed appropriately by the Town. Other employees were reprimanded and suspended without pay as a result of her complaints. She was fired because she initiated and participated in dissension in the work place that the Town was concerned would ultimately lead to violence that could result in the Town being unable to comply with its duty under clause 3-8(a) of The Saskatchewan Employment Act to provide a safe workplace

[148] The Appellant argued that Ms Corey is a difficult person to work with. She has a definite point of view about how things should be done and by whom. She acknowledged that in the fall



of 2018 she was angry with everyone, even with persons she counted as friends. By December 2018, Mr. Varsanyi told Jim Gatske he refused to work with her anymore. In a small workforce such as this one, if half the employees cannot work together it creates a large problem for the employer. However, Ms Corey was off work on disability from late December 2018 until March 1, 2019 and this did not become a practical problem until she returned. The Appellant related that according to the testimony there were immediate problems when Ms. Corey came back between her and Quincy Grohs. She lied to Frank Varsanyi about what Mr. Grohs had said about him and she lied to Jim Gatske that Mr. Grohs had refused to drive her home to change. Saying these things can only be calculated to incite conflict, and that is certainly what happened. That conflict led to both her and Mr. Grohs being sent home without pay on March 18, 2019. This event caused Mr. Beachey, the Town's chief administrative officer, to form the opinion that something had to be done.

[149] In her Argument, the Appellant claimed the only issue was timing. According to the testimony, Mr. Beachy prepared a letter to dismiss her without claiming cause. He prepared the letter the day before and finalized it on the morning of April 9, 2019 and called her into the office to give it to her.

[150] The Appellant argued that since Mr. Willfong prepared the dismissal letter on April 8, 2019, it is clear that Mr Beachy and Mr. Willfong did not decide to dismiss her because of the complaints she brought in on April 9, 2019. Mr. Willfong testified that he began to think of dismissal on March 18, 2019 because of his concerns relating to violence in the workplace after the events of that day. Dave Wilfong's notes from that day refer to dismissal without cause (Tab 50).

[151] The Appellant noted that Ms Corey did accurately describe the meeting on April 9, 2019 when she was dismissed. She said that Mr. Beachy informed her she was being dismissed without cause and she kept asking why. He pointed out that there was no cause claimed and so no reasons need be given. Ms. Corey admitted that she said she started recording the conversation as soon as she found out she was being fired. She said she records "every major conversation" she has. She didn't say she was recording because she thought she didn't have to. I did not determine whether Ms Corey was correct in her assumption or not. It was the fact that she did record the conversation was what was relevant.

[152] The Appellant's argument was that the problem with surreptitious recording in the workplace is that it undermines the trust relationship that must exist between employer and employee, and with coworkers. Given that all of Ms Corey's former co-workers who testified said that her return to the workplace would create a great deal of difficulty and tension, and given that three of them have refused to work with her, the fact that she would be likely to secretly record a "major conversation" with any of them would no doubt make things even more difficult and tense.

### ***Conclusion of the Appellant's Submission***

**[153]** The Appellant concluded her arguments by quoting *JR v Chip and Dale Homes Inc.*, Adjudicator Blanke set out the framework for analysis of a complaint of discriminatory action:

The initial step, as per section 28(1) (Note that the section references are to the former legislation.) requires consideration whether the worker had reasonable grounds for believing that the Employer has taken discriminatory action against her for a reason mentioned in section 27. Thus, the initial onus is on the Appellant [in this case the employee] to establish that:

- (1) the employee suffered an adverse employment consequence within the scope of the description of "discriminatory action" found in section 2(1)(g) of the Act;
- (2) the employee engaged in a health and safety activity protected by section 27 of the Act; and
- (3) the employer's discriminatory action was taken "for a reason" described in section 27 of the Act. In other words, the worker must establish a connection between the discriminatory action and the worker's protected s. 27 activity. (LRB 030-15 at para.91)

**[154]** Following the above case, the Appellant's arguments are that there is no dispute that dismissal is an adverse employment consequence that is within the scope of the definition of "discriminatory action" found in the Act. However, the complaints Ms Corey made were not harassment complaints and were thus not a protected health and safety activity. Nevertheless, any complaints she made prior to her dismissal were investigated. Where action needed to be taken, it was by either Mr. Gatske or Mr Willfong. There is no causal connection between the complaints she made and her dismissal. She was dismissed for good and sufficient other reasons, unconnected with her complaints.

**[155]** The question of what constitutes 'good and sufficient other reason' was also canvassed by Adjudicator Blanke in the case of *SIGA v Karyn Taypotat* SKLRB File 116-14 at paras.155 and 156. :

In assessing whether reasons given for termination can and do constitute "good and sufficient other reason", I have been guided by the meaning of that term as expressed by the Supreme Court of Canada in *LaFrance v. Commercial Photo Service Inc.* (1980), 111 D.L.R. (3d) 310 which states:

"From the outset it has been held that this phrase means that the investigation commissioner (the person who decides the issue) must be satisfied that the other reason relied on by the employer is of a substantial nature and not a pretext and that it constitutes the true reason for the dismissal. "



Stated another way, on appeal, an adjudicator does not sit in review of the merits of the employer's decision as to whether the Respondent ought to have been terminated or whether the criteria used to reach its decision were fair and reasonable. If the employer sincerely acted for the reasons given - reasons other than the worker's protected health and safety related activity - even though in the circumstances it may be unfair or unreasonable for it to have done so, then I cannot conclude the employer had contravened section 3-35 of the Act. The worker may still have cause for complaint and may have legal recourse in other forums (about which I take no position), but my remedial jurisdiction is limited to the question whether the employer's actions were in contravention of the Act or regulations, i.e., whether the employer's reasons were discriminatory. [emphasis added]

[156] The Town had a serious concern with the potential for violence in the workplace and the fact that all of the other permanent staff in Public Works have either refused to work with Ms Corey or would do so if she returned to the workplace. They do not trust her.

[157] Ms. Corey is the most junior of the permanent staff. The alternative to dismissing her would be to fire everyone. Whether or not the decision to dismiss Ms Corey was, as Adjudicator Blanke put it, "fair and reasonable" is not the issue. The issue is whether the employer contravened section 3-35 of the Act. The answer to that question is, no.

## **Written Submissions of the Respondent**

[158] The Respondent set out the following issues to be considered:

- a) Was the Respondent engaging in protected behavior under section 3-35 of *The Saskatchewan Employment Act*?
- b) Did the employer take discriminatory action against the Respondent as defined in *The Saskatchewan Employment Act*?
- c) If the answer is yes to the above, can the Employer rebut the presumption in favour of the Respondent by virtue of Section 3-36 of the Act, that the Respondent was terminated for good and sufficient reason?

### ***Issue a) Protected Behaviour***

[159] The Respondent argued that Ms. Corey had submitted a formal complaint to her supervisor who was an OH&S representative and the Manager of Public Works and Utilities. This complaint alleged that the Respondent was harassed by an employee and that she felt unsafe in the workplace as a result. The argument was that this type of complaint fall under the protections under s 3-35.

[160] As well, the Respondent argued that under Section 3-8(a) of the Act that an employer has a duty to “ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer’s workers.” Also argued was that Section 3-8(d) states an employer is to ensure as is reasonably practicable that the employer’s workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers’ employment.

[161] It was submitted that the Respondent was seeking enforcement of both the above sections of Part III of the Act and therefore, was engaging in protected behavior.

### ***Issue b) Discriminatory Action***

[162] The Respondent set out in her Argument that Part III of *The Saskatchewan Employment Act* defines ‘discriminatory action’ as follows:

(i) ‘discriminatory action’ means any action or threat of action by an employer that does or would adversely affect a worker with respect to any terms or conditions of employment or opportunity for promotion, and includes termination, layoff, suspension, demotion or transfer of a worker, discontinuation or elimination of a job, change of a job location, reduction in wages, change in hours of work, reprimand, coercion, intimidation or the imposition of any discipline or other penalty, but does not include:

(i) the temporary assignment of a worker to alternative work, pursuant to section 3-44, without loss of pay to the worker, or

(ii) the temporary assignment of a worker to alternative work, without loss of pay to the worker, while:

(A) steps are being taken for the purposes of clause 3-31(a) to satisfy the worker that any particular act or series of acts that the worker refused to perform pursuant to that clause is not unusually dangerous to the health or safety of the worker or any other person at the place of employment;

(B) the occupational health committee is conducting an investigation pursuant to clause 3-31(b) in relation to the worker’s refusal to perform any particular act or series of actions; or

(C) an occupational health officer is conducting an investigation requested by a worker or an employer pursuant to clause 3-32(a);

It is submitted by the Respondent that termination of employment clearly falls within this definition and therefore the Respondent has engaged the presumption of section 3-36 of the Act.

***Issue c) Other Good and Sufficient Reason***

[163] The Respondent's argument asked the question, can the Employer rebut the presumption that the discriminatory action was taken for "other good and sufficient reason"? To support this argument, the Respondent set out Section 3-36(4) of the Act which reads:

3-36(4) If discriminatory action has been taken against a worker who has acted or participated in an activity described in section 3-35; and

(a) in any prosecution or other proceedings taken pursuant to this Part, there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in section 3-35; and

(b) the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason.

[164] The Respondent submitted that in this case it is imperative that this requirement not be confused with considering whether there *existed* at the time or whether there ever *existed* 'good and sufficient reason' to terminate the Respondent. The question was whether in the minds of the employers the Respondent was terminated for 'good and sufficient reason'.

[165] Further the Respondent argued that the case itself brought up past instances of conflict between the Respondent and employees and employees between themselves. The fact is that none of those instances triggered any action on the employer's part. Further, the employers did not testify that any of those instances that were referenced in the hearing were on their minds when they had made the determination. It is submitted that those instances should not be weighted toward any good and sufficient reason for termination.

[166] The Respondent submitted that the Appellant has not rebutted the presumption stated in s.3-36(4) for the following reasons:

1. *There was conflicting and unsubstantiated evidence by all the Employers as to why and when the Respondent was terminated.*

Mr. Beachy stated that his primary concerns was that there would be violence in the workplace and that this concern was triggered by Mr. Grohs and the Respondent throwing chairs. The fact that there was no evidence that the Respondent ever threw a chair was not relevant. It was the violence of the action caused by the disagreement that was relevant.

Mr. Wilfong gave evidence that the reason for her termination was that she was consistently late or leaving early. He did not provide evidence to substantiate this claim. They had not formally reprimanded the Respondent for this and could not point to any series of specific incidents when this happened. The Employer did not establish that she had late/leaving early or absence issues

more than any other employee. It is submitted that the Respondent had not been warned about leaving late or early and it was not established that any time she did this, this was not acceptable to the employer.

*2. The Complaint I was never seriously or appropriately investigated and only after an OH&S Investigation was launched or they were on notice that it would be launched is there evidence that investigations took place.*

The Respondent submits that all the documentary evidence that shows there was investigation into the incident were made after the Respondent's termination. It is submitted that the statements of employees being exactly the same should cause suspicion into how the employees were instructed.

It should also be noted that the circumstances surrounding the formal reprimand of Mr Grohs were suspicious. A letter was drawn up that allegedly was never given to him and he stated that he was actually reimbursed for the day in which he was supposed to forgo pay. Mr. Wilfong in answering whether this occurred was very indirect. It is submitted that generally, a person would know whether or not they make it a practice to reimburse people who have been suspended without pay.

### **Conclusion of Respondent's Submission**

[167] The Respondent submits that the Appellant has not discharged the onus of establishing that the Respondent was terminated for good and sufficient other reasons. The Employer did not point to any of the instances that happened as the reason for termination. The termination must have been made because of those instances for that evidence to be relevant. The testimony was very inconsistent as to why the Respondent was terminated. Further, any of the reasons given were not substantiated. The circumstances surrounding the termination and the investigations were suspicious and the Employer simply failed to properly investigate the Respondent's complaints.

[168] Also submitted was that Ms. Corey was the only female in the workplace. She felt intimidated by a male. When she brought those concerns forward she was terminated without any proper investigation.

### **Reply on behalf of the Appellant to Written Submission by Respondent**

[169] The Appellant set out the following under the heading FACTS:

- *Incident with the chairs* – Ms Corey had indicated that at the coffee break on March 12, her chair had been kicked twice. No one else indicated this.

- *Anonymous texts* – The texts Ms. Corey testified regarding had nothing to do with Mr Grohs.
- *The hair touching incident* – Ms. Corey did not make a complaint about this until at least a year later. It was never an issue under the definition of harassment because it never recurred.
- *The jeans-* Ms. Corey talked about the kind of jeans she wore all the time, and everyone knew.
- *March 18<sup>th</sup> incident* – Ms. Corey said she went home because of ‘stress’ but she was in fact sent home. Mr. Wilfong was incorrect when he said he did not receive Ms Corey’s complaint on that day. He noted receipt of the documentation that date.
- *Wheeler Incident* – Mr. Beachy did not make the decision to terminate based on this incident.
- *Generalities* – It is not sufficient to assert that evident ‘generally supported the contents of Ms. Corey’s complaints as the descriptions by other witnesses are not the same.

[170] Application of the Act was discussed as follows:

- *The definition of harassment* - Ms Corey’s complaints were not harassment as that term is defined in the Act The fact that she made those complaints is not a protected activity.
- *No causal relationship* – There was no causal connection between the complaints and the dismissal.
- *Reason for Dismissal* – Ms. Corey was dismissed because she was the cause of dissension in the workplace that would likely eventually lead to real violence. She was also the most junior of the permanent employees in Public Works. The decision to dismiss was made for reasons unrelated to the complaints she made.

## **Reply to Appellant’s Brief of Law submitted by Respondent**

[171] The reply filed by the Respondent was a listing of points that the Respondent was disputing:

- *Extension of Probationary Period* - There is no evidence that the probationary period was extended due to lateness.
- *Evidence that others would get angry and swear in the workplace* – There is evidence of Mr Grohs being forceful.
- *Refusal to work with others* - Ms. Corey only refused to work with Mr. Grohs. Ms. Corey said that Corey Szakas only refused to work with her because of the hearing.

- *Cat litter incident* – there is conflicting evidence. The only person who said Ms. Corey was lying was Mr. Grohs.
- *Comments about jeans* – There was no investigation into this complaint to determine if it was valid.
- *Decision to terminate* – Mr. Beachy submitted a timeline to OH&S Officers that the decision to terminate was made the day prior to April 9<sup>th</sup>.
- *Discussion of Complaint on March 18<sup>th</sup>* – 1) this was not a discussion of the complaint submitted by Ms Corey but only an acknowledgement of receipt, 2) there was no proper investigation of the incident, and therefore no proper establishment of the validity or non validity of the complaint.
- *Complaint did contain allegations of harassment* – The Appellant did not take reasonable steps to look into the matter
- *Repeated aggression and name calling* – These actions fall into the category of section 3-(1)(l)(i)(B)9b). This is independent of whether the Respondent has ever been guilty of same. The chair kicking incident was a pretty substantial incident. As for lasting psychological harm, there is no requirement of medical proof of this. Ms. Corey testified that she left work due to the stress which occurred from the incident which is a reasonable reaction.
- *Lies alleged to be told by the Respondent* – The only persons alleging the Respondent to have lied is the alleged harassers themselves.
- *Mr. Beachey's claim that something had to be done* - This was based on him believing that Ms Corey had also thrown chairs, a conclusion that would have not been reached had her complaint been investigated.
- *Temporal link between complaint and decision to terminate* – Mr. Willfong did not testify that he made notes of the complaint on March 18<sup>th</sup> on the date when the complaint was received.
- *Recording of meeting April 9<sup>th</sup>* – Taping of the meeting was not relevant in relation to the trust issue as it was during the termination meeting when the employer was already trying to sever the relationship.
- *Temporal link* – When prior issues happened that the employer was aware of they didn't engage in disciplinary action. Disciplinary action was only taken once a formal complaint was received.

## V Analysis

This Analysis deals with the issues before me raised by the Appellant and the Respondent in their Written Submissions.

### **A. Issues raised by Appellant in her Brief of Law**

[172] There were two issues raised by the Appellant in her Brief of Law:

- 1) *Did the actions of Quincy Grohs that are complained of constitute harassment as defined in The Saskatchewan Employment Act? And*
- 2) *Did the Town dismiss Ms. Corey because she made the complaints about Mr. Grohs outlined above?*

#### **Issue 1 - Did Mr. Grohs' actions constitute Harassment within the Act?**

[173] I accept the Appellant's argument that the actions by Mr. Groh did not constitute 'harassment' as defined by the Act. In order to meet the definition set out in Section 3(1)(l)(i) the inappropriate conduct, comment, display, action or gesture by a person must adversely affect the worker's psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated'. As stated at line [148] of the Summary of Arguments:

"There is no evidence that any of the events described in these allegations adversely affected Ms. Corey's physical or psychological well-being. There is no evidence that Mr. Grohs knew or reasonably ought to have known that these events would cause Ms Corey to be humiliated or intimidated. Nor do the allegations constitute "repeated" conduct as described in clause 3-1(4)(a) or a single "serious" event that had a lasting effect on Ms Corey. As a result, the complaints she made were not complaints of "harassment" as defined in the Act and do not become "harassment" because she has labelled them that way. (*Christine Racic, Appellant, vs Moose Jaw Family Services, Respondent & Government of Saskatchewan Director of Occupational Health and Safety* 2015 CanLII 60882 (SKLRB), at para. 30) "

[174] Ms. Corey testified that she was stressed but *the Act* requires that there be a lasting effect on the worker. Her claim to the Workers' Compensation Board in paragraph [152] in the Summary of Arguments was rejected when she filed for compensation for psychological injury due to a traumatic event. That investigation found there was no confirmation of her complaint.

[175] In paragraph [151] Ms. Corey admitted that she has a 'vulgar mouth' and she uses it without hesitation. There were many altercations between Mr. Groh including the argument on April 8, 2019 where it was testified that they both yelled and swore at each other.



[176] At one point in her testimony, Ms. Corey referred to the verbal exchanges in the coffee room as 'banter'. She also commented that she had worked in a mostly male environment, that she had been working with men all her life. Therefore, I do not believe that there was any credence in her claim that some of the incidents arose because she was female. At paragraph [179] Ms. Corey acknowledged, "I am a welder so I use the same language that the men working in the trades use."

[177] In reviewing the list of incidents that were the basis for conflict between Mr Groh and Ms Corey, it appeared that the comments of the Appellant at paragraph [152] in her arguments were evidence that Ms. Corey was not intimidated. She continued to tell other employees untrue things about what Mr. Grohs said, fanning the flames of dissention in the workplace. That behavior was further touched upon in paragraph [154].

[178] In light of the above, I conclude that the actions of Mr Grohs were not 'harassment' within the meaning of the Act.

**Issue 2 - Did the Town dismiss Ms. Corey because she made the complaints about Mr. Grohs outlined above?**

[179] According to the evidence presented, the Town had only received the first written complaint from Ms. Corey prior to the date of her termination. At paragraphs [93] and [94] Mr. Wilfong described his investigation of Ms. Corey's complaints previously. He stated that he generally he could not come to a conclusion because other staff did not see anything. At paragraph [100] Mr. Wilfong testified that the written complaint had been received by him on March 18, 2019. He testified that he had interviewed Mr. Grohs about the complaint, and that he had suspended Mr. Groh without pay for one day. It is not clear whether Mr. Grohs was reimbursed later for the pay withheld. Mr. Wilfong could not recall if that had happened.

[180] Regarding other complaints and incidents, as stated in paragraph [75] Jim Gatske was asked "*Did you ever bring concerns to the OH&S meetings?*" His response was "No because they were handled in-house – we would talk it over and then it would be done." Examples were when staff were sent home, and when they were forced to talk their confrontation out in his office etc.. Therefore there were no records of reprimands as matters were resolved..

[181] It was testified that complaints 2 and 3 written by Ms. Corey, were brought to the meeting with Mr. Beachey on April 9<sup>th</sup>, 2019. That was the meeting where Ms. Corey received notice that her employment had been terminated. Therefore, there was no opportunity by Mr. Beachey and Mr. Wilfong to review or investigate them to be part of the reasons for termination.

[182] In summation, at paragraph [160] in this document I accept the argument made by the Appellant that;



“... the complaints Ms Corey made were not harassment complaints and were thus not a protected health and safety activity. Nevertheless, any complaint she made prior to her dismissal were investigated. Where action need to be taken, it was. There is no causal connection between the complaints she made and her dismissal.”

### **B. Issues raised by Respondent**

[183] The issues raised by the Respondent in her Written Submissions were laid out at paragraph [164]:

- a) Was the Respondent engaging in protected behavior under section 3-35 of *the Saskatchewan Employment Act*?
- b) Did the employer take discriminatory action against the Respondent as defined in the Act?
- c) If the answer is yes to the above, can the Employer rebut the presumption in favour of the Respondent by virtue of Section 3-36 of the Act, that the Respondent was terminated for good and sufficient reason?

#### **Issue a) Protected behavior under section 3-35 of the Act**

[184] Section 3-35 of the Act describes the instances where the no employer shall take discriminatory action against a worker. There is no particular subsection specified in the submission. In paragraph [165] there is a reference to the complaint that Ms Corey had filed with Mr. Wilfong who was an OH&S representative claiming that she had been harassed by an employee and she felt unsafe in the workplace. As already set out above, I have determined that the complaint had been investigated and the matter had been dealt with some time before the termination. Also, I have determined previously that none of the acts by Mr. Grohs constituted ‘harassment’ under the Act.

[185] At any rate, I have already determined Ms Corey was not terminated due to the complaints that she had raised.

[186] The Respondent’s reference to Section 3-8(a) of the Act that sets out that ‘... the duty of an employer is to ensure as is reasonably practicable that the employer’s workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers’ employment.’ I have already determined that there was no harassment.

#### **Issue b) Discriminatory Action**

[187] The Respondent quoted the Act defines ‘discriminatory action’ as:

“... any action or threat of action by an employer that does or would adversely affect a worker with respect of any terms or conditions of employment, or opportunity for promotion, and includes termination ...”

I agree that termination of employment falls within the definition of discriminatory action.

[188] The Respondent argued that if the termination is found to be within the definition of ‘discriminatory action’ then the following section of *The Saskatchewan Employment Act* applies:

Section 3-36(4) If discriminatory action has been taken against a worker who has acted or participated in an activity described in section 3-35; and

(a) in any prosecution or other proceedings taken pursuant to this Part, there is a presumption in favour of the worker that the discriminatory action taken against the worker because the worker acted or participated in an activity described in section 3-35; and

(b) the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason.

[189] I find that the Respondent is correctly interpreting the Act in arguing that there is a presumption in favour of the worker regarding an activity described in section 3-35, and the onus is then placed on the employer to establish that the discriminatory action was taken against the worker for ‘good and sufficient other reason’.

#### **Issue c) Good and Sufficient Other Reason**

[190] As discussed above, in section 3-36(4)(b) the onus is placed on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason. The complaints Ms Corey made were not harassment complaints and were thus not a protected health and safety activity. Testimony by Mr Gatske and Mr. Wilfong provided evidence that the complaints were investigated and action was taken.

[191] I agree that the Employer must then show that it meets the onus required by Section 3-36(4)(b).

### ***C. Issue of Good and Sufficient other Reason***

[192] The issue is whether the Employer met the onus required by Section 3-36(4)(b) of the Act. The Appellant argued that the Respondent was fired for the following reasons:

- That the Town had a serious concern with the potential for violence in the workplace;
- That all of the permanent staff in Public Works have either refused to work with Ms. Corey or would do so if she returned to the workplace;
- That the rest of the staff do not trust her; and

- That Ms. Corey was the most junior of the permanent staff.

[193] Regarding the ***potential for violence in the workplace***, under section 3-8 Every employer shall (a) ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer's workers. Testimony from Jim Gatske and the workers illustrated that the incidents between Ms. Corey and Mr. Grohs were escalating from shouting at each other, to throwing chairs and personal belongings, to chest bumping etc. There was both verbal and physical violence. In the incident involving the garbage truck, the evidence was uncorroborated, but Ms. Corey claimed that Mr Grohs had put the truck in motion while she was exiting the vehicle. Although Mr. Gatske had taken action to resolve matters between the two, incidents were still occurring and escalating.

[194] According to the testimony of the other workers, ***all of the permanent workers had refused to work with Ms. Corey***. At paragraph [148] the Appellant argued that "Ms. Corey was a difficult person to work with. She has a definite point of view about how things should go." The testimony provided evidence that the Town performs services for the population of Regina Beach such as tree cutting, and garbage collection. Mr. Gatske testified that most of these duties require two employees to be scheduled to work together for the safety of the employees. Some employees have qualifications for certain jobs which makes scheduling difficult if employees refuse to work together. As the Town of Regina Beach has only four permanent employees and two casual seasonal employees, the Town was having difficulty meeting its obligations to the population to get the work done because of the scheduling problem created by employees not wanting to work with certain other employees. All other employees stated that they refused to work with Ms Corey.

Although the Respondent argued that other workers refused to work with each other, Ms. Corey was the only one that everyone stated that they would refuse to work with.

[195] There was testimony from the workers that ***the rest of the staff do not trust her***. Trust is necessary when employees work closely together. In the testimony Mr. Varsanyi recounted that Ms. Corey had lied to him about what Mr. Grohs had said about him in the garbage bins incident, and Mr. Gatske testified that Ms. Corey had lied to him about that Mr. Grohs had refused to drive her home during the cat litter incident. At paragraph [148] the Appellant argued that "Saying these things can only be calculated to incite conflict, and that is what happened."

Regarding the taping of the meeting on April 9<sup>th</sup>, 2019, the Respondent argued that the taping could not be considered as a trust issue as the taping occurred during the meeting to terminate Ms Corey. I therefore did not place any weight on that incident.

[196] That Ms. Corey was ***the most junior of the permanent staff***. In the testimony of Mr. Gatske, when the three managers for the Town met on March 18<sup>th</sup> and they reviewed the situation after the complaint filed by Ms. Corey. In the context of the other incidents that had

occurred, Mr. Gatske commented regarding the staff, “they should all be fired” because of the dissension in the workplace. They of course could not fire all the employees. They discussed terminating Ms. Corey as she was the most junior of the permanent staff. That reason was based on the fact that it would cost less to terminate her employment than the other employees who had been employed longer and would require large severance payments.

[197] In considering the good and sufficient other reasons, I did not consider the following as good and sufficient reasons:

- the original basis for terminating Ms Corey’s employment discussed by the managers - leaving work early and absences. These instances occurred during her first probationary period There was no evidence that there had been a recurrence of this issue since Ms. Corey had been hired as full time permanent.
- the public complaints regarding Ms Corey’s interactions with the public; and
- the anonymous texts and phone calls received by Mr. Beachy.

[199] In determining whether the Appellant has met the onus set in section 3-36(4)(b), I refer to the ruling by the Adjudicator in *Siga vs. Karyn Taypotat* (SKLRB File 116-14) :

In assessing whether reasons given for termination can and do constitute ‘good and sufficient other reasons’, I have been guided by the meaning of that term as expressed by the Supreme Court of Canada in *LaFrance vs Commercial Photo Service* (1980), 111 D.L.R. (3d) 310 which states:

“From the onset it has been held that this phrase means that the investigation commissioner (the person who decided the issue) must be satisfied that the other reason relied on by the employer is of a substantial nature and not a pretext and that it constitutes the true reason for the dismissal.”

Mr. Beachy gave testimony under cross examination that his decision to terminate Ms. Corey’s employment was not because of the March 18<sup>th</sup> incident, but because of an accumulation of issues. I accept that the Appellant has met the onus of ‘good and sufficient other reason as set out in paragraph [192]:

- That the Town had a serious concern with the potential for violence in the workplace;
- That all of the permanent staff in Public Works have either refused to work with Ms. Corey or would do so if she returned to the workplace;
- That the rest of the staff do not trust her; and
- That Ms. Corey was the most junior of the permanent staff.

## VI Conclusion

[200] Based on the evidence presented before me and the written arguments that were submitted I find the following:

- That the actions of Quincy Grohs that are complained of by the Respondent did not constitute 'harassment' as defined by section 3-35 of *The Saskatchewan Employment Act*;
- That Ms. Corey's employment was not terminated because of the complaints that she made to the Employer;
- That the Respondent was not engaging in protected behavior under section 3-35 of the Act; and
- That although the Appellant had taken discriminatory action under section 3-36 of the Act, the Appellant met the onus that the Respondent was terminated for 'good and sufficient other reason' under section 3-36(4)(b).

## VII ORDER

[200] I hereby order:

- That the Order for the Stay of Proceedings issued October 28, 2019 be quashed;
- That the appeal is granted; and
- That the Notice of Contravention Order 1-00005676 issued May 22, 2019 be quashed.

Dated at Gull Lake, Saskatchewan this 27<sup>th</sup> day of January, 2020.

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Marlene Weston - Adjudicator