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BCHRT 137

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

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

BETWEEN:

Jessie Nelson

COMPLAINANT

AND:

Goodberry Restaurant Group Ltd. dba Buono Osteria, Michael J. Buono, Ryan Kingsberry, Brian
Gobelle and Nova Melanson

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Devyn Cousineau

Counsel for the Complainant:

Adrienne S. Smith

Counsel for the Respondents:

Michael F. Welsh, QC

Date of Hearing:

July 26 – 28, 2021

Location of Hearing:

Via videoconference

I INTRODUCTION

[1] Jessie Nelson is a non-binary, gender fluid, transgender person who uses they/them pronouns. They worked as a server for Buono Osteria, a restaurant run by the respondents Michael Buono and Ryan Kingsberry. The respondent Brian Gabelle was the bar manager. During their employment, Mr. Gabelle persistently referred to Jessie Nelson with she/her pronouns and with gendered nicknames like “sweetheart”, “honey”, and “pinky”. Jessie Nelson asked Mr. Gabelle to stop, and he did not. They asked management to intervene and were told to wait. On their final day of work, Jessie Nelson again tried to speak to Mr. Gabelle about this issue and the discussion grew heated. Four days later, they were fired. Pressed to explain the termination, Mr. Kingsberry told Jessie Nelson that they had simply come on “too strong too fast” and were too “militant”.

[2] Jessie Nelson alleges that Mr. Gabelle’s conduct towards them, and the employer’s response, amounts to discrimination in employment based on their gender identity and expression, in violation of s. 13 of the *Human Rights Code* [**Code**]. I agree.

[3] For the reasons that follow, I find that Buono Osteria, Mr. Gabelle, Mr. Kingsberry, and Mr. Buono discriminated against Jessie Nelson and I order remedies against them. I dismiss the complaint against Nova Melanson.

II ISSUES

[4] In this complaint, Jessie Nelson bears the burden of proving that they were treated adversely in their employment and that their gender identity or expression was a factor in that adverse treatment: *Moore v. BC (Education)*, 2012 SCC 61 at para. 33. There are three issues I must decide:

- a. Did Mr. Gobelle's conduct towards Jessie Nelson in the workplace amount to discrimination?
- b. Was the employer's response reasonable and appropriate?
- c. Was Jessie Nelson's gender identity and expression a factor in the termination of their employment?

III FACTS

[5] In this section I set out my findings of fact. These findings are based on the testimony of Jessie Nelson and the following witnesses:

- a. **Stacy Coplin** (she/hers): Ms. Coplin was a server who worked with Jessie Nelson. She witnessed a number of the events in this complaint, including the final incident with Mr. Gobelle and the phone call in which Mr. Kingsberry terminated Jessie Nelson's employment.
- b. **Katie Grill-Donovan** (she/hers): Ms. Grill-Donovan is Jessie Nelson's friend. She witnessed the termination call with Mr. Kingsberry.
- c. **Michael Buono** (he/his): Mr. Buono is a director of Buono Osteria, and its executive chef. He made the decision to terminate Jessie Nelson's employment. He is a named respondent.
- d. **Nova Melanson** (she/hers): At the relevant time, Ms. Melanson was the front of house manager. She was present at an important staff meeting and at the final incident with Mr. Gobelle. She is a named respondent.
- e. **Brian Gobelle** (he/his): At the relevant time, Mr. Gobelle was the bar manager. It was his conflict with Jessie Nelson that led to their termination. He is a named respondent.

[6] The final named respondent, Ryan Kingsberry (he/his), did not testify or appear in this proceeding, though he was represented by counsel for the respondents. Jessie Nelson submits that I should draw an adverse inference from his failure to testify, particularly since he was directly involved in at least two crucial conversations. I do not find it necessary to draw an adverse inference. The effect of Mr. Kingsberry's failure to testify is that Jessie Nelson's evidence about their conversations is uncontested. That evidence supports their allegations.

[7] I am satisfied that all of the witnesses testified truthfully to the best of their ability. At the time of the hearing, the events in question had taken place nearly 2.5 years ago. Memories had understandably faded and, in my view, this explains most of the small differences in the evidence I heard from witnesses to the same events. Other minor differences can be attributed to the witnesses' subjective interpretations and perceptions of the same incident.

[8] There are very few material issues on which the evidence was directly in conflict. On those issues, I have been required to make findings of credibility. In doing so, I apply the well-known principles summarized by Justice Dillon in *Bradshaw v. Stenner*:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides ... The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time ...

Bradshaw v. Stenner, 2010 BCSC 1398; aff'd 2012 BCCA 296; leave to appeal refused, [2012] SCCA No. 392 at para. 186 [citations omitted]

[9] As this passage makes clear, the weight I give to a witness' evidence will depend both on their truthfulness as well as their reliability, or accuracy. While related, these two concepts –

credibility and reliability – do not always overlap. A person may testify honestly but their evidence may not be reliable because of their inability to accurately observe, recall, or recount the event: *R. v. H.C.*, 2009 ONCA 56 at para. 42. In that case, the decision maker may not safely rely on their testimony where it conflicts with others' who are better positioned to give accurate testimony.

[10] The primary dispute in the evidence is between the testimony of Jessie Nelson and Mr. Gobelle. In those areas where their testimony was in conflict, I have preferred Jessie Nelson's version. They had a clear recollection of events, which had a deep impact on them. They testified in a straightforward manner and their evidence was not shaken in cross-examination. They readily acknowledged when they behaved poorly. On the other hand, by his own admission, Mr. Gobelle's memory was very poor. He attributes this to a head injury. He often could not remember events or, if he did, his memory was uncertain. Where Mr. Gobelle testified that he could not remember a particular event, I have accepted the evidence of other witnesses about his conduct. That evidence was generally consistent between the witnesses and was also consistent with behaviour I observed from Mr. Gobelle during the hearing. He struggled more than anyone else to use the proper pronouns to describe Jessie Nelson and used a type of bravado to cope with the stress of the moment. In the result, most of my findings in this decision rely on evidence from the other witnesses. I set out the specific basis for my findings of fact on disputed issues below.

A. Background

[11] Buono Osteria is a restaurant in a small town on BC's Sunshine Coast. Mr. Buono is the director and executive chef. He primarily works in the kitchen. At the relevant time, Mr. Kingsberry was also a director of the restaurant, and its general manager. In that role, he was responsible for hiring, and oversaw the front of house staff. Ms. Melanson was the front of house manager, reporting to Mr. Kingsberry. Mr. Gobelle was the bar manager, also reporting to Mr. Kingsberry.

[12] In 2019, Jessie Nelson was moving from Vancouver to the Sunshine Coast. They had significant experience in the restaurant industry. They reached out to their friend, Ms. Coplin, for help finding a job. At that time, Ms. Coplin was a server at Buono Osteria and enjoyed her work there. She put Jessie Nelson in touch with Mr. Kingsberry and – with Jessie Nelson’s permission – made a point of telling him in advance that Jessie Nelson uses they/them pronouns.

[13] Mr. Kingsberry interviewed and hired Jessie Nelson as a server for the restaurant. Their first shift was May 27, 2019. The first three months of their employment was a probationary period.

[14] When they started, Jessie Nelson talked to Mr. Kingsberry about how important it was to them to be properly gendered in the workplace. At that point, Jessie Nelson had come out as trans relatively recently. They explain that it is a daily struggle to have their pronouns properly recognized:

It’s not easy, it’s not simple. Anytime I am in relationship with any other person, whether that’s getting a coffee or going to the grocery store, I’m almost always misgendered. I’m either referred to as “Ms” or “ma’am” or I’ve had people assume that Jessie is a shorthand for Jessica. It’s a daily conversation I’m in.

Jessie Nelson was happy, then, to have Mr. Kingsberry’s support in speaking to the restaurant staff and ensuring that they were properly gendered in their workplace.

[15] Mr. Buono explains that Jessie Nelson was the first non-binary person to work at the restaurant. It was a new experience for many of the staff and managers, himself included, to use they/them pronouns. They made mistakes – as Jessie Nelson expected, and accepted, that they would. Jessie Nelson perceived that some staff were nervous about making mistakes and kept their distance. Others, including Mr. Kingsberry and Ms. Melanson, were proactive and diligent about using the right pronouns and correcting themselves immediately if they made a mistake. Ms. Coplin witnessed Mr. Kingsberry correct staff who used the wrong pronouns for Jessie Nelson.

[16] Mr. Gobelle was another story. At the beginning of their employment, Jessie Nelson perceived that Mr. Gobelle was distant from them. This was more or less consistent with how he treated many of the staff. However, the relationship degraded relatively quickly.

[17] Mr. Gobelle referred to Jessie Nelson by nicknames. When they started work, they had pink hair and so Mr. Gobelle called them “pinky”. He also referred to them as “sweetheart”, “sweetie”, and “honey”. When he used pronouns, Mr. Gobelle referred to Jessie Nelson as she/her. This was all very hurtful. Jessie Nelson experienced the nicknames as offensive, degrading, and minimizing. Sweetie, sweetheart, and honey are all nicknames traditionally used for women and femme people. They specifically undermined and erased Jessie Nelson’s gender identity. Jessie Nelson explains:

It’s an incredibly dysphoric feeling. I’ve lived my entire life attempting to self-express and figure out who I am and find a place in this world. And I’ve worked very very hard and gone through a lot to get here. And it’s a challenging battle to have on a daily basis, even when people don’t mean it, let alone when somebody is doing it purposely.

[18] Jessie Nelson asked Mr. Gobelle to stop referring to them as she/her and to stop using nicknames. The first time they spoke to Mr. Gobelle, they took a lighthearted approach. Ms. Coplin, who witnessed the exchange, described it as a “simple call in”, along the lines of “hey – I have a name. I’d love if you could use it”. However, the conduct persisted, and Jessie Nelson spoke to Mr. Gobelle at least two more times. They repeated that their name was Jessie and that, at the very least, if he could not use the right pronouns, he could use their name. Mr. Gobelle’s conduct persisted. Jessie Nelson felt that he was deliberately trying to hurt them. For her part, Ms. Coplin could not tell at first whether the nicknames were Mr. Gobelle’s ill-advised attempt at comradery. However, she very quickly saw that his tone was condescending and not friendly. Even Mr. Buono acknowledged that Mr. Gobelle was using nicknames as a way to “get back” at Jessie Nelson in connection with their efforts to make the restaurant a more inclusive place for trans people. I return to this below.

[19] For his part, Mr. Gobelle testified that he may have called Jessie Nelson “pinky” because they had pink hair at the time. He does not recall Jessie Nelson asking him to stop. He does not

recall using other nicknames. For the reasons I have set out above, I prefer Jessie Nelson's evidence about his behaviour towards them, which was corroborated by other witnesses and consistent with Mr. Gobelle's behaviour during the hearing.

[20] Management became aware fairly early on that there was conflict between Mr. Gobelle and Jessie Nelson. Mr. Buono says that he was aware that Jessie Nelson and Mr. Gobelle were "having a hard time getting along". He and Mr. Kingsberry spoke to Mr. Gobelle about his behaviour. They asked Mr. Gobelle to be "as accommodating as possible" towards Jessie Nelson. Mr. Buono recalls that Mr. Gobelle was having a hard time getting used to using gender neutral pronouns and that he said he felt confused by it. Mr. Buono says they told Mr. Gobelle to use the right pronouns and that, if he could not do that, to just use Jessie Nelson's name.

[21] Notwithstanding this conversation, Mr. Gobelle's behaviour did not improve.

B. Staff meeting

[22] On June 13, 2019, Mr. Kingsberry convened a staff meeting. This meeting was a turning point in the relationship between Jessie Nelson and Mr. Gobelle.

[23] Mr. Kingsberry led the meeting with announcements and directions to prepare staff for the busy summer months. Among other things, he asked staff not to alienate guests by asking if they had a reservation. At the end of the meeting, he opened up the conversation to invite ideas from staff.

[24] Ms. Coplin took this opportunity to speak up about some of the offensive language that staff was using in the restaurant. In particular, she had overheard staff using the word "retarded" to describe things they thought were stupid or they did not like. This word is very harmful to people with disabilities and Ms. Coplin asked people to stop using it. She also noted that there had been incidents where staff made inappropriate and harmful jokes about rape. For example, she had heard Mr. Gobelle warn staff before a busy night that they were going to be "raped" or to prepare themselves to be "anally raped without lubricant". These types of comments were deeply upsetting to her and should not be present in any workplace.

[25] Jessie Nelson then took the opportunity to speak up about how staff could make the restaurant a more inclusive place for trans guests by using gender neutral language. They explained: “We don’t know who’s walking in the door. Wouldn’t it be kind of us to not assume anything about them?”. For example, instead of greeting a group of guests with “hi ladies” or “hey guys”, they suggested that staff could use words like “folks” or “friends”, or skip collective pronouns altogether. They used their own experience going to restaurants to highlight the harm that can be caused by misgendering a guest:

I used ... the general example of being in restaurants and being misgendered. Oftentimes it will be me with a group of femme-appearing or female people and a server will come up and say, “hey ladies”, which takes me completely out of that experience. I don’t feel like I’m at the table anymore. I now feel that I have to correct the server, or my friends feel like I do. When the server leaves, it’s not like that moment is over. Now my friends are worried about me and feeling that they have to take care of me. It changes the entire environment, the entire experience. And that’s why people go to restaurants – is to have an experience, to have somebody serve them food and have a higher value night.

[26] The reaction to this suggestion was mixed. Mr. Kingsberry was supportive, as were some other staff. On the other hand, some staff reacted defensively and offered resistance. Ms. Melanson testified that she felt that Jessie Nelson and Ms. Coplin had aggressively taken over the meeting. Both were relatively new to the restaurant, and Ms. Melanson found it “bizarre” that they would take it upon themselves to effectively “run the meeting”. She says, “it was a lot in a short period” and that Jessie Nelson was coming off very “strong”. This is the same type of language that would later be used to explain why their employment was terminated. After the meeting, Ms. Melanson spoke to one of the servers who was particularly upset at the suggestion that she should change the way she greets guests.

[27] Jessie Nelson and Ms. Coplin recall that Mr. Gobelle’s body language during this part of the meeting was angry and annoyed. Jessie Nelson recalls that he abruptly got up and left to open the bar. Mr. Gobelle agrees that he did not appreciate the suggestion to change his behaviour. He testified that he was not about to change how he spoke to guests unless he was

directly ordered to by his manager. From Mr. Buono's perspective, this became the main source of Mr. Gobelle's resentment towards Jessie Nelson.

[28] Indeed, after this meeting, the tension between Jessie Nelson and Mr. Gobelle intensified. He talked to them as little as possible, often ignoring them altogether. He made their job more difficult by being uncooperative or non-communicative about drink orders. For example, when a customer sent back a glass of white wine, Mr. Gobelle refused to taste it or offer Jessie Nelson any suggestions for how to address the customer's complaints. Another time, one of Jessie Nelson's tables ordered a daquiri. When Jessie Nelson went to the bar to pick up the drink, Mr. Gobelle laughed at them, said he did not make daquiris, and walked away without offering any alternatives. Jessie Nelson went back to talk to the table, and when they returned to the bar, Mr. Gobelle had made the daquiri. While this behaviour was not strictly reserved for Jessie Nelson, they did perceive – rightly, in my view – that he had a specific animus towards them.

[29] Ms. Coplin also perceived an increase in tension in her dealings with Mr. Gobelle after the staff meeting. She says that he "blatantly" treated her and Jessie Nelson differently, and was purposely messing up their drinks and not helping them. She complained to Mr. Kingsberry that she could not do her job properly anymore, and that it seemed like Mr. Gobelle was deliberately trying to make it as hard as possible on her. Mr. Kingsberry acknowledged the issue, and told Ms. Coplin that Mr. Gobelle was going through a tough time. He assured her that he would talk to Mr. Gobelle about his behaviour.

[30] Because of the issues they were having with Mr. Gobelle, Jessie Nelson developed concerns that their employment could be negatively impacted because of their gender identity. They expressed this concern to Mr. Kingsberry and asked for feedback about their performance. Mr. Kingsberry reassured them. He told them they were a great server and that he was happy with their performance. Ms. Coplin overheard part of this conversation, as well as one other more casual exchange where Mr. Kingsberry was complimenting Jessie Nelson on their performance and offering words of encouragement.

[31] Jessie Nelson also talked to Mr. Kingsberry about the problems they continued to have with Mr. Gobelle. The timing of this conversation is important. Jessie Nelson says that it was about one week before the final incident leading to their termination, which would be about June 16. The respondents do not dispute this timing, and I accept it as accurate.

[32] Jessie Nelson asked Mr. Kingsberry to talk to Mr. Gobelle again about using their name and pronouns correctly. Mr. Kingsberry assured them that he would talk to Mr. Gobelle but said that it might take a little time. He explained that the restaurant was currently addressing other performance issues with Mr. Gobelle and he did not want to “pile on” to him too much. After their conversation, Jessie Nelson understood that someone from management was going to speak to Mr. Gobelle on their behalf.

[33] However, Mr. Gobelle’s behaviour towards Jessie Nelson continued. They found it increasingly hard to work with him for an entire shift. They felt nervous and stressed about whether Mr. Gobelle would misgender them, interrupt their service, or sabotage their performance.

C. Final incident

[34] The final incident that led to Jessie Nelson’s termination happened on June 23, a Sunday. By this point, Jessie Nelson felt that too much time had passed since their last conversation with Mr. Kingsberry and Mr. Gobelle’s behaviour was not getting any better. Before their shift, they approached Mr. Kingsberry to ask whether he had spoken to Mr. Gobelle. He had not.

[35] This conversation between Mr. Kingsberry and Jessie Nelson is important because the respondents say that Jessie Nelson’s conduct afterward amounted to insubordination in light of what they were told by Mr. Kingsberry. Jessie Nelson denies doing anything that Mr. Kingsberry had told them not to.

[36] Mr. Buono was not present for the conversation but gave evidence about what he understood that Mr. Kingsberry had told Jessie Nelson. He says that Mr. Kingsberry told Jessie

Nelson that he and Mr. Buono intended to meet with them and Mr. Gabelle on Thursday, June 27. By this point, management was aware that Mr. Gabelle's behaviour had not improved, and that Jessie Nelson was reporting that he was not using the correct pronouns to refer to them. Mr. Buono had determined that the next step was for he and Mr. Kingsberry to meet with Mr. Gabelle and Jessie Nelson to "mediate" the dispute between them. He felt it was important to create a space where management could control emotions and give each person the space to "speak freely without judgement". In that environment, he says, management could "evaluate both people's opinions and then hopefully push towards creating a resolution by offering an unbiased opinion."

[37] Mr. Buono says that Mr. Kingsberry told him that Jessie Nelson wanted to talk to Mr. Gabelle themselves. He says that he told Mr. Kingsberry to tell Jessie Nelson not to do that, especially during work hours, and to wait until they could facilitate a proper mediation. He says that he never would have agreed to have Jessie Nelson try to resolve the conflict themselves by talking to Mr. Gabelle alone. He understands that Mr. Kingsberry told Jessie Nelson not to try talking to Mr. Gabelle directly.

[38] Ms. Melanson also testified that Mr. Kingsberry told her that he had told Jessie Nelson not to talk to Mr. Gabelle but instead to wait until they could all sit down for a meeting together.

[39] Mr. Gabelle has a slightly different recollection. He "vaguely" remembered Mr. Kingsberry telling him that he, Mr. Kingsberry, and Jessie Nelson would meet to have a conversation after the shift. He says that he did not really understand what it was about. He did not mention a mediation or a meeting on June 27.

[40] Jessie Nelson recalls their conversation with Mr. Kingsberry differently. They say that Mr. Kingsberry told them that he and Ms. Melanson were going to speak to Mr. Gabelle the next day. However, at that point, Jessie Nelson felt they could not wait any longer for management to deal with the issue. Change was not coming fast enough, and they did not want to work another shift having to deal with Mr. Gabelle's conduct. They asked Mr. Kingsberry if

they could talk to Mr. Gobelle directly. They hoped to connect with Mr. Gobelle on a human level, and felt confident that they could have a respectful conversation. Mr. Kingsberry told them that was fine, but asked that they wait until after work. Jessie Nelson responded that they would rather have the conversation 'on the clock' because it was work being imposed on them, as a trans person, to ensure their workplace was safe. Mr. Kingsberry agreed, but asked Jessie Nelson to wait for a lull in the service. Jessie Nelson says that Mr. Kingsberry never proposed or mentioned a mediation, or a conversation between themselves, management, and Mr. Gobelle.

[41] Only Jessie Nelson and Mr. Kingsberry were present for their conversation about how to address Mr. Gobelle's conduct that day. As I have said, Mr. Kingsberry elected not to testify and so Jessie Nelson's firsthand evidence about the conversation is undisputed. Mr. Gobelle has no clear or reliable memory of what he was told by Mr. Kingsberry. Mr. Buono and Ms. Melanson's evidence about this conversation is hearsay, based on what they say Mr. Kingsberry told them about it. Ultimately, I prefer Jessie Nelson's evidence about what they were told by Mr. Kingsberry. I have already found their evidence to be generally credible and reliable. Further, I find it unlikely that they would deliberately and flagrantly disobey clear management instructions. At this point, they were already concerned about their employment. They had made a point of asking Mr. Kingsberry's permission to address Mr. Gobelle directly, and – as I will explain – approached Mr. Gobelle directly in front of Mr. Kingsberry and other managers, none of whom intervened to stop them or say that their behaviour was inappropriate. In fact, Mr. Kingsberry affirmed later in the evening that Jessie Nelson could talk to Mr. Gobelle directly.

[42] In sum, I find that Mr. Kingsberry had approved Jessie Nelson's request to talk to Mr. Gobelle during a lull in service that night. That is what they did.

[43] Jessie Nelson waited for the service to slow down and then approached the bar to talk to Mr. Gobelle. There is some dispute in the evidence about whether they crossed into a prohibited area behind the bar or spoke to Mr. Gobelle from outside the bar area. In my view, nothing turns on this. I simply note that, if Jessie Nelson did go into a prohibited area, no one from management intervened though they were nearby and witnessed it.

[44] Jessie Nelson asked if Mr. Gobelle would mind stepping outside so they could have a chat. He refused and said he was working. Jessie Nelson explained that Mr. Kingsberry had approved the two of them spending a few minutes of work time to have a discussion. Mr. Gobelle repeated that he was working and said they could talk after the shift. Jessie Nelson left it at that.

[45] Mr. Buono and Ms. Melanson both observed this interaction from afar. Ms. Melanson overheard Mr. Gobelle tell Jessie Nelson that he was still working, and they could talk after the shift. She says she knew that the conversation would not end well.

[46] About 20-30 minutes later, Jessie Nelson saw Mr. Kingsberry standing at the bar with Mr. Gobelle. The restaurant was quiet. They decided to approach Mr. Gobelle again, in hopes that Mr. Kingsberry would support the two of them having a conversation. Again, they asked Mr. Gobelle to step outside and talk to them. He ignored them. Mr. Kingsberry told Jessie Nelson that it seemed that Mr. Gobelle would prefer to talk after the shift was over.

[47] Again, Mr. Buono observed this interaction from afar but did nothing to intervene.

[48] At this point, Jessie Nelson felt confused. They had fully expected Mr. Kingsberry to back them up but instead they felt that they were being left to deal with the situation completely on their own. They waited until the end of the shift.

[49] After the restaurant closed, Jessie Nelson approached Mr. Gobelle a third time. He told them he would be going outside for a cigarette soon and they could talk then. It was tense. A few minutes later, Jessie Nelson saw that Mr. Gobelle was smoking outside. They followed him out there.

[50] At this point, it was clear that Mr. Gobelle did not want to talk to Jessie Nelson. They felt scared about having the conversation, which would be a difficult one under the best of circumstances. In this case, they had reason to anticipate that Mr. Gobelle would be resistant to their point of view.

[51] Only Jessie Nelson and Mr. Gobbelle were present to witness this first part of their interaction. Mr. Gobbelle says that Jessie Nelson was obviously angry with him, but he did not know why. He says they were behaving very aggressively. He could not remember much of what they talked about, but says it was possible that they raised the issue of their pronouns, and how to address guests. He says he was not receptive to changing how he addressed guests. He says he tried to go inside when Jessie Nelson put their hands on his chest and said, “you’re not going anywhere”. He brushed past them and went inside.

[52] Jessie Nelson’s evidence about this exchange was different. They say they started the conversation by expressing that they sensed that Mr. Gobbelle did not like them and that they did not understand why. They recall that Mr. Gobbelle laughed and responded, “yeah I don’t fucking like you”. He told them, “you’re trying to police our language and tell me how to speak, and what words to use”. He felt this was unfair and that it went against what his grandfather had fought for in the war. Jessie Nelson understood this to mean that their requests somehow impaired Mr. Gobbelle’s freedoms – a position they found ironic given that freedom and equality was the foundation of their requests of Mr. Gobbelle. Jessie Nelson recalls that Mr. Gobbelle described them as “militant” – a word that would later be used in the explanation for why their employment was terminated.

[53] At least three times during their conversation, Mr. Gobbelle called Jessie Nelson sweetie, sweetheart, or honey. Each time they told him not to. They told him, as they had before: “my name is not pinky or sweetie. If you can’t use my pronouns, at least use my name”. Mr. Gobbelle said that he was not going to change who he was. The people who come to his bar are “ladies and gentlemen”, “boys and girls”. If anyone wants to be called differently, they can tell him and he will respect that. Jessie Nelson tried to explain that this would be a hard conversation for a guest, and it is kinder not to assume a person’s gender and require them to have this conversation when all they really want to do is eat their food.

[54] By the third time they had to ask Mr. Gobbelle to use their name, Jessie Nelson was frustrated. They spoke sternly and with a raised voice: “Brian, that is not my name. My name is Jessie. Call me by my name”.

[55] Jessie Nelson recalls that the conversation ended abruptly. Mr. Gobelle said, “this conversation is over, I’m done” and started to walk by them. Jessie Nelson says that they raised their arms in disbelief and said, “are you serious?”, to which Mr. Gobelle responded: “yeah I’m fucking serious”. Mr. Gobelle brushed past them and back into the restaurant.

[56] On this issue, I again prefer Jessie Nelson’s evidence. They had a clear recollection of the conversation, which was unshaken in cross-examination. They were frank in acknowledging their own conduct, even when it did not cast them in a favourable light. Their evidence about what Mr. Gobelle said was consistent with the evidence of other witnesses about Mr. Gobelle’s resistance to their suggestions about how to be more inclusive of trans guests, as well as his own admitted feelings on the matter. As in other areas, Mr. Gobelle’s memory was vague and at times inconsistent with the probabilities of the case as a whole. In particular, I find it highly improbable that Jessie Nelson would try to physically block Mr. Gobelle in the manner he says they did. While Mr. Gobelle may have perceived their conduct as aggressive or threatening, in my view that is more a function of his own discomfort with conflict and his perception that Jessie Nelson was pushing their ‘agenda’ onto him. In the result, I accept Jessie Nelson’s evidence about what happened in this interaction.

[57] At that time, a number of staff and managers had gathered in the restaurant’s private dining room to drink and socialize after their shift. Ms. Coplin, Ms. Melanson, and Mr. Buono were all there when Mr. Gobelle stormed into the dining room, slamming the sliding door behind him. They all agree he was visibly upset. He came to Mr. Buono, angry and swearing. Mr. Buono describes him as “rambling”. Ms. Coplin recalls that he said words to the effect of, “get her the fuck out of here”, “it’s her or me”, and “I’m gonna fucking quit if she stays”. None of the other witnesses could remember his exact words, but everyone agrees he was angry and swearing. I accept Ms. Coplin’s evidence that Mr. Gobelle expressed that he was angry at Jessie Nelson and referred to them using she/her pronouns. Ms. Coplin was already very alert to the issue of Jessie Nelson being misgendered in the workplace and would have immediately recognized the significance of those exact words being used.

[58] Jessie Nelson was only a few seconds behind Mr. Gobelle. They narrowly missed being hit by the sliding door that Mr. Gobelle had slammed. This was scary. They felt a lot of adrenaline and fear in their body. They were highly emotional.

[59] Mr. Gobelle was swearing. Jessie Nelson recalls him saying words to the effect “I can’t fucking do this anymore, I’m not going to fucking do this – I’m outta here”. Ms. Melanson was trying to get him to stop talking. What happened next is the subject of disagreement between the witnesses.

[60] The entire exchange was very short – about 30 seconds. There is no dispute that Jessie Nelson said something condescending and sarcastic to Mr. Gobelle, which was intended to hurt him. They called Mr. Gobelle “sweetie”, as he had done so many times to them. There is also no dispute that Jessie Nelson touched Mr. Gobelle on his back. But whereas they say this was a gentle touch, the respondents describe it as a violent physical assault.

[61] Jessie Nelson says they put their hand on Mr. Gobelle’s shoulder and said something sarcastic like “must be tough, eh sweetie?”. They admit, “this was not my finest hour”. They were trying to get a jab in and weaponize the same words that Mr. Gobelle had been using against them on him. They deny hitting or striking him, or putting their hand on his neck.

[62] Ms. Coplin recalls that Jessie Nelson said something like “it’s ok, sweetie – I’m leaving so you don’t have to”. She did not see Jessie Nelson touch Mr. Gobelle, and could not confirm whether they did or did not. She was focused on Jessie Nelson and ensuring their safety in that moment.

[63] For his part, Mr. Gobelle says that Jessie Nelson “smacked” him on the back. He could not remember the words they used. He was shocked. He describes it as a “violent encounter” and an assault. This is similar to the evidence of Mr. Buono and Ms. Melanson. Mr. Buono says that, when they entered the room, Jessie Nelson’s eyes were “intense”. He says they slapped Mr. Gobelle on the back and said, condescendingly, “see ya later, sweetie”. He describes it as an “antagonizing blow” that was not friendly. Ms. Melanson says that Jessie Nelson “slapped”

Mr. Gobelle on his back and said, “have a good night sweetie”. She says that the slap was hard enough that she could hear it.

[64] I accept that Jessie Nelson used some force on Mr. Gobelle’s back. In their own words, they were experiencing a rush of adrenaline and “emotional chaos”. They were upset and angry. Along with their words, they intended to find some way to hurt Mr. Gobelle as he had hurt them. The contact was enough to shock Mr. Buono and Ms. Melanson. However, I do not accept that it is fair to characterize this as a violent physical assault. It did not hurt Mr. Gobelle, and he does not claim it did. Rather, he was surprised by it and the touch was unwelcome. It was a parting slap on the back.

[65] Jessie Nelson told Ms. Coplin they were leaving, and the two left together. Once they got to the car, Jessie Nelson broke down and started crying. They describe it “like a panic attack”. They felt incredibly hurt and afraid they would lose their job.

[66] Back at the restaurant, Mr. Buono says that Mr. Gobelle was so angry that he was nearly inconsolable. Other staff were upset and concerned. Mr. Buono reassured everyone that the restaurant would not tolerate Jessie Nelson’s conduct.

D. Decision to terminate

[67] Mr. Buono spoke to Mr. Kingsberry. He felt that Jessie Nelson had been insubordinate in taking it upon themselves to talk to Mr. Gobelle and then going so far as to hit him. Mr. Buono no longer felt that the two of them could be in the same building because of the physical altercation, and that it was his obligation to keep the environment safe by removing Jessie Nelson. In the circumstances, he says that Jessie Nelson was the “obvious aggressor”, having confronted Mr. Gobelle against management’s wishes and then “approaching and striking” him. He felt that he could not create a safe environment if he were to allow Jessie Nelson to return to work. Because Jessie Nelson was still in their probationary period, he decided that the restaurant could exercise its right to terminate them without notice and without explanation. He thought that, by not giving any reason for the termination, they could avoid a perception that the termination was because of the “gender neutral pronoun request”.

[68] At some point, Mr. Buono also spoke to Mr. Gobelle about the incident. He says this was after he had already made the decision to terminate Jessie Nelson's employment. He asked Mr. Gobelle to write a statement about what had happened. The respondents assert litigation privilege over this statement and did not disclose it in these proceedings. In response to my questions, counsel for the respondents said that the statement was dated June 23 – the night of the incident. This would seem to support that Mr. Buono had spoken to Mr. Gobelle before, or around the same time as, he was deciding to terminate Jessie Nelson's employment. I do not make a specific finding about this, or about the merits of the claim of privilege. Ultimately, it is clear that Mr. Buono chose Mr. Gobelle over Jessie Nelson and accepted his version of events without ever asking for, or considering, theirs.

[69] Mr. Buono announced to staff that Jessie Nelson would not be returning. He explained that they had gone against the wishes of management about how to handle a conflict and engaged in a physical altercation. There is no dispute that this announcement happened before Jessie Nelson was informed of their own termination.

[70] Mr. Buono never spoke to Jessie Nelson again. From his perspective, he had seen enough.

E. Termination

[71] After the incident, four days passed. Neither Jessie Nelson nor Ms. Coplin heard anything from the restaurant. They found this strange; they had expected someone to reach out. Jessie Nelson contacted Mr. Kingsberry to ask about their schedule for the following week, and were reassured that it was coming. They asked if they could come by and pick up their tips.

[72] On Thursday, June 27, Jessie Nelson and Ms. Coplin went to the restaurant to pick up their tips. Mr. Kingsberry met them outside, which was very unusual. Ms. Coplin explained that usually she would go in and say hi, chatting with her co-workers. This time, Mr. Kingsberry seemed not to want them in the restaurant. He did not ask Jessie Nelson how they were, or anything about the incident. He told them they were scheduled to work on the following day.

[73] The next day was Friday, June 28. Jessie Nelson understood they would start work around 4 or 4:30. Earlier in the day, they went grocery shopping with Ms. Coplin and Ms. Grill-Donovan. While they were at the store, Jessie Nelson received a call from Mr. Kingsberry. Because Mr. Kingsberry did not testify, the evidence from Jessie Nelson about this conversation is uncontested. It is also corroborated by the evidence of Ms. Coplin and Ms. Grill-Donovan, who overheard most of the conversation on speaker phone.

[74] Mr. Kingsberry explained that he was calling to terminate Jessie Nelson's employment. They were shocked and caught off guard. They immediately asked why. Within a couple of minutes, they got in the car with Ms. Coplin and Ms. Grill-Donovan, and put the call on speaker phone.

[75] The call lasted about 20-30 minutes. Jessie Nelson persisted in trying to get Mr. Kingsberry to explain why they were being fired, especially given his recent positive feedback about their performance. Mr. Kingsberry continuously evaded the question and repeated that they were being terminated without cause, during their probationary period. The witnesses described him as sighing a lot, giving vague answers, and saying things like "I don't know what to tell you". Eventually he told Jessie Nelson that they had just come off "too strong too fast" and were too "militant" – a word that reminded Jessie Nelson of what Mr. Gabelle had said about them. They challenged Mr. Kingsberry that they were being fired because of their pronouns. Ms. Coplin recalls Mr. Kingsberry telling Jessie Nelson that "part of the problem is making sure you vibe with the team", and that they had made people uncomfortable. He said that his hands were tied, that "the team has spoken", and that Jessie Nelson just was not a "good fit". Ms. Grill-Donovan recalls him saying that it was "too much too fast" and "staff isn't there".

[76] At no point in the conversation did Mr. Kingsberry suggest that Jessie Nelson's termination had anything to do with their final conflict with Mr. Gabelle or the restaurant's view that they had "assaulted" him. There was also no complaint about their performance.

[77] Based on what Mr. Kingsberry said, Jessie Nelson understood that they were being terminated because of their gender identity. This was devastating. Immediately after the call, Jessie Nelson went home with their two friends and sobbed. Ms. Grill-Donavan had never seen her friend cry like that before. Ms. Coplin called the restaurant and resigned. The impact of these events on Jessie Nelson was significant. I return to this below.

[78] On March 24, 2020, Jessie Nelson filed this complaint of discrimination.

IV ANALYSIS AND DECISION

[79] Jessie Nelson only worked for Buono Osteria for about four weeks. During that time, one of their co-workers persistently referred to them with the wrong pronouns and unwanted, gendered, nicknames. They were fired after their attempt to address this conduct led to a heated encounter. I must decide whether, by their conduct, the respondents violated s. 13 of the *Code*. As I have said, the specific issues are:

- a. Did Mr. Gobelle’s conduct towards Jessie Nelson in the workplace amount to discrimination?
- b. Was the employer’s response reasonable and appropriate?
- c. Was Jessie Nelson’s gender identity and expression a factor in the termination of their employment?

I consider each of these issues in turn.

A. Mr. Gobelle’s conduct

[80] All employees have the right to a workplace free of discrimination. Trans employees are entitled to recognition of, and respect for, their gender identity and expression. This begins with using their names and pronouns correctly. This is not an ‘accommodation’, it is a basic obligation that every person holds towards people in their employment: *BC Human Rights Tribunal v. Schrenk*, 2017 SCC 62 [**Schrenk**].

[81] I am satisfied that Mr. Gobelle’s conduct towards Jessie Nelson amounted to discrimination. He was told, by his managers and directly by Jessie Nelson, that they are trans, non-binary, and use they/them pronouns. They are not a woman. And yet, he persisted in referring to them with female pronouns and gendered nicknames. This adversely impacted Jessie Nelson in their employment based on their gender identity. I begin with the pronouns.

[82] Like a name, pronouns are a fundamental part of a person’s identity. They are a primary way that people identify each other. Using correct pronouns communicates that we see and respect a person for who they are. Especially for trans, non-binary, or other non-cisgender people, using the correct pronouns validates and affirms they are a person equally deserving of respect and dignity. As Jessie Nelson explained in this hearing, their pronouns are “fundamental to me feeling like I exist”. When people use the right pronouns, they can feel safe and enjoy the moment. When people do not use the right pronouns, that safety is undermined and they are forced to repeat to the world: I exist.

[83] I appreciate, as the respondents point out, that for many people the concept of gender-neutral pronouns is a new one. They are working to undo the “habits of a lifetime” and, despite best intentions, will make mistakes. Unfortunately, this learning is done at the expense of trans and non-binary people, who continue to endure the harm of being misgendered.

[84] Human rights law is concerned not with intentions, but with impacts: *Code*, s. 2; *Schrenk* at para. 88 (per Abella J, concurring). This does not mean, however, that intention is irrelevant. A person’s intention can go a long way towards mitigating or exacerbating the harm caused by misgendering. Where a person is genuinely trying their best, and acknowledges and corrects their mistakes, the harm will be reduced. This is evidenced by Jessie Nelson’s response to mistakes made by Mr. Kingsberry, who proactively took steps to correct himself and make the workplace more inclusive. These mistakes, though they may have been painful, did not lead them to file a human rights complaint. As they explained in this hearing, “I don’t expect perfection around my pronouns; I never have.” On the other hand, where a person is callous or careless about pronouns or – worse – deliberately misgenders a person, the harm will be magnified. This was the case with Mr. Gobelle.

[85] In cross-examination, Jessie Nelson was asked to agree that Mr. Gobelle was older than other staff and held old-fashioned views that were reflected in how he spoke to them. Jessie Nelson reframed his conduct as follows:

Q: He had a very traditional way of speaking and thinking about things?

A: Ya, again I wouldn't use those terms. Those terms are quite kind. I would say he wasn't traditional or old fashioned, I would say that he was deliberately bigoted. He was deliberately insensitive to the people around him.

Jessie Nelson told Mr. Gobelle that he was hurting them. At that point, it is not a defence to simply say that he is older, or old fashioned, or confused by the request to use gender neutral pronouns. Though he may have struggled to adapt to a "new" way of talking, he was obliged to at least try. Instead, he communicated that Jessie Nelson's wellbeing was not important to him and, in doing so, harmed them in their employment in connection with their gender identity.

[86] I turn now to the nicknames. The nicknames that Mr. Gobelle used to refer to Jessie Nelson, including "sweetie", "sweetheart", and "honey" are well understood gendered terms which are most often used towards women or femme appearing people. While they may be welcome terms of endearment when used to address a close family member or romantic partner, they have no place in a professional setting. When used by a man towards a woman, the effect is infantilizing and patronising, and reinforces gendered hierarchies: *The Sales Associate v. Aurora Biomed Inc. and others (No. 3)*, 2021 BCHRT 5 at para. 116. In Jessie Nelson's case, there was an added layer of harm by the implicit messaging that Mr. Gobelle regarded and treated them as a woman. This undermined, erased, and degraded their gender identity in their place of work. This is discriminatory.

[87] Though the nickname "pinky" may not have the same overtly gendered tone, it was still patronizing and unwelcome. By persisting with this nickname after being told more than once to stop, Mr. Gobelle continued to reassert that he would be the one to define Jessie Nelson in their workplace, regardless of their wishes. This conduct persisted in a context where, by all accounts, Mr. Gobelle was resentful towards Jessie Nelson because of their efforts to make the

restaurant a more inclusive place by pointing out ways in which his behaviour could harm trans people. Even Mr. Buono speculated that the nicknames were Mr. Gobbelle's way of getting back at Jessie Nelson for speaking up about how gendered language affects guests and staff alike. In this context, I am satisfied that this conduct adversely impacted Jessie Nelson and that adverse impact was connected to their gender identity and expression. It was discriminatory.

[88] Mr. Gobbelle's animus towards Jessie Nelson also affected how he worked with them. Although it is undisputed that Mr. Gobbelle had difficulties getting along with other people in the workplace, I have found that he was particularly hostile to Jessie Nelson and Ms. Coplin after their comments about inclusion at the staff meeting. He was unhelpful to them when they had issues with drink orders and refused to communicate in a productive way. The reason for that hostility was laid bare in his final conversation with Jessie Nelson, in which he accused them of "policing" his language and undermining the freedoms his grandfather had fought for in the war. Though this did not relate only to how Mr. Gobbelle was being asked to address Jessie Nelson, I cannot extricate his resentment towards their general feedback from their personal gender identity. Jessie Nelson told him – and others – that it hurts trans people to be casually misgendered in a service setting and spoke from a place of personal experience. Mr. Gobbelle's indifference to Jessie Nelson's lived experience, and open hostility to changing his behaviour, sent a message that the issue was not important to him and neither were they.

[89] In sum, I find that Mr. Gobbelle discriminated against Jessie Nelson in their employment. His use of female pronouns and gendered nicknames demeaned them and undermined their dignity at work. His resentment towards their feedback about inclusion led him to directly undermine their performance by being uncommunicative and uncooperative. All of this was connected directly to Jessie Nelson's gender identity and expression, and constitutes a violation of the *Code*.

B. The employer's response

[90] Jessie Nelson brought their concerns about Mr. Gobbelle's discriminatory conduct to management. There is no dispute that Mr. Kingsberry, Mr. Buono and Ms. Melanson were well

aware of the dispute between the two, and that Jessie Nelson objected to Mr. Gabelle's use of nicknames and female pronouns. As the employer, they were obliged to respond. The Tribunal has summarized the employer's obligations in these circumstances as follows:

... employers have obligations under the *Code* to respond reasonably and appropriately to complaints of discrimination... This includes a duty to investigate. Because the *Code* obliges employers to respond to allegations of discrimination, a failure to do so in a way that is reasonable or appropriate can amount to discrimination.... In particular, an investigation can, on its own, amount to discrimination "regardless of whether the underlying conduct subject to the investigation is found to be discriminatory"... Some factors the Tribunal may consider are whether the employer and persons charged with addressing discrimination have a proper understanding of discrimination, whether the employer treated the allegations seriously and acted "sensitively", and whether the complaint was resolved in a manner that ensured a healthy work environment...

Jamal v. TransLink Security Management and another (No. 2), 2020 BCHRT 146 at para. 106 [citations omitted]; see also discussion in *Denness v. PDK Café and others*, 2020 BCHRT 184 at paras. 200-203 and *Algor v. Alcan and others (No. 2)*, 2006 BCHRT 200 at paras. 185-188.

[91] In my view, the employer's response fell short of what was reasonable and appropriate and sowed the seeds for the altercation that would lead to Jessie Nelson's termination.

[92] First, I acknowledge that the employer had some understanding of discrimination and a stated commitment to creating an inclusive space. This is reflected in their policy on harassment and inclusion, which provides:

We strive to create an inclusive space in Buono. Every staff member has the right to feel safe in our work environment, and free of any unwelcome conduct based on a person's race, sex, or any other status.

It is also reflected in Mr. Kingsberry's support and proactive attempts to ensure that Jessie Nelson was properly gendered at work.

[93] Notwithstanding their high-level commitment to an inclusive workplace, the managers' response to Jessie Nelson's complaints lacked any sense of urgency. This suggests that they did

not appreciate how serious those complaints were. I have a hard time imagining that the restaurant would have responded in the same way to other serious complaints of discrimination.

[94] According to the restaurant's policy, a person who feels they are being harassed is obliged to alert a manager as soon as possible. Jessie Nelson did that, by reporting the behaviour to their manager – Mr. Kingsberry. Mr. Kingsberry, in turn, spoke to Mr. Buono and the two of them led the employer's response.

[95] Mr. Buono spoke to Mr. Gobelle and instructed him to use Jessie Nelson's name and correct pronouns, but that seemed to have no impact on his actual behaviour. When Jessie Nelson raised the issue again, they were told that the issue would have to wait because the employer was addressing other performance concerns with Mr. Gobelle and did not want to "pile on" to him too much. Mr. Buono explains that he felt that Mr. Gobelle deserved a few chances because "this was new". This was not fair to Jessie Nelson and failed to appreciate the impact of them having to attend work each day for a six-hour shift alongside a person who could, at any time, degrade and discriminate against them in their workplace. Whatever Mr. Gobelle's other performance issues may have been, his duty not to discriminate against a co-worker should have taken immediate and urgent precedence.

[1] Above I have found that Mr. Kingsberry did not tell Jessie Nelson that the employer intended to 'mediate' between them and Mr. Gobelle. Accepting for the moment that this was indeed Mr. Buono's intention, and that it was well-meaning, the idea was misguided. This was not a conflict between two employees who simply held different opinions or did not like each other. This was a matter of discrimination. Given that the employer had accepted that Jessie Nelson's complaints were valid, all that remained was to correct Mr. Gobelle's behaviour. This was the employer's responsibility and not Jessie Nelson's. The employer is responsible for ensuring a healthy work environment: *Robichaud v. Canada (Treasury Board)*, [1987] 2 SCR 84 at para. 15.

[2] I appreciate that the period of time in question was relatively short, and this is not a case where the employer was indifferent or took no steps to address the conduct. However, it was not reasonable or appropriate to ask Jessie Nelson to continue to endure discrimination until the employer found an opportune time to talk to Mr. Gobelle. If it truly was necessary to wait, then the employer should have put something in place to protect Jessie Nelson from discrimination during their shifts.

[3] Significantly, the outcome of the employer's approach was not to restore a healthy work environment for Jessie Nelson. To the contrary, it led Jessie Nelson to conclude they would have to address the issue themselves – at the eventual cost of their employment. The decision to terminate Jessie Nelson's employment must be considered as part of the employer's response to their complaints, and bolsters my finding that the employer's response fell short of what is required by the *Code*. I turn to that issue now.

C. Termination

[4] To prove that the termination of their employment violated the *Code*, Jessie Nelson must show that their gender identity and expression was **one** factor in that decision. It does not need to be the only or overriding factor: *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para. 52.

[5] Mr. Buono says that there were two reasons underlying his decision to terminate Jessie Nelson's employment: their decision to talk directly to Mr. Gobelle on the evening of June 23, which he considered insubordination, and their conduct in insulting Mr. Gobelle and hitting him on the back. Though I have found that Jessie Nelson was not, in fact, insubordinate, I will accept for the purpose of this analysis that Mr. Buono thought they were. The respondents argue that these two reasons constitute a complete and non-discriminatory explanation for the termination. I do not agree.

[6] At the outset I must address the respondents' submissions about the effect of Jessie Nelson being in the probationary period of their employment. From a human rights

perspective, this is irrelevant. Parties cannot contract out of their duties under the *Code: Insurance Corporation of British Columbia v. Heerspink*, [1982] 2 SCR 145 at p. 158. While an employer may terminate a probationary employee without cause and without notice, they cannot terminate them for any reason connected to the personal characteristics protected under s. 13.

[7] In this case, I have no difficulty concluding Jessie Nelson’s gender identity was a factor – if not **the** factor – in their termination. This conclusion is supported both by the explanation offered by Mr. Buono, as well as what Mr. Kingsberry told Jessie Nelson in their final call.

[8] Accepting Mr. Buono’s explanation for their termination, it is apparent that Jessie Nelson was terminated in connection with their efforts to address discrimination. There is no dispute that their conflict with Mr. Gobelle was based, in part, on his ongoing use of female pronouns and nicknames, and that Jessie Nelson objected to that conduct because it harmed them in connection with their gender identity. The conflict was also related to Jessie Nelson’s feedback at the staff meeting and elsewhere about how people could change their behaviour to be more inclusive towards trans guests – feedback which they overtly connected to their own personal experience. Mr. Buono says that this was Mr. Gobelle’s main problem with Jessie Nelson. Mr. Gobelle felt that it was his right to refer to guests as “guys” or “gals”, and that it was not Jessie Nelson’s place to “police” his language. On one occasion, Mr. Buono says that Jessie Nelson publicly “called out” Mr. Gobelle when he referred to a group of male-appearing guests as “guys”, which was humiliating for him. From his perspective, Mr. Buono perceived that Mr. Gobelle was using inappropriate nicknames as a way to “get back at” Jessie Nelson over this issue.

[9] Where an employee is terminated in the context of a discriminatory work environment, careful attention must be paid to ensure there is no connection between the termination and the discriminatory environment: *Vanderputten v. Seydaco Packaging Corp*, 2012 HRTO 1977 at para. 81, citing *Smith v. Ontario (Human Rights Commission)*, 2005 CanLII 2811 (ON SCDC) at para. 24. In *Vanderputten*, the Human Rights Tribunal of Ontario explained that “[w]here employees are confrontational or aggressive as a result of a discriminatory working

environment, discipline for that aggression is a violation of the *Code*": para. 81. While that may not necessarily be true in every case, it is in this one.

[10] It is painful to endure a discriminatory work environment. In *Naraine*, the Ontario Board of Inquiry quoted expert evidence about the pressures on a person in that position:

A person who must endure a poisoned work environment is constantly in pain, is constantly humiliated ... is always under stress because [they know] that an evaluation is being formed on irrelevant criteria. No matter how good you do the job, you're still going to be perceived in negative terms. So, the immediate effect on the victim is incredible stress, pain, suffering, humiliation, and at the same time the knowledge that a job has to be maintained, because one's own survival and the survival of one's family is dependent on earning a living.

Naraine v. Ford Motor Co. of Canada (No. 4), 1996 CanLII 20056 (Ont. Bd. Inquiry) at para. 90; rev'd on other grounds, 2001 CanLII 21234 (ON CA)

Indeed, this is how Jessie Nelson described their experience. They became fearful that their performance would be judged based on their trans identity and not their merit. This led them to seek, and receive, reassurance from Mr. Kingsberry. At the same time, every shift – especially after the June 13 staff meeting – was a fresh opportunity and occasion for stress, pain, suffering, and humiliation.

[11] Under such conditions, people may react in any number of ways. When a person complains or speaks up about discrimination, there is a well-known propensity to label them as "problematic or difficult to deal with": *Monsson v. Nacel Properties*, 2006 BCHRT 543 at para. 33. This perpetuates the discrimination. In *Naraine*, the Board of Inquiry cited the following analysis, which applies directly to the circumstances before me:

Discrimination is frequently masked as a "personality" problem ... Oppressors frequently are successful in obscuring the reality of oppression by characterizing complainants as "confrontational." This is the ultimate reversal of "who is doing what to whom." Resisting, fighting back, or showing anger is seen as inappropriate, intimidating and/or immature behaviour.

[This takes] the oppressed's angry response to a discriminatory incident rather than the incident itself, as the starting point of the interaction, thereby constructing the oppressed as culpable and legitimating harsh employer action as a justifiable "response" to the oppressed's "inappropriate" (re)action. Another method is to depoliticize and allegedly equalize the context so that both the dominant and the subordinate are seen as being equally responsible for their "bad tempers." Understanding the politics of inequality which underlie these interactions reveals a different story. It reveals how one party's hostility is about maintaining dominance by stripping the other of their will/dignity, and the other's "temper" is about trying to maintain dignity and assert equality. The expression of anger is a completely appropriate and healthy response to discrimination, which emanates from a sense of self-worth and a demand that others recognize one's humanity: "I am worth more than what your actions dictate, and I refused to be treated with such disregard." From the dominant perspective, however, revealing one's anger and asserting one's equality is seen as a hostile act because it undermines the dominator's sense of self as dominant. **When viewed in context, the acts of "temper" by the dominant and the subordinate parties can be appreciated as being radically different. However, in terms of the development of the principle of insubordination in labour law, they are context-stripped and their analysis reduced to cliché: "two wrongs don't make a right."**

Lynne Pearlman, "Theorizing Lesbian Oppression and the Politics of Outness in the Case of *Waterman v. National Life Assurance: A Beginning in Lesbian Human Rights/Equality Jurisprudence*" (1994) 7:2 C.J.W.L. at 461, 485–86, cited in *Naraine* at para. 92 [emphasis added]

[12] In this case, the employer took Jessie Nelson's conduct on June 23 – rather than Mr. Gobelle's discriminatory conduct – as the "starting point of the interaction". Jessie Nelson was then cast as the angry instigator. The assessment of their conduct was stripped of context, allowing the employer to ignore the inequality between the two sides in the conflict, and its connection to Jessie Nelson's gender identity. Whereas for Jessie Nelson, the issue was their right to a workplace free of discrimination, the issue for Mr. Gobelle was his insistence that he would not change his behaviour to avoid hurting his co-worker. These are not equivalent.

[13] Mr. Buono explained that, from his perspective, Jessie Nelson's use of physical force warranted a much more severe response than Mr. Gobelle's conduct, which was purely verbal.

In his view, anything physical is “much more serious”. In the context of this case, I do not accept that explanation.

[14] To begin, there is some inconsistency between Mr. Buono’s testimony, and the closing submissions made on behalf of the respondents. Mr. Buono testified that he decided to terminate Jessie Nelson before talking to Mr. Gobelle, based on the conduct he had directly witnessed – in particular the slap on Mr. Gobelle’s back in the dining room. However, in their closing submissions the respondents say that they terminated Jessie Nelson’s employment because they had “physically assaulted” Mr. Gobelle twice. The second time refers to Mr. Gobelle’s allegation that they put their hands on his chest when the two of them were talking outside the restaurant. In this decision, I have found that did not occur. If the respondents did in fact rely on this allegation to terminate Jessie Nelson’s employment, it is alarming that they did so without talking to Jessie Nelson to hear their version of events.

[15] Regarding the final incident in the dining room, the respondents overstate the amount of physical force that was involved. I have found that Jessie Nelson slapped Mr. Gobelle on the back. I do not want to minimize this conduct – clearly people should never touch each other without consent, particularly in anger. Jessie Nelson acknowledges this was inappropriate. However, there is no evidence that the contact actually hurt Mr. Gobelle or could fairly be characterized as violent. Its actual impact was to surprise and shock Mr. Gobelle and others who were present.

[16] At the same time, Mr. Buono’s assessment seriously underestimates the power of language and the impact of discrimination. I have set out some of that impact above and return to it below. Suffice to say that it is extremely serious. While he is critical of Jessie Nelson’s “condescending” use of the word “sweetie” and their slap on Mr. Gobelle’s back, Mr. Buono either failed to recognize or to give any consideration to the fact that Mr. Gobelle had, yet again, referred to Jessie Nelson as “her” in his angry rant. This is telling. Though he may have been genuinely committed to an inclusive workplace – and I accept that he was – Mr. Buono failed to identify and understand how that type of conduct was itself extremely harmful. In the specific context of this case, its impact was far greater than a single slap on the back.

[17] In sum to this point, even accepting Mr. Buono’s explanation, there is a clear connection between Jessie Nelson’s gender identity and their termination. They were terminated because of how they responded to discrimination. They were held to a higher standard of conduct than Mr. Gobelle, and the discriminatory context of the dispute was ignored.

[18] However, I do not think that Mr. Buono’s explanation is a complete one. Rather, Mr. Kingsberry’s remarks during their final conversation reveal that the employer’s issue with Jessie Nelson extended beyond the events of June 23 to a more generalized concern that they were coming on “too strong” on the issue of trans inclusion.

[19] Pressed to explain the termination, Mr. Kingsberry told Jessie Nelson that they had come off “too strong too fast” and too “militant”, that “staff wasn’t there”, that they did not “vibe with the team” and that they were not a “good fit”. There is no dispute that the only source of tension between Jessie Nelson and other employees was their use of they/them pronouns – which was new and uncomfortable for some staff – and their suggestions about how to make the restaurant more inclusive of trans people. Mr. Gobelle had accused Jessie Nelson of being too “militant” about gender neutral language. Mr. Buono also admitted during his testimony to feeling uncomfortable about how Jessie Nelson communicated their gender identity to guests. Ms. Melanson felt Jessie Nelson was “aggressive” in their suggestions for gender neutral language. This situation demonstrates the dangers of “fit” or workplace “vibe” when it comes to equality-seeking groups. Jessie Nelson was the first trans, non-binary, employee to work at this restaurant and to insist on equal treatment. They did not “fit in” with employees and managers who felt uncomfortable and challenged to change behaviour they had engaged in for their entire lives. Ultimately, the employer concluded that it would be easier to terminate their employment than to meaningfully address any of these issues. In doing so, they discriminated against Jessie Nelson.

[20] The respondents posit that, during this final conversation, Mr. Kingsberry was “trying to provide some answer without getting into the cause”. In the absence of evidence from Mr. Kingsberry, this is pure speculation. Respectfully, it also does not make sense that in order to avoid telling Jessie Nelson they were being terminated for physical assault, Mr. Kingsberry

would opt to tell them they were fired for reasons clearly connected to their gender identity. As in *Benton v. Richmond Plastics Ltd*, 2020 BCHRT 82, this is the type of explanation that “could only make it worse”: para. 57. In any event, even if Mr. Kingsberry did misrepresent the reasons for Jessie Nelson’s termination, that type of misrepresentation still violates the *Code* where, as here, it causes a discriminatory impact: *English v. Sihota*, 2000 BCHRT 19.

[21] The respondents submit that the staff response to Jessie Nelson’s recommendations for a more inclusive environment from guests should be separated from conduct related directly to their gender identity. They argue:

With the proposal by the complainant that gender terms like ‘guys/gals/boys/ladies/gentlemen’ not be used for customers, we submit that the staff does not following this does not amount to an act of discrimination [against] the complainant. The complainant’s personal pronouns not being used is relevant. Use of pronouns for other persons is not. It may be a good and progressive step that leads to less false assumptions but that is a different matter. Again, the timeframe involved was short, and as Melanson said, at least for her, the idea had merit although the way it was presented at the staff meeting irritated staff.

I agree that the issue in this case is not whether or not staff discriminated against customers by using gendered language to greet them. However, the negative response that some staff, and at least one manager, had to Jessie Nelson’s suggestions led the employer to conclude that they were not a good “fit” and were coming on “too strong too fast” and – ultimately – to terminate their employment. This was directly connected to their gender identity.

[22] The respondents argue that this is a case like *Harvey v. Black and Lee*, 2013 BCHRT 49. In *Harvey*, the complainant thought she had been fired for being pregnant. She texted her employer and called him a “lying piece of shit” and a “fucking asshole”. Based on these messages, the employer thought she quit. The Tribunal found that the complainant had misunderstood the situation and that, in fact, her employment was not in jeopardy. Unfortunately, her response to the employer “escalated matters to the point that conciliatory conversation and clarification was obviated”: para. 51.

[23] I disagree that the facts of *Harvey* are similar to the ones before me. Jessie Nelson did not swear or abuse their employer. I have found they were not insubordinate and in fact Mr. Kingsberry gave his permission for them to attempt to talk to Mr. Gobbelle. They approached Mr. Gobbelle in full view of the managers, who did nothing to intervene. They were simply trying to talk to a person who was discriminating against them. The fact that the conversation did not go well was not their fault. By all accounts, Mr. Gobbelle became extremely angry and upset. The employer made no effort to investigate what happened between the two of them, or otherwise determine whether “conciliatory conversation and clarification” was possible.

[24] In the result, I am satisfied that Jessie Nelson’s gender identity was a factor in the termination of their employment and, as such, that their termination violated s. 13 of the *Code*.

[25] Before I consider the appropriate remedy, I must address the issue of which respondents are liable for the discrimination.

D. Complaint against individual respondents

[26] I have found that Jessie Nelson was discriminated against in their employment. Under s. 44(2) of the *Code*, the corporate respondent (Goodberry Restaurant dba Buono Osteria) is liable for the conduct of its employees and directors. It is responsible to fulfill the remedies I order. In these circumstances, the respondents argue that the complaint should be dismissed against the individual respondents. The parties did not make extensive submissions on this issue and so I address it only briefly.

[27] As the Supreme Court of Canada has acknowledged, “the aspirational purposes of the *Code* require that individual perpetrators of discrimination be held accountable for their actions”: *Schrenk* at para. 56. In this decision, I have found that Mr. Gobbelle discriminated against Jessie Nelson by persisting in referring to them with female pronouns and gendered nicknames. He demonstrated his hostility towards their ideas for a more inclusive workplace by being rude and uncooperative. By this behaviour, he violated the *Code* and is directly liable for his conduct.

[28] Likewise, I have found that the employer's response to Jessie Nelson's complaints of discrimination, and ultimate decision to terminate their employment was discriminatory. This was a decision made by Mr. Buono and Mr. Kingsberry for which they are directly responsible.

[29] I reach a different conclusion about Ms. Melanson. There are no direct allegations of discrimination against her. Rather, Jessie Nelson argues that, as the front of house manager, she was aware of the discrimination and obliged to intervene. I am not persuaded that the circumstances of this case warrant a finding against Ms. Melanson as an individual. It is undisputed that Jessie Nelson brought their concerns forward to Mr. Kingsberry, and that it was Mr. Kingsberry and Mr. Buono who took the lead in addressing those concerns and then terminating their employment. Given her role, it was appropriate for Ms. Melanson to defer to them. I am not persuaded that Ms. Melanson did anything that violated the *Code*, and I dismiss the complaint against her as an individual.

V REMEDY

[30] I have found Jessie's Nelson complaint of discrimination justified against the respondents Buono Osteria, Mr. Kingsberry, Mr. Buono, and Mr. Gobelle. For the purpose of this remedy section, I will refer to these four as the **Respondents**.

[31] I declare that the Respondents' conduct, as set out in this decision, was discrimination contrary to s. 13 of the *Code*. I order them to cease the contravention and refrain from committing the same or similar contraventions: *Code*, s. 37(1)(a) and (b).

[32] In addition to these orders, Jessie Nelson seeks compensation for injury to their dignity, feelings, and self-respect, and orders that the restaurant develop a pronoun policy and implement mandatory training for management and staff about human rights law. I address each of these in turn.

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

[33] A violation of a person's human rights is a violation of their dignity. That is why s. 37(2)(d)(iii) confers discretion on this Tribunal to award damages to compensate a complainant for injury to their dignity, feelings, and self-respect. The purpose of these awards is compensatory, and not punitive. In exercising this discretion, the Tribunal generally considers three broad factors: the nature of the discrimination, the complainant's social context or vulnerability, and the effect on the complainant: *Torres v. Royalty Kitchenware Ltd.*, 1982 CanLII 4886 (ON HRT); *Gichuru v. Law Society of British Columbia (No. 2)*, 2011 BCHRT 185, upheld in 2014 BCCA 396 at para. 260. The quantum is "highly contextual and fact-specific", and the Tribunal has considerable discretion to award an amount it deems necessary to compensate a person who has been discriminated against: *Gichuru* at para. 256; *University of British Columbia v. Kelly*, 2016 BCCA 271 [**Kelly**] at paras. 59-64. In this case, Jessie Nelson seeks an award of \$30,000.

[34] I begin with the nature of the discrimination. It took place over a relatively short time frame of about four weeks. However, within that period the discrimination was ongoing and escalating. It culminated in the ultimate employment-related consequence: loss of a job. There is no question that is a severe outcome in any circumstance. There are many cases which eloquently describe the significance of a person's employment to their financial and emotional wellbeing. I will only invoke one:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of [their] sense of identity, self-worth and emotional well-being.

Reference Re Public Service Employee Relations Act (Alta.), [1987] 1 SCR 313 at p. 368 (per Dickson CJ)

As Jessie Nelson points out, it is a central purpose of the *Code* to remove impediments to full and free participation in the economic life of the province: s. 3(a). Because of the significance of employment to a person's dignity, cases which involve the termination of employment have

often attracted the top end of this Tribunal's awards: see e.g. *Senyk v. WFG Agency Network (No. 2)*, 2008 BCHRT 376 at paras. 463-470; *Benton* at paras. 67-68.

[35] Next, I consider the social context of the complaint, and Jessie Nelson's vulnerability. In doing so, I recognize that the Tribunal has traditionally lumped these considerations within the umbrella term of "vulnerability". The risk of that approach is that it can obscure the underlying causes of the vulnerability, which often lay outside the complainant as an individual and in systemic patterns of inequality and oppression. As the Tribunal recently pointed out, "[v]ulnerability has different aspects, including that which relates to a complainant's individual situation and that which relates to their membership in a group which society has stereotyped, disadvantaged, or marginalized": *Client v. Spruce Hill Resort & Spa*, 2021 BCHRT 104 at para. 42. To further the *Code's* purpose of identifying and eliminating "persistent patterns of inequality", this Tribunal should be precise about the nature and source of a complainant's "vulnerability": *Code*, s. 3(e).

[36] There are several aspects to Jessie Nelson's vulnerability in this case – all of which arise from social forces and are not endemic to them as a person. First, employees are uniquely vulnerable in the context of their work. They are "a captive audience to those who seek to discriminate against them": *Schrenk* at para. 44. This is especially so in the restaurant industry, which is often marked by diminished job security, lower wages, and reliance on tips: see eg. Ontario Human Rights Commission, *Not on the menu: Inquiry report on sexualized and gender-based dress codes in Ontario's restaurants* (March 2017) at p. 2. As the Supreme Court of Canada has observed, "[w]hether a server is harassed by the restaurant owner or the bar manager, by a co-worker, or by a regular and valued patron, the server is ... being harassed in a situation from which there is no escape by simply walking further along the street": *Schrenk* at para. 44.

[37] Second, Jessie Nelson was vulnerable because of the forces of systemic inequality that continue to oppress, marginalize, and discriminate against transgender people. This context was summarized by the Tribunal in *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 as follows:

And so, despite some gains, transgender people remain among the most marginalized in our society. Their lives are marked by "disadvantage, prejudice, stereotyping, and vulnerability... They are stereotyped as "diseased, confused, monsters and freaks.... Transpeople face barriers to employment and housing, inequitable access to health care and other vital public services, and heightened risks of targeted harassment and violence. The results include social isolation, as well as higher rates of substance use, poor mental health, suicide, and poverty.... For transgender children, anti-trans bullying leads to higher rates of absenteeism and poorer educational outcomes, which then has ripple effects for their health and future prospects... [para. 60, citations omitted]

It is this social context that led the legislature to amend the *Code* in 2016 to confer express protection against discrimination based on "gender identity and expression": *Oger* at para. 63.

[38] Third, Jessie Nelson had just left their home, their job, and their community in Vancouver to move to the Sunshine Coast. They found themselves in a smaller community with fewer opportunities for employment, in which they already felt some trepidation about whether they would be accepted. Jessie Nelson was concerned that their experience with *Buono Osteria* could diminish their opportunities to work in other local restaurants and/or that it would be replicated in other restaurants where they may eventually work. Fortunately, they found work fairly quickly in a workplace where they felt welcomed and safe. This does not, however, diminish the significance of this factor because, as I will explain, it heightened the impact of the discrimination on Jessie Nelson.

[39] In that regard, I find that the impact of the discrimination on Jessie Nelson was serious. The Respondents sought to point to their resilience in finding work very shortly after as evidence that they were not seriously impacted by these events. I disagree.

[40] In the immediate aftermath of their termination, Jessie Nelson was extremely upset. Ms. Grill-Donavan had never seen her friend like that. In the days that followed, Ms. Grill-Donavan perceived that they were depressed and scared about what the future held for them on the Sunshine Coast. For her part, Ms. Coplin saw an immediate shift in Jessie Nelson's confidence and feeling of safety. She testified:

Immediately, Jessie started to ... alter some of the ways that they showed up in public spaces on the Coast. I think there was a pretty clear sense of not being safe, that there are people in the community that do not uphold human rights and that do not care for all people... Later in the week Jessie was like, 'I don't have a job, I live in the middle of nowhere, I don't have my family around, I don't have my support system to help me'.

And so very quickly there was the understanding that 'I can't just not work'. But then there was this added pressure of going to these restaurants and trying to visually see how diverse their team [was]. Are there going to be people on this team that understand what it's like to not be seen, and to not be witnessed, and not be honoured in their truth?

And so ... all of a sudden it really changed things about where Jessie could apply for jobs. Because there had been a precedent set that the Coast is not safe...

[41] Ultimately, the impact on Jessie Nelson is best described in their own words:

It's hard to put into words. This was one of the first jobs I had where I felt confident enough to disclose who I was. I've gone into many, many situations and beyond employment, this happens in housing, this happens in medical care, this happens all over the place all the time and this was the first time I was like, you know what, I'm going to be fully myself. I deserve that. I'm 32 years old. I've lived long enough pretending, and that's why I disclosed who I was to Ryan prior to taking the job. Now, I don't believe that trans people should have to do that, but I did feel like it would be beneficial. And it was devastating. It's a piece of trauma in a long line of trauma for a trans person living a trans experience.

...

... Ultimately, I was really disappointed. I was scared and sad for myself, but more than that I was really worried about future people. That same summer, prior to this incident happening at Buono, the local crosswalks were painted in rainbow and in the middle of the night somebody had gone and painted them back to white as a protest to queer lives. So that's the environment that I lived in, that I worked in. That was just literally around the corner from my place of employment. So it led me to believe that that was the feeling on the Coast – that a person like me wasn't welcome. And a person like me deserved to be treated as less than.

...

... I am here today in bringing this forward because it is important for me, as a trans person, to have my existence respected. I'm a human being, with a beating heart and a desire to be seen and valued and heard in the world. And I'm also here for every other current and future trans or queer person working in a service or customer-facing setting so that hopefully this doesn't happen anymore. Because it's a lot. It's very draining. And we deserve to live, and have joy, and be respected for who we are.

[42] The parties have provided me with a number of cases in which the Tribunal found discrimination based on sex or gender identity and awarded damages in amounts ranging from \$4,000 to \$22,000. Many of those cases are now dated, and the quantum of damages does not reflect the upward trend in these awards: *Araniva v. RSY Contracting*, 2019 BCHRT 97 at para. 145. In that regard, more recent cases involving discriminatory harassment and/or the termination of a person's employment have attracted damage awards in the range of \$15,000 to \$40,000: see eg. *Benton*; *Araniva*; *Sales Associate*; *Loiselle v. Windward Software Inc. (No. 3)*, 2021 BCHRT 80; *Ban v. MacMillan*, 2021 BCHRT 74.

[43] In all the circumstances, I find that a global award of \$30,000 is appropriate. As the employer, Buono Osteria is liable for this entire amount. Mr. Gabelle is individually liable for \$10,000. Mr. Kingsberry and Mr. Buono are individually liable for \$20,000. Liability among respondents is joint and several.

B. Order for pronoun policy and mandatory training

[44] Section 37(2)(c)(i) grants the Tribunal discretion to order a respondent to "take steps, specified in the order, to ameliorate the effects of the discriminatory practice". This encompasses orders that require respondents to develop and implement human rights policies: see eg. *Gebresadik v. Black Top Cabs*, 2017 BCHRT 278; *Brar v. BC Veterinary Medical Association and Osborne*, 2015 BCHRT 151 at paras. 1380-1381. Such orders aim to further the *Code's* purposes of identifying and eliminating patterns of inequality and preventing discrimination: *Heintz v. Christian Horizons*, 2010 ONSC 2105 (Ont. Div. Ct.) at para. 276.

[45] In this case, Jessie Nelson seeks orders that the restaurant, Buono Osteria, implement a pronoun policy and mandatory training for all staff and managers about diversity, equity and

inclusion. The restaurant does not resist these orders but asks the Tribunal to be mindful of the resources that may be required to implement extensive training within the context of a small restaurant trying to stay open during a global pandemic.

[46] I agree these orders are appropriate.

[47] I order Buono Osteria to include a statement in its employee policies that affirms every employee's right to be addressed with their correct pronouns. The restaurant can draft its own language, but it could be something like: "**Pronouns** – All team members have the right to be addressed by their own personal pronouns." I also encourage, but do not order, the restaurant to update its policies to use nonbinary, gender neutral language throughout. This would mean, for example, replacing references to men or women with 'people' and replacing his/his/she/hers with they/them.

[48] I also order Buono Osteria to implement mandatory training for all staff and managers about human rights in the workplace. This training should be no less than two hours. I understand that Jessie Nelson has recommended a well-regarded training provider and I encourage the restaurant to avail itself of this option.

VI CONCLUSION

[49] I have found that Buono Osteria, Mr. Buono, Mr. Kingsberry, and Mr. Gobelle discriminated against Jessie Nelson in their employment on the basis of their gender identity and expression, in violation of s. 13 of the *Code*. I make the following orders:

- a. I declare that the Respondents' conduct contravened s. 13 of the *Code*: *Code*, s. 37(2)(b).
- b. I order the Respondents to cease the contraventions and refrain from committing the same or similar contraventions: *Code*, s. 37(2)(a).

- c. I order Buono Osteria and Mr. Gobelle to pay Jessie Nelson \$10,000 as compensation for injury to their dignity, feelings, and self-respect: *Code, s. 37(2)(d)(iii)*.
- d. I order Buono Osteria, Mr. Kingsberry, and Mr. Buono to pay Jessie Nelson \$20,000 as compensation for injury to their dignity, feelings, and self-respect: *Code, s. 37(2)(d)(iii)*.
- e. Within three months of this decision, I order Buono Osteria to:
 - i. Add a statement to its employee policies that affirms every employee's right to be addressed with their own personal pronouns.
 - ii. Implement mandatory training, of no less than two hours, for all staff and managers about human rights in the workplace.

Code, s. 37(2)(c)(i)
- f. I order the Respondents to pay Jessie Nelson post-judgement interest on the damage award until paid in full, based on the rates set out in the *Court Order Interest Act*.

[50] I dismiss the complaint against Ms. Melanson.

Devyn Cousineau
Tribunal Member
Human Rights Tribunal