

Case Name:

Paquette v. Amaruk Wilderness Corp.

**IN THE MATTER OF the Human Rights Code
R.S.B.C. 1996, c. 210 (as amended)
AND IN THE MATTER OF a complaint before
the British Columbia Human Rights
Tribunal
Between
Bethany Paquette, Complainant, and
Amaruk Wilderness Corp. and Christopher
Fragassi-Bjornsen, Respondents**

[2016] B.C.H.R.T.D. No. 35

2016 BCHRT 35

File No. 13128

British Columbia Human Rights Tribunal
Vancouver, British Columbia

Panel: Norman Trerise, Member

Heard: November 24, 2015.

Decision: March 2, 2016.

(108 paras.)

Appearances:

Counsel for the Complainant: Geoffrey Trotter.

Counsel for the Respondents: James Macdonnell.

REASONS FOR DECISION

I. INTRODUCTION

1 Bethany Paquette filed a complaint on September 30th, 2014 with the Tribunal alleging that Amaruk Wilderness Corp. ("Amaruk") and Christopher Fragassi-Bjornsen (together "the Respondents") discriminated against her in the area of employment. The alleged discrimination is on the basis of ancestry, religion and political belief in the case of Amaruk, and against Mr. Fragassi-Bjornsen on the basis of religion and political belief, contrary to s. 13 of the *Human Rights Code*.

2 The essence of the Complaint is that, when Ms. Paquette applied for an Assistant Guide Internship in the summer of 2014, Amaruk refused to hire her in part because she had obtained her undergraduate degree from Trinity Western University ("TWU") thus denying her an employment opportunity, and that the Respondents engaged in harassment of Ms. Paquette on the basis of her religion.

3 The Respondents denied each of the alleged discriminatory grounds.

II. ISSUES

4 At the commencement of the hearing, Mr. Macdonnell spoke to preliminary issues raised by the Respondents. Those issues included:

- * that Mr. Fragassi-Bjornsen had requested that all questions put to him and his answers should be in French;
- * that he was denied representation by European lawyers respecting orders which had/might be made which were beyond the jurisdiction of Canadian administrative Tribunals or courts;
- * that the Tribunal had refused to allow witnesses respecting the sexual history of the Complainant as it related to previous employment;
- * that a member of the Tribunal had participated in the past in issues relating to Aboriginal residential schools;
- * that the Tribunal was incompetent to hear the Complaint;
- * that security concerns raised by the Respondent had not been addressed by the Tribunal.

5 Mr. Fragassi-Bjornsen participated in berating the Tribunal for the aforesaid issues.

6 Mr. Fragassi-Bjornsen demonstrated both during the discussion of preliminary issues and in his written submissions to the Tribunal over the course of this Complaint a clear competence in the English language. Mr. Macdonnell was sent a communication from Mr. Fragassi-Bjornsen to the Tribunal dated September 27, 2015 advising that he would be communicating in French only respecting questions relating to Amaruk but would communicate in English on matters relating to him personally. Mr. Macdonnell was advised by the Tribunal at the time that all correspondence on behalf of the Respondents should be sent by their legal representative and that requests to conduct part of the hearing in French must be applied for on the appropriate Application Form. No such application was ever made. The Respondents were advised that the hearing would be conducted in the English language and would commence immediately.

7 The Tribunal had previously received materials from individuals self-identified as lawyers from the European Economic Area. The Tribunal sent those materials to Mr. Macdonnell advising him that submissions on behalf of the Respondents should be communicated through their legal representative. No attempt was made by Mr. Macdonnell to resubmit the documents in question or to make the same points directly.

8 The Tribunal's Registrar had advised Mr. Macdonnell on October 14, 2015 that if the Respondents wanted the Tribunal to arrange security for the hearing, the request should be directed to the Registrar and must provide a basis for the alleged security concerns. No such request was ever made.

9 The Respondents and their counsel left the hearing. While leaving, Mr. Fragassi-Bjornsen advised that the Respondents would not honour any monetary award which the Tribunal might make in favour of the Complainant.

10 The hearing proceeded in the absence of the Respondents or their counsel.

III. WITNESSES

11 Ms. Paquette was the only witness in this proceeding.

12 I have reviewed all of the evidence but only refer to that which I consider necessary to my decision.

IV. THE EVIDENCE OF BETHANY PAQUETTE

BACKGROUND INFORMATION

13 Ms. Paquette grew up in Kamloops. Her parents were separated and she grew up in her mother's home. Her mother was Christian. Ms. Paquette attended a Christian elementary and high school and, at that time of her life, considered herself a Christian.

14 Ms. Paquette's mother was a low-income parent and, at one point, had to turn to the church for help with her financial circumstances, but the church did not support her. That broke Ms. Paquette's trust in the church. As a result, she had a trust issue with Christian churches in general.

15 Ms. Paquette was embarrassed to say what she believed with respect to Christianity, although, she did believe in Christ at the time.

16 Sometimes Ms. Paquette had academic problems at school. She described herself as being depressed resulting in her shutting off her emotions and being "horrible" with respect to communication. She was athletic and only attended school in order to participate in sports programs. Her attendance was generally poor, missing between 25 percent and 50 percent of her classes.

17 Although TWU was not on her radar with respect to post-secondary education because it is an expensive school, she attended a seminar put on by TWU to recruit students and it got her attention. She became aware that there was a community on campus, that there was an atmosphere of positivity and that the school cares for its students. As a result, she took student loans and obtained bursaries from the school as well as eventually obtaining some positions which added to her bursary contribution. She attended TWU from 2009 through 2014 and obtained a Bachelor of Science Degree in Biology.

18 Ms. Paquette signed what is referred to as the "Community Covenant". The Community Covenant at TWU is described as:

a code of conduct which embodies TWU's evangelical Christian religious values. Those values are derived from the Bible and traditional evangelical Christian beliefs on human dignity and moral conduct. These religious beliefs give rise to a code of conduct that encourages behaviour that evangelical Christians believe is in accordance with biblical teaching and discourages behaviour that evangelical Christians believe contradicts biblical morality. ...

One of the central issues that arises from the Community Covenant is the prohibition in the Community Covenant against 'sexual intimacy that violates the sacredness of marriage between a man and a woman'. Marriage within the evangelical Christian tradition has been defined as an exclusive, life-long, covenant of union of male and female. Portions of the Bible are interpreted as the foundation for that belief. Because evangelical Christians understand marriage as divinely instituted, it takes a central position in the theological understanding of the good Christian life for human beings. Consequently, those who are unmarried are expected to abstain from sexual relations, living chaste and celibate lives. Same-sex intercourse is believed to be contrary to biblical teaching and, therefore, morally unacceptable. These teachings about sexual morality are integral to an evangelical Christian faith; *Trinity Western University v. Law Society of Upper Canada*, 2015 ONSC 4250, paras. 13 and 14.

19 Ms. Paquette testified that she generally sought to follow the Community Covenant.

20 During her time at TWU, Ms. Paquette lived on campus for four years. She attended chapel service on average every other day.

21 In her third year, Ms. Paquette served as an International Team Member. As such, she worked with students and played a leadership role in assimilating international students into the programs at TWU.

22 In her fourth year, she served as an International Team Member: GLOBE Resident. The GLOBE is a public lounge space available to all students with a specific focus on providing a safe place for international students to connect with North American students. All students can access the lounge, cook, do their homework, get involved with each other and generally feel welcome.

23 Ms. Paquette also served as a Resident Assistant which is a broad-based mandate. There are many international students, many of whom are either English second language or in first-year university. The Resident Assistant runs weekly dormitory meetings. International students are not necessarily Christians, but optional meetings are held in which students explore life, how they came to God and how Christianity has changed their lives.

24 Ms. Paquette also served as a TWU Omada Teambuilding Challenge Course facilitator. Her task was to facilitate team building and discussion. This work was not necessarily carried out for TWU but for any group which wanted to work on teamwork through outdoor challenges such as climbing as a team.

25 All of these positions were paid positions which assisted Ms. Paquette with her tuition. In all of these leadership positions she recommitted herself to the Community Covenant. She and others in these positions were told that the Community Covenant was important because if, as leaders, they were unable to follow the Covenant they could not be good examples for the students whom they were supposed to help.

26 Through all of these experiences Ms. Paquette's confidence improved and she became more comfortable with who she was.

27 Ms. Paquette had considerable experience river rafting in the Mount Robson area after first-year university and the following summer she went to guide school and obtained her certificate of competency in the areas of paddle and oar respecting raft guide training.

28 She also received a Canadian Red Cross certificate respecting standard first aid.

29 Ms. Paquette received more training in the summer of 2012 and then commenced work as a raft guide in 2013. In the summer of 2014, she guided for a river rafting company in British Columbia. She describes the experience as not being easy because she was the only employee with religious convictions. She says she was hassled over her commitment not to drink, consume drugs or have sex and this challenged her and made her ask why she was living as she did. She found it was good for her. It strengthened her faith and made her faith her own instead of just something that she had always grown up with.

THE APPLICATION TO DISMISS

30 Ms. Paquette first heard about Amaruk from another rafting guide. She searched the Amaruk website at www.amaruk.com. The website that was up at the time was produced as an exhibit. It advertised assistant guide internships with one of the bases of operations being Vancouver, British Columbia. It advertised a pay scale for that base of operations as \$21.53 per hour. It advertised minimum requirements to apply as:

- * No violation under any Wildlife Legislation
- * Current Active/Inactive PAWGI Certified Assistant Guide (CAG) certification
- * Backcountry Experience
- * Legally entitled to work in region of operation
- * Meet Amaruk minimum Fitness Standards:
 1. Be able to swim for 500 metres in under 12 minutes
 2. Be able to perform a minimum of 42 push-ups in two minute max
 3. Be able to perform a minimum of eight pull-ups (no time limit)
 4. Be able to perform a 2.5 kilometre run in no more than 11 minutes

31 Ms. Paquette described PAWGI as an acronym for Professional Association of Wilderness Guide and Instructors.

32 Ms. Paquette filed an affidavit sworn by a case assessment officer with Corporations Canada, a division of Industry Canada, which certified two copies of all statutory filings made by Amaruk Wilderness Corp. and relating to the

Professional Association of Wilderness Guides and Instructors Inc. Those documents establish that Mr. Fragassi-Bjornsen was a director of PAWGI from January 10th, 2012 through October 14, 2014, as well as a director of Amaruk Wilderness Corp. from September 1st, 2009 through November 18, 2014.

33 Ms. Paquette described herself as being interested in working for Amaruk in Canada. She provided her résumé and current photograph as well as a covering letter to www.amaruk.com on September 10th, 2014. In her cover letter she described herself as:

...a 23-year-old Canadian and I am interested in working for Amaruk as an assistant guide intern this winter. I would like to work for you because I think it would be beneficial for my future endeavours, and I've heard that it is an amazing company to work for. I have been raft guiding for the last three summers, and would like to become more involved in wilderness guiding as well.

34 Ms. Paquette also said she was planning on taking a 90-hour wilderness first aid course in the fall of 2014. She testified that she sent this package by e-mail to emploi@amaruk.com, the e-mail address the website indicated applications should go to.

35 She received an e-mail response dated September 11, 2014 from Olaf Amundsen, e-mail address: careers.emploi@amaruk.com, which read:

Ms. Paquette,

I do not understand the purpose of your application considering you do not meet the minimum requirements that are clearly outlined on our website.

Additionally, considering you were involved with Trinity Western University, I should mention that, unlike Trinity Western University, we embrace diversity, and the right of people to sleep with or marry whoever they want, and this is reflected within some of our staff and management. In addition, the Norse background of most of the guys at the management level means that we are not a Christian organization, and most of us actually see Christianity as having destroyed our culture, tradition, and way of life.

Sincerely,

36 Ms. Paquette responded September 13, 2014 as follows:

Olaf Amundsen

I do not understand the purpose of your response considering where I attended university and my religious belief should have nothing to do with whether or not I meet your company requirements.

Additionally, considering Amaruk holds diversity so highly I thought I should inform you that your disagreement with Trinity Western University, simply because they do not support sex outside of marriage, can in fact be noted as discrimination of approximately 76 % of the world population!!! Wow, that's a lot of diverse people that you don't embrace. If you would like more information on the given percentage, please refer to the data at the bottom of this e-mail; as it contains the various religions in the world, the approximate number of people in each religion, and their view on sex.

While I do agree with you that Christianity did affect the culture and traditions of the Norse people, it is important to realize that the beginning of the transition towards Christianity began with the decision of the Norse. Decisions in the Germanic culture were done primarily through a group decision making process which was due to the tribal makeup of the culture. The Norse were a strong people and tended to conquer English communities, who believed strongly in Christianity. After a people were conquered a tradition was followed in which the religion of the conquered became that of the conqueror. In other words the Victor, Norse, allowed the vanquished, English,

to preach to and baptize them. In fact, it was the Viking Kings who ultimately decided to move towards Christianity in order to solidify their political authority within the surrounding countries. Viking leaders would set up churches, and have archbishoprics created. The Viking kings would then be able to exert some control over these archbishoprics, thus exerting even more power over the surrounding community.

At the same time, once Christianity became more widespread it did not simply wipe out the Norse mythology and traditions but actually assimilated with them. This made it easier for the Norse people to convert to a new culture and religion. This is the same reason that much of the Norse mythology can be noted to have overlap with beliefs in Christianity.

Lastly, I would like to inform you that in Canada it is illegal for employers to discriminate (*sic*) an individual based on their religious beliefs.

P.S. even if I had qualified for this position I would have to have refused it on the basis that I do not desire to work for or be associated with a company that is so highly discriminatory against people's beliefs and lifestyles that they do not agree with.

God Bless, Bethany Paquette proud Christian and graduate of Trinity Western University.

37 When Ms. Paquette received Mr. Amundsen's e-mail she acknowledged that she "maybe wasn't fully qualified". She read further into his e-mail, however, and testified, "It didn't make sense - if you're not giving me a job why dump on my beliefs?" She said at first she left it but the more she thought about it the more she got upset. She testified that when she sent the e-mail of September 13th, 2014 she was definitely angry. She felt that what they did wasn't right and she sent the e-mail to get things off her chest.

38 With respect to her signoff of "God Bless" she testified that she would apologize for it. She testified, "I knew it would affect them. For that I am sorry."

39 The next day, September 14, 2014 she received another e-mail from Mr. Amundsen. This one read:

Bethany,

In asking students to refrain from same sex relationships, Trinity Western University, and any person associated with it, has engaged in discrimination, as well as intolerance against other people's beliefs, religious, and otherwise. This is precisely because we cannot tolerate discrimination, or intolerance, that graduates from Trinity Western University are not welcome in our (Norwegian) company. There are also practical concerns about a Christian university that rejects the concept of evolution but still grants "biology" degrees.

If you were opposed to same sex relationships but weren't trying to force your views onto other people, this would be completely different. Everybody is entitled to their beliefs and opinions, and this works quite well in our company. However, you force other people to embrace your religious beliefs, by preventing them from doing as they wish with their own life and body. This is where we draw the line however.

This is nothing new: people who did not agree with your church would be flayed, burnt, roasted, quartered, etc... so you guys have a long history of intolerance. You are even reinforcing this idea by excluding our own religion from your list of religions.

Your assertions about the Norse people and Norse mythology are very ignorant, and completely biased by your religious beliefs. I am not a young First Nations boy sexually abused by a priest into submission for years while locked in a concentration camp (as in residential school), but a Viking with a Ph.D. in Norse History. So propaganda is lost on me.

As for your allegation of discrimination, this will be addressed by one of our VP's.

In closing, "God Bless" is very offensive to me, and yet another sign of your attempts to impose your religious views on me. I do not want to be blessed by some guy who was conceived by a whore, outside of marriage, and whom (*sic*) has been the very reason for the most horrendous abuses and human right violations in the history of the human race. If I was to meet the guy, I'd actually fuck him.

Sincerely,

40 Upon receiving that e-mail, Ms. Paquette viewed the first paragraph as suggesting that her college degree meant nothing because it is bestowed by a Christian university.

41 With respect to the third paragraph, she testified that she was "not saying this stuff did not happen but it's not like we are proud of what happened. It's like saying all Christians are like this because of what happened in the past".

42 Respecting the last paragraph, Ms. Paquette said, "I kind of froze. How can they say this? It's super offensive. They had no problem just discounting what I believe in - I can tell they are doing whatever they can to offend me. ... I was definitely feeling attacked. I was feeling disrespected. They had no intention of getting to know me but wanted to attack me and attack my beliefs".

43 That e-mail was followed by an e-mail originating from C.D. Bjornsen. I note that Christopher Fragassi-Bjornsen does not appear to have the initials C.D., but I also note that, just as Mr. Amundsen's e-mails were sent on Amaruk/Olaf Amundsen letterhead, this second September 14th C.D. Bjornsen e-mail was sent on Christopher Fragassi-Bjornsen, Dwayne Kenwood-Bjornsen, Chairman/Norsk Vikingar Corp. letterhead. It reads:

Re: assistant guide internship Canada

Trinity Western University believes that two men loving each other is wrong. So they force students to agree that they will not do such a thing. In doing so, they are forcing their religious beliefs onto their students, and discriminating against other students based on their own different beliefs.

In contrast, we believe that a man ending up with another man is probably the best thing that could happen to him. But we do not force these views onto other people, and we are completely fine if a guy decides to go the emasculation route by marrying a BC woman. Live and let live.

Similarly, you end your message with "God Bless". We do not end ours with "Long live pòrr".

So which is engaging in discrimination here?? Who is disrespecting the other by trying to force their religious beliefs onto them?

44 Later on the same day, Ms. Paquette received the following e-mail from arkyn.borg@amaruk.com:

Subject: Charter

Bethany Paquette:

The right to freedom of religion, including religions outside of Christianity that do not condemn homosexuality, is protected under the Canadian Charter of Rights and Freedoms.

In forcing students to refrain from engaging in homosexual sex, and thus, to comply with Christian doctrine, Trinity Western University is not only engaging in active discrimination and violation of the Charter of Rights and Freedoms, but also legitimizing such reprehensible behavior with its students.

As discrimination is not acceptable within Canadian society, and under Canadian law, it is equally unacceptable in the Kingdom of Norway, and as a result, within our company.

You are free to your own opinions and to live your life as you see fit, but you have no right to force your opinions onto others, and control their innate behavior.

Yours sincerely,

- 45 Mr. Borg is identified as the Vice President, Human Resources and Lead Guide/Instructor, Norway for Amaruk.
- 46 Ms. Paquette testified that these e-mails made her ashamed of who she is and that she graduated from TWU. She stated, "That is wrong - I shouldn't have to be ashamed or hide about who I am."
- 47 Ms. Paquette had no further communication with any of the authors of the e-mails.
- 48 Ms. Paquette testified she would have no problem guiding gay or bisexual clients.
- 49 Ms. Paquette testified that her experience with Amaruk and its staff has thrown a wet blanket over her willingness to discuss her religion or TWU with others.
- 50 Ms. Paquette gave evidence with respect to her work history from mid-September 2014 through March of 2015. I am not setting that out in this decision because it goes only to the issue of wage loss and for reasons that will be discussed later, wage loss will not be awarded in this decision.
- 51 Ms. Paquette testified that she went to Amaruk's website the week prior to the hearing of this matter and found that the website had been disabled and replaced by the following notice:

On September 25, 2015 the Government of Canada, namely the Province of British Columbia, and specifically the Human Rights Tribunal, issued an order of an unprecedented scope to access Amaruk records located in the European Economic Area.

The order was estimated to cover several-hundred-thousand pages highly personal and private records, including full name, address, date of birth, spousal information (and thus, sexual orientation), religious requirements, medical history, blood type, financial information, training records, and private communications, of thousands of clients and employees located outside of Canada.

The order would also expose several Amaruk employees to possible criminal prosecution in Canada for merely criticizing Christianity, a crime under Section 296(1) of the *Canada Criminal Code*, and thus, a clear human rights violation under both European law, as well as the United Nations Convention on Human Rights.

The British Columbia Human Rights Tribunal, in an embarrassing display of incompetence, imperialistic arrogance, and plain disregard for actual human rights, refused to understand the elementary legal premise that a Canadian tribunal simply has no jurisdiction outside of Canada.

Indeed, the countries that form the European Economic Area are not colonies of Canada, and as such, are not subjected to Canadian laws or court orders. Any request for records by the Government of Canada is therefore not only illegal, but also an attack on the very sovereignty of several European countries, as well as a violation of the most fundamental rights of their citizens.

As a result, in spite of several of its current and former directors facing harassment and penalties from the Canadian government, Amaruk shall not honour an illegal order, and shall not disclose any information to the Government of Canada.

In addition, any further attempts by the Government of Canada to illegally access records protected under European legislation, and as upheld by European courts, may result in several Canadian government officials facing various charges in Europe.

Lastly, for the protection of client and employee personal data, access to the Amaruk website from Canada is no longer authorized and has been disabled.

52 Ms. Paquette submitted into evidence her hotel registration demonstrating a rate of \$119 a night and testified that she had driven from Kamloops and would be returning to Kamloops after the hearing and that the return trip would be 700 kilometres as confirmed by Google Maps which was placed in evidence.

V. POSITION OF THE COMPLAINANT

53 The Complainant says that the Tribunal has jurisdiction over the Respondents and that the three elements necessary to establish a *prima facie* case of discrimination on the basis of religion and political belief have been met. She also says that discrimination based on ancestry has been proven as against Amaruk.

54 The basis for the Complainant's submissions that the evidence supports such discrimination are the e-mails of September 11th and September 14th set out earlier.

55 The Complainant further submits that Mr. Fragassi-Bjornsen was clearly the directing mind of the company based upon the documents placed in evidence by the affidavit of the Case Assessment Officer with Corporations Canada and the Senior Business Manager with Industry Canada, all of which demonstrate repeatedly Mr. Fragassi-Bjornsen signing documents submitted on behalf of Amaruk and being described in Industry Canada's Canadian Company Capabilities document as Co-Chief Executive Officer.

56 The Complainant submits that the said e-mails communicate:

- a. dislike of evangelical Christians generally;
- b. assumptions about Ms. Paquette's religious beliefs or conduct due to her attendance at TWU; and
- c. animus towards TWU and the Christian beliefs upon which it is based which the Respondents then transferred onto Ms. Paquette solely because of her attendance at TWU.

57 The Complainant further submits that the e-mails demonstrate discrimination on the basis of political belief that the Respondents clearly assumed were held by Ms. Paquette, including that TWU should have the freedom to hold its Community Covenant as a valid exercise of freedom of religion.

58 The Complainant submits that Mr. Fragassi-Bjornsen should be held personally liable for his communications because:

- a. Amaruk has not irrevocably acknowledged that it is liable for the acts of Mr. Fragassi-Bjornsen or acknowledges responsibility to satisfy any remedial orders which the Tribunal might make in respect of Mr. Fragassi-Bjornsen's e-mail;
- b. Amaruk has withdrawn from active operations in Canada therefore personal judgment against Mr. Fragassi-Bjornsen is important;
- c. Mr. Fragassi-Bjornsen is the directing mind of Amaruk having personally signed over 90 percent of its corporate filings and being listed as its co-CEO at all relevant times; and
- d. Mr. Fragassi-Bjornsen has affirmed his approval of Amaruk's rejection of the Complainant's job application and has continued to make allegations against her in the course of this proceeding.

VI POSITION OF THE RESPONDENTS

59 As the Respondents had left the proceeding, the Tribunal has not received from the Respondents their specific responses to the positions taken by Ms. Paquette in this proceeding. The Respondents have, however, filed a response which sets out several defences to the Complaint. These are:

- a. that the employment opportunities with Amaruk for which it recruits potential employees from British Columbia are located outside of Canada;

- b. at all material times the position/employment opportunities offered by Amaruk were and are located outside the jurisdiction of British Columbia and Canada and all applicants to Amaruk for employment opportunities must submit their application online to Amaruk's head office in Norway;
- c. that Ms. Paquette was at all material times not an employee of Amaruk and therefore s. 13 of the *Code* is not applicable
- d. that regardless of the fact that one of Amaruk's bases of operation for the assistant guide internship was located in Vancouver, British Columbia there was no guarantee that Ms. Paquette would be given that base of operations for the internship;
- e. that Ms. Paquette was not hired because she did not meet the minimum requirements of the position and specifically denies that her employment application was rejected because she was involved with TWU;
- f. that the e-mails of September 14, 2014 respond to Ms. Paquette's e-mail of September 13th, 2014 and should be viewed as unrelated to her application for employment;
- g. that Ms. Paquette's application required no further consideration once it was determined that she held none of the stated qualification requirements as set out in the internship advertisement;
- h. that there was not a positive obligation on their part to consider whether Ms. Paquette's beliefs would actually interfere in any way with her ability to perform the job duties of the internship since her application was deficient as to stated qualifications; and
- i. that Mr. Amundsen's comments are merely a statement of opinion and have a basis in historical fact vis-à-vis the Christian practice of flogging, burning people and drawing and quartering individuals.

VII ANALYSIS AND DECISION

60 The Complaint which is the subject matter of this decision was made pursuant to s. 13 of the *Code* which reads:

A person must not

...discriminate against a person regarding employment or any term or condition of employment because of the ancestry, ...political belief, religion, ...of that person...

61 A Complainant is required to prove a *prima facie* case of discrimination on a balance of probabilities in order to establish discrimination under the *Code*. If the Complainant is successful in establishing such *prima facie* case of discrimination, the burden shifts to the Respondent to justify its conduct. If the Complainant fails to prove a *prima facie* case of discrimination then there is no breach of the *Code*. That hurdle must be viewed in light of the broad liberal and purposive approach which must be taken to interpretation of the *Code*, *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353, p. 370.

62 The determination of whether a *prima facie* case has been established will involve analysis in a contextual and purposive manner: *Hutchinson v. British Columbia (Ministry of Health)*, 2004 BCHRT 58, upheld on judicial review in *HMTQ v. Hutchinson et al*, 2005 B.C.S.C. 1421.

63 In order to establish a *prima facie* case, the Complainant must prove that she exhibited the prohibited grounds of ancestry, religion and political belief; that she experienced an adverse impact with respect to her employment or prospective employment and that it is reasonable to infer from the evidence that the prohibited grounds of discrimination were a factor in that adverse impact; *Moore v. British Columbia (Education)*, 2012 S.C.C. 61, para. 33.

RELIGIOUS DISCRIMINATION

64 It is undisputed that Ms. Paquette is Christian and attended and obtained her undergraduate degree from TWU which is an evangelical Christian-based university.

65 It is also undisputed that Ms. Paquette applied for and was denied employment with Amaruk.

66 Accordingly, Ms. Paquette has met the first two components of the test of a *prima facie* case.

67 The central issue to the case is whether Ms. Paquette's religion was a factor in Amaruk's rejection of her employment application and subjection of Ms. Paquette to religious harassment.

68 I am satisfied upon reading the e-mail exchanges between Ms. Paquette and the various Amaruk staff who responded to her, including Mr. Amundsen and Mr. Fragassi-Bjornsen, that the position of the Respondents that only Mr. Amundsen's initial response e-mail should be considered must fail. Mr. Amundsen's initial e-mail of September 11th, 2014 clearly incorporates two elements. The first is that Ms. Paquette did not meet the minimum requirements for the position advertised. The second, however, makes a point of taking issue with the principles embraced by TWU and with Christianity on a broad-brush basis, which implies that Ms. Paquette's religious beliefs were a factor in rejecting her employment application. The e-mails following Ms. Paquette's response of September 13 clearly connect those comments by Mr. Amundsen on September the 11th with Amaruk's decision to reject Ms. Paquette's application and expressly confirm that religion was a factor that was considered. Mr. Amundsen on September 14th states:

...This is precisely because we cannot tolerate discrimination, or intolerance, that graduates from Trinity Western University are not welcome in our (Norwegian) company. ...

As for your allegation of discrimination, this will be addressed by one of our VP's. ...

69 I find that, on the balance of probabilities, C.D. Bjornsen's e-mail was written by Mr. Bjornsen. I conclude this because it was written on Mr. Bjornsen's letterhead, and the Response does not plead that Mr. Bjornsen was not the author of the September 14, 2014 e-mail or that C.D. Bjornsen is not the same individual as Mr. Bjornsen. As would be expected if that were the case.

70 Mr. Bjornsen's e-mail of September 14th reinforces that TWU follows religious beliefs that are not acceptable to Amaruk when he starts the second paragraph of his e-mail stating, "In contrast, **we believe** that a man ending up with another man is probably the best thing that could happen to him." In doing so, he is referring to a contrast with TWU's beliefs respecting same-sex relationships. Similarly, arkyn.borg@amaruk.com expressly connects his aversion to TWU's "Christian doctrine" to Amaruk's decision not to accept Ms. Paquette's application in his third paragraph where he states:

As discrimination is not acceptable within Canadian society, and under Canadian law, it is equally unacceptable in the Kingdom of Norway, and as a result, within our company.

You are free to your own opinions and to live your life as you see fit, but you have no right to force your opinions onto others, and control their innate behavior.

71 Each of these e-mails clearly expresses the aversion of Amaruk's staff involved in the hiring process (Co-CEO, Vice President, Human Resources and Lead Guide/Instructor, Norway and Wilderness Guide/Instructor, also serving as the first point of contact with Ms. Paquette) to Ms. Paquette's connection to TWU. It is clear from the e-mails that TWU's views are attributed to Ms. Paquette by their authors. The e-mail from Mr. Amundsen of September 14th and the e-mail from Mr. Borg of the same date clearly connect that aversion with an unwillingness to hire Ms. Paquette.

72 I find that the evidence establishes that there were two issues at play in the decision to reject Ms. Paquette's application. The first was her lack of the required qualifications, but also a factor was her past affiliation with TWU, establishing her, in the minds of Amaruk and its employees, as an evangelistic Christian.

73 Further, I find that the e-mails of Amaruk's staff, including Mr. Fragassi-Bjornsen, particularly those of September 14, 2014, religiously harassed Ms. Paquette. Religious harassment generally requires a course of repeated conduct, however, where the alleged conduct is extreme, as little as a single act may be sufficient to make such a finding; *Bell v. Flaming Steer Steak House* (1980) 1C.H.R.R. D/155 (Ont. Bd. Inq.), *Hadzic v. Pizza Hut Canada (c.o.b.) Pizza Hut*, 1999 BCHRT 44, *Small Legs v. Dhillon* 2008 BCHRT 104, para. 20.

74 I am satisfied that the circumstances recounted herein easily meet that test and that, on September 14, indeed, the Respondents engaged in repeated conduct amounting to religious harassment.

POLITICAL BELIEF

75 The concept of political belief has not to date been well-defined by the Tribunal, *Devitt and Hargrove obo others v. School District 43 and another (No. 2)*, 2012 BCHRT 189. While, in my view, it is probable that the sentiments espoused in the Respondents' e-mails qualify as an attack on Ms. Paquette's political beliefs, it is not necessary for me to decide that and I decline to do so, particularly in a case where no argument to the contrary has been provided to me. I have already decided that the e-mails have taken issue with Ms. Paquette's religious beliefs and that that was a factor in the rejection of her application for employment.

ANCESTRY

76 Ms. Paquette relies upon Mr. Amundsen's comment on September 14, 2014 that "people who did not agree with your church would be flayed, burnt, roasted, quartered, etc. ...so you guys have a long history of intolerance. ..." I'm not satisfied that this comment was meant to be discriminatory of Ms. Paquette on the basis of her ancestry. Neither do I think it has this effect. Rather, I see this paragraph as a general statement of the historical practice of Ms. Paquette's religion based upon Mr. Amundsen's assumptions of Ms. Paquette's religious beliefs.

77 Ancestry is generally a label applied to a person's lineage and those who preceded that individual in his or her family (ancestors). In my review of the Tribunal's decisions related to complaints of ancestry, that is the context in which it has been applied. Historical religious practices or one's religious background do not fall within the rubric of ancestry.

78 I find that the evidence before me does not support that the Respondents engaged in discrimination on the ground of ancestry.

JURISDICTION

79 The Respondents challenge that the Tribunal has jurisdiction over this dispute on several grounds:

- a) That the employment opportunities with Amaruk, including that sought by Ms. Paquette, were located outside Canada;
- b) That Ms. Paquette was at all material times not an employee of Amaruk therefore s. 13 of the *Code* is not applicable; and
- c) That there was no guarantee that Ms. Paquette would be given Vancouver as a base of operations for the internship.

80 The website advertisement for an assistant guide internship states that one of the bases of an internship is Vancouver. Ms. Paquette's application states that she is Canadian and is interested in working for Amaruk "as an assistant guide intern this winter".

81 I find, on the evidence before me, that Ms. Paquette applied to work for Amaruk as an assistant guide intern during the Canadian Winter of 2014-15.

82 The website advertised a position in British Columbia, the complainant applied from British Columbia, and Amaruk's response was delivered to Ms. Paquette's e-mail address, that of a resident of British Columbia.

83 Section 92(10) of the *Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.)* gives the federal parliament and therefore the federal human rights system, jurisdiction over interprovincial or international modes of communication: *Toronto v. Bell Telephone Co. (1905)*, [1905] A.C.53 (J.C.P.C.), *Elmasry v Rogers Publishing Ltd.*, 2008 BCHRT 378, paras. 46-48.

84 While the line of cases I have just identified place jurisdiction over electronic and international modes of communication in the federal sphere, they do not apply to deprive British Columbia of jurisdiction over this matter in the circumstances. Those cases concern situations where the substance of the matter about which there was a complaint occurred on the Internet. Such cases include cases involving Internet gaming, distribution of hate propaganda on a wide scale, and distribution of an article.

85 I contrast such communications with what we have here -- a series of person-to-person communications respecting an application for employment and the rejection of same. In my view, such communications are no different than a letter (the mail) or a telephone conversation (telecommunications) respecting the formation of a contract or the termination of an employment relationship. The essence of what occurred here is that an employment opportunity was advertised on the internet for a position available in British Columbia, The Complainant applied for such position over the internet and a response was sent to her over the internet rejecting her application and incidentally subjecting her to religious harassment. The communication was private and could as easily have been communicated by letter or by phone -- indeed such communications take place every day and the civil courts of this Province have no difficulty exercising jurisdiction over the disputes arising therefrom. This case is no different, in my view. I find the Tribunal has jurisdiction over this dispute.

CONCLUSION ON THE ISSUE OF DISCRIMINATION

86 I have previously concluded that the Respondents' perception of Ms. Paquette's religious beliefs were a factor in their decision not to hire her to an internship. The Tribunal has expressed, in the context of disability, sexual orientation and race, that perception is sufficient to support a finding of discrimination under the *Code: Lipskaia v. Fabcor*, 2013 BCHRT 2, para. 20; *James obo James v. Silver Campsites and another (No. 2)*, 2011 BCHRT 370, paras. 178, 179 and 184.

87 Ms. Paquette has established a *prima facie* case of discrimination which the Respondents have failed to rebut. The Respondents have also made no argument that there is a *bona fide* occupational requirement for their decision, as they were entitled to do.

88 I find that both Amaruk, through its employee's actions, and Mr. Fragassi-Bjornsen have discriminated against Ms. Paquette on the ground of religion by harassing her for her presumed religious beliefs and declining to accept her application for an internship, in part because of those beliefs. The Complaint is justified against both Respondents.

VIII REMEDY

89 Section 37 of the Code establishes the remedies available to a successful complainant.

90 The Tribunal has clearly stated that its remedies are intended to be remedial rather than punitive; *Bitonti and others v. The College of Physicians and Surgeons of British Columbia*, 2002 BCHRT 29, para. 147.

CEASE TO CONTRAVENE

91 I order, pursuant to s. 37(2)(a) of the *Code*, that the Respondents jointly and individually cease to contravene the *Code* and refrain from committing the same or similar contraventions in the future.

WAGE LOSS

92 Ms. Paquette has testified that she did not possess the qualifications set by Amaruk to apply for one of their internship positions. Ms. Paquette seeks the sum of \$22,218.96 representing alleged wages lost due to the Respondents denying her a six-month internship. However, on the balance of probabilities, I find it is unlikely that Ms. Paquette would have been successful with her application, even in the absence of the discriminatory behaviour exhibited towards her. She has acknowledged that she was not qualified for the position. Further, if she had successfully applied for the position, I find it highly unlikely, given the nature of her employer's executives, the probability of a poisoned employment atmosphere, and September 13, 2014 e-mail assertion that she would refuse the position because she has no desire to work with a company that is so discriminatory, that she would have lasted in the position for any length of time. In all of these circumstances, I decline to award any wage loss.

INJURY TO DIGNITY AND SELF-RESPECT

93 The violation of the *Code* in this instance was in the area of Ms. Paquette's religious beliefs. The Supreme Court of Canada has recently commented on the importance of an individual's religious beliefs to their personal identity. The Court stated:

...religious belief is more than an opinion. ...Religion is an integral part of each person's identity...when the state treats his or her religious practices or beliefs as less important or less true than the practices of others, or when it marginalizes her or his religious community in some way, it is

not simply rejecting the individual's views and values, it is denying her or his equal worth;
Movement que qubcois v. Saguenay, 2015 SCC 16, para. 73.

94 While this comment was made in the context of a Charter case dealing with denials of freedom of religion by the state, I see them as cogent in the circumstances of this case.

95 The Respondents' harassment of Ms. Paquette on the basis of her religious beliefs and their rejection of her application for an internship based in part on her religious identity, amounted to a denial of her equal worth.

96 The Complainant points to the aggressive nature of the Respondents' contemporaneous correspondence and Mr. Fragassi-Bjornsen's ongoing venomous comments respecting Ms. Paquette's religious beliefs during the course of this proceeding. She points out submissions by Mr. Fragassi-Bjornsen stating that she holds "extremist religious views" and that she is equated with dark-age crusaders in grim terms. She advocates for a high award of damages for injury to dignity of \$10,000, relying on *Garneau v. Buy-Rite Foods*, 2015 BCHRT 77, para. 44.

97 Comments made by Mr. Fragassi-Bjornsen during the course of these proceedings cannot form the basis of an independent action and I do not consider them in making this award.

98 In *Garneau*, the complainant was driven from his total employment duration of almost nine years, encompassing one substantial interruption. The Tribunal found that the complainant was subjected to harassment and bullying due to his physical and mental disabilities and perceived sexual orientation. He was awarded \$15,000 and the egregious nature of the violation, the fact that it related to his employment -- a fundamental and significant component in any persons' existence. I find that Ms. Paquette's circumstances entitle her to less compensation than Mr. Garneau received.

99 I consider that Ms. Paquette was in the process of seeking employment of a short-term duration, that the events which are the focus of the Complaint occurred over the compact period of 4 days and that, in my view, for those holding strong religious views, their religious beliefs are as important to their identity and well-being as their employment circumstances, albeit for different reasons.

100 I also consider that, as in *Garneau*, the nature of the harassment the Respondents engaged in was egregious. It went on, however only for 4 days in total (and the real vitriol was reserved for correspondence on September 14, 2014), as opposed to the lengthy exposure that Mr. Garneau had to endure.

101 Ms. Paquette produced no medical evidence to support the impact which the Respondents' communications had on her. She testified, however, that the events occurred at a time in her life when she was fragile, when her religious convictions had only recently become firm and that these events made her ashamed about who she is and dissuaded her from being forthcoming about her religious beliefs. For a person such as Ms. Paquette, that is a profound effect.

102 On balance, I award Ms. Paquette the sum of \$8,500 for injury to dignity and self-respect.

EXPENSES

103 Ms. Paquette seeks recovery of the sum of \$661.08, comprised of \$276 for two nights' accommodation at her hotel and \$385 for mileage from and to Kamloops at a rate of \$.55 per kilometer as accepted by the Canadian Revenue Agency. I award \$661.08 in expenses incurred by Ms. Paquette to attend the hearing.

COSTS FOR MISCONDUCT

104 Ms. Paquette seeks costs for the Respondents' misconduct over the course of this proceeding, which she describes as:

- a. Wilful breach of the disclosure order;
- b. Disclosure of settlement discussions;
- c. Serious, unsupported allegations against herself, her legal counsel and the Tribunal relying on:
- d. unsupported allegations of Complainant's counsel "leaking documents to the media" and "extremist religious groups", seeking disclosure in order to leak more such documents,

suggesting that counsel has extremist religious views and this conduct constitutes a crime in Europe;

- e. unsupported allegations that the Complainant and her counsel would breach a publication ban in order to release documents and incorrect information to the media for the purpose of inciting hatred against a minority;
- f. allegations that counsel mis-used a document disclosed by the Respondents and used it to seek financial and other information from the Respondents' airline; and
- g. alleging that the Tribunal and its Members were biased and had systemic conflicts of interest against the Respondents.

105 These are serious allegations and, unlike the merits of the Complaint, which the Respondents chose not to attend to contest, the details of the allegations are not, for the most part, known to the Respondents. I can inform the Complainant that such an application in respect of the refusal to disclose is unlikely to be successful. I say that because, while the Tribunal certainly has the authority to require disclosure from a party to a complaint, the Respondents are correct that our jurisdiction does not extend outside the boundaries of the Province. The Respondents did not disclose as ordered but their penalty arising from that refusal is that they were deprived of their right to admit those documents into a hearing and ultimately could have been deprived of the right to testify respecting matters which are the subject matter of such documents. They clearly recognised that and chose, in the circumstances, not to participate in this hearing. I consider that the penalty for their decision was sufficient.

106 If the Complainant wishes to proceed with this application, she should file an application, serve it on the Respondents and thereby allow the Respondents to make submissions. I decline to make an order respecting the issue at this time but leave the matter open and will retain jurisdiction over the issue should the Complainants wish to pursue the application for costs further.

INTEREST

107 I award post-judgment interest on the amounts awarded herein at the rate set out in the *Court Order Interest Act*, R.S.B.C. 1996, c.79.

IX CONCLUSION SUMMARY

108 I find that the Respondents have violated the provisions of s. 13 of the *Code* and order that they jointly and severally:

- a. Cease to contravene the *Code* and refrain from committing the same or similar contraventions;
- b. Pay to Ms. Paquette the sum of \$8,500 for injury to dignity and self-respect;
- c. Pay to Ms. Paquette the sum of \$661.08 for reimbursement of expenses incurred in this proceeding; and
- d. Pay to Ms. Paquette post-judgement interest on the aforesaid sum.

Norman Trerise, Tribunal Member