Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2021 CHRT 1
Date: January 4, 2021
File No.: T2400/5919

Between:

Bonnie West

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Cold Lake First Nations

Respondent

Decision

Member: Gabriel Gaudreault

Table of Contents

I. Decision Overview and Background

[1] This decision concerns a complaint by Bonnie West (the "Complainant"), a First Nations Cree woman and member of Cold Lake First Nations ("CLFN", the "Respondent" or the "Nation"), who in June 2016 attempted to stand for election as councillor to sit on the CLFN band council.

[2] Her nomination was rejected by the elections officer, and Ms. West filed a complaint with the Canadian Human Rights Commission (the "Commission"), a complaint that was referred to the Tribunal in July 2019.

[3] In her complaint Ms. West alleges that she was discriminated against contrary to section 5 of the *Canadian Human Rights Act* (the "Act" or "CHRA") in the provision of services by the Nation on the grounds of her race, her national or ethnic origin, and her family status (subsection 3(1) of the CHRA).

[4] More specifically, Ms. West submits that the conjunction of her race and national or ethnic origin (Cree) and her family status (her father was adopted by members of the Nation) was a factor in the elections officer's rejection of her nomination.

[5] In addition, with the Tribunal's permission, Ms. West amended her complaint, adding an allegation of retaliation by CLFN, contrary to section 14.1 of the CHRA. More specifically, she alleges that she was retaliated against through another person, given that her daughter, Jolene Janvier, was not given access to a new house in the community, in contrast to what had been planned.

[6] Ms. West believes that the complaint she filed was a factor in CLFN's decision to reassign her daughter's future house to another member of the Nation. She believes that CLFN acted in this manner in retaliation against her filing her complaint.

[7] The hearing took place from July 29 to 31, 2020, entirely by videoconference in light of the public health crisis in Canada and the rest of the world. Aside from a technological adjustment at the beginning of the hearing, the parties and the Tribunal did not, in my opinion, experience any particular difficulties in using the technology and the videoconference.

[8] The Tribunal had issued clear, precise rules for both the parties and the witnesses, and had prepared detailed guidelines for the filing of documentary evidence and final submissions, including the filing of case law. The parties and the witnesses strictly complied with these rules and guidelines.

[9] Finally, each of the parties in this case participated, collaborated and cooperated in an exemplary manner. Even though it does not affect this decision, I would like to note the efforts made by Ms. West in this proceeding even though she was not represented by counsel. I recognize these efforts, which allowed her to carry this complaint through to the end. In addition, Ms. Walsh, counsel for the Commission, and Ms. Lambert, counsel for the Respondent, and their colleagues were courteous “officers of the court” who understood and respected the principle of proportionality that applies when counsel interact with an unrepresented party within the scope of their mandate. I would like to take this opportunity to recognize this professionalism.

[10] Having said that, I have to make a decision on Ms. West’s complaint on the basis of the evidence before me at the hearing. Having analyzed the documentary evidence and the testimony, as well as the case law and the submissions presented to me, I conclude that Ms. West’s complaint must be dismissed in its entirety (subsection 53(1) of the CHRA), for the following reasons.

II. Issues

[11] The first main issue in this complaint is clear:

> Did the Respondent or any of its agents discriminate against Ms. West in the provision of services to the general public, contrary to section 5 of the CHRA?

[12] More specifically, at issue is whether CLFN or any of its agents discriminated against Ms. West when she was found to be ineligible for band council, within the meaning of section 5 of the CHRA.

[13] The following is the second main issue:

> Did the Respondent or any of its agents retaliate against Ms. West, contrary to section 14.1 of the CHRA?

[14] At issue more specifically is whether CLFN retaliated against Ms. West through a third party, in this case, her daughter, Jolene Janvier, who did not gain access to the house assigned to her, as a result of the complaint filed under the CHRA.

[15] The Tribunal will also deal with some complementary issues raised by the Complainant, particularly with respect to the submission of a protest by a CLFN member, the attestation of this protest, the breaches of procedural fairness and natural justice allegedly made by the elections officer and the committee of Elders' unfamiliarity with Ms. West's family history.

III. Discrimination Law

[16] It is important to remember that the purpose of the CHRA is to ensure that all individuals have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on prohibited grounds of discrimination (section 2 of the CHRA).

[17] It is well established that the complainant first has to meet his or her burden of proof on a balance of probabilities. To do this, the complainant has to show a *prima facie* case. A *prima facie* case is one which covers:

> […] the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer.
>
> (*Ont. Human Rights Comm. v. Simpsons-Sears*, 1985 CanLII 18 (SCC), [1985] 2 SCR 536, at paragraph 28 [*Simpsons-Sears*])

[18] Three elements must be established by Ms. West, on a balance of probabilities:

> 1) She has one or more prohibited grounds of discrimination under the CHRA.
>
> 2) She experienced an adverse impact (in this case, contrary to section 5).
>
> 3) The prohibited ground or grounds of discrimination were a factor in the adverse impact.
>
> (*Moore v. British Columbia (Education)*, 2012 SCC 61, at paragraph 33 [*Moore*], and *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 789, at paragraph 63 [*Bombardier*]; *Simpsons-Sears*, at paragraph 28).

[19] For retaliation, the first element of the analysis developed in *Moore* changes, in that the basis for the complaint is not a prohibited ground of discrimination (section 3 of the CHRA) but the filing of the complaint as such.

[20] Practically, therefore, the complainant has to establish the following with regard to retaliation (section 14.1 of the CHRA), also on a balance of probabilities:

> (1) She previously filed a complaint;
>
> (2) She experienced an adverse impact;
>
> (3) The filing of the complaint was a factor in the adverse impact.
>
> (*First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada))*, 2015 CHRT 14, at paragraphs 4 and 5 [*Family Caring Society*]).

[21] Ms. West's complaint raises some other highly interesting issues, particularly with respect to the Tribunal's jurisdiction to deal with her complaint. More specifically, the complaint raises a fundamental issue: does section 5 of the CHRA actually apply in the circumstances?

IV. Preliminary Issue

[22] The Commission suggests that a preliminary issue is the Tribunal's analysis to determine whether the actions described in Ms. West's complaint fall under or trigger the protection of section 5 of the CHRA.

[23] The Respondent also devoted most of its arguments to the issue of whether the actions described in Ms. West's allegations are indeed a "service". It argued, among other things, that the Complainant was in fact directly challenging the *Cold Lake First Nations Election Law*, adopted on May 27, 1986 (the "1986 Election Law").

[24] I do wonder whether this issue must **necessarily** be dealt with as a preliminary issue. Should the matter of determining whether the alleged actions are a "service" not be a standard part of the Tribunal's analysis developed in *Moore*?

[25] For one, it is clear that the Tribunal is in the best position for determining whether the alleged actions are a "service" within the meaning of section 5 of the CHRA. The Tribunal has the jurisdiction to deal with this question (*Canada (Human Rights Commission) v. Saddle Lake Cree Nation*, 2018 FCA 228, at paragraphs 34 and 38).

[26] Second, the Supreme Court recently ruled on a lengthy legal debate in *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31. This decision is commonly referred to as *Matson/Andrews*, since it is the culmination of the joining of two complaints that the Tribunal disposed of: *Matson et al. v. Indian and Northern Affairs Canada*, 2013 CHRT 13 [*Matson*], and *Andrews et al. v. Indian and Northern Affairs Canada*, 2013 CHRT 21 [*Andrews*]. Both decisions were brought before the Federal Court for judicial review, appealed before the Federal Court of Appeal, and ultimately ended up before the Supreme Court of Canada.

[27] Without going over the details of the analysis of my colleagues, members Lustig and Marchildon, in those two complaints, I must note that they dismissed the complaints because they were direct challenges of the *Indian Act*, R.S.C., 1985, c. I-5. The proper procedural vehicle for challenging that statute is the judicial one, with regard to section 15 of the

Canadian Charter of Rights and Freedoms, Part I of the *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 (the "Canadian Charter").

[28] In *Matson/Andrews*, the Supreme Court held that the Tribunal's decisions were reasonable. Our highest authorities therefore confirm that the act of legislating is not a service. In other words, Parliament's law-making is not a service as such within the meaning of section 5 of the CHRA.

[29] In the Tribunal's two decisions, *Matson* and *Andrews*, members Lustig and Marchildon both approached the issue of a direct challenge to legislation and the act of legislating performed by Parliament as a preliminary matter; it became the focus of their analysis.

[30] When they concluded that the complaints in *Andrews* and *Matson* were merely direct challenges to the *Indian Act*, the analysis could not be continued. I believe that dealing with this issue preliminarily was a choice my colleagues made, a discretion they exercised, and I fully respect it.

[31] In *Matson/Andrews*, the Supreme Court did not consider the analysis of the issue of a direct challenge to legislation as a preliminary matter. Rather, its reasoning focused on the principle of deference and the standard of reasonableness. It concluded that the Tribunal's two decisions fell within a range of possible, reasonable outcomes. It therefore showed deference in applying its supervisory authority and did not rule on the point at which the "service" analysis should take place.

[32] In my opinion, the decision to deal with an issue preliminarily is within a member's discretion.

[33] I would also add that I am not necessarily bound by the manner in which the parties decide to deal with what they consider to be the issues if there is a more coherent way of doing so.

[34] I completely agree with the Commission's point that there is a minimal threshold, or evidentiary burden, that must be fulfilled. Indeed, the Tribunal must determine whether the acts and actions in question are essentially "services" within the meaning of the CHRA.

[35] However, it is my opinion that this fundamental issue can be a regular part of the analysis developed in *Moore*. The Tribunal has jurisdiction to analyze and determine what a "service" is and whether the acts in question fall into this category. This analysis can therefore be performed at the second stage of the analysis developed in *Moore*, when the Tribunal has to determine whether there was adverse treatment, or an adverse impact, in the provision of services customarily available to the general public.

[36] Before this second stage is reached, however, the complainant has to establish that one or more prohibited grounds of discrimination under the CHRA apply to him or her. If the complainant fails, the analysis must stop, and there is no need to consider the issue.

[37] I will review Ms. West's complaint, the evidence presented at the hearing and the parties' arguments keeping these preliminary observations in mind.

V. Analysis and Parties' Arguments

A. Facts

[38] The Tribunal finds itself in an unusual situation: the main facts of the case are not disputed or, shall we say, not strongly disputed by any of the parties here. The main facts of the complaint are straightforward and clear, and they were presented to the Tribunal concisely and unambiguously by each of the parties.

[39] The Respondent, CLFN, is a First Nations community in Alberta with a population of about 3,000 members both on and off the reserve. In 1986, the Nation adopted an election law (the *Cold Lake First Nations Election Law*, adopted on May 27, 1986), which was approved by order of the former Minister of Indian and Northern Affairs, signed on December 29, 1989.

[40] As for the Complainant, Ms. West was a 61-year-old woman at the time of the hearing. She identifies as a Cree woman, a member of the First Nations and a member of CLFN.

[41] The undisputed evidence does indeed show that Ms. West has a 100% North American Indian Blood Quantum (to use the terms in the documentary evidence). Even though the members of CLFN are of mixed origin—they are of Chipewyan/Denesuline and Cree descent—Ms. West is actually of Cree descent.

[42] Ms. West was born and raised in the community, and she lived there for much of her life. She had to leave CLFN at certain times, for a few years, when she married her husband, who is not a member of a First Nation and works outside the community.

[43] Even though Ms. West currently lives outside CLFN, she works as the manager of the social development program for CLFN. This position is linked to Service Canada policies and procedures for members of the community in need of social assistance. Among other duties, Ms. West develops and administers these programs for members.

[44] In the June 2016 election for CLFN's chief and band council, a member of the Nation nominated Ms. West to run for election as a councillor on the band council.

[45] After she was nominated, another member of the Nation, Loretta Angnaluak, protested Ms. West's nomination. The protest alleged that Ms. West was not a direct descendant of original treaty citizens, contrary to subsection 5(G) of the 1986 Election Law.

[46] Upon receipt of the protest, the elections officer at the time, Allan Adam, had to consider the matter and determine whether Ms. West fulfilled the requirements set out in the 1986 Election Law, more specifically in subsection 5(G).

[47] Subsection 5(G) of the 1986 Election Law reads as follows:

> In order to be eligible to run for Council, a person must be a direct descendent of original treaty citizens.

[48] Even though the 1986 Election Law does not clearly stipulate what is meant by "original treaty citizens", the evidence establishes on a balance of probabilities that this expression refers to the signatories of Treaty No. 6. In other words, original treaty citizens are individuals who signed Treaty No. 6 on September 9, 1876. The list of the original signatories was produced as evidence by the parties.

[49] Both Ms. West and the Respondent consistently argued in favour of the same definition of this requirement. Moreover, Ms. West's complaint and the items of evidence Ms. West presented, be they documentary (family tree, blood quantum, treaty card) or testimonial, directly mention that she is a direct descendant of Treaty No. 6 signatories.

[50] Only the Commission left room for doubt, by stating that the requirement is ambiguous, and thereby presumably open to interpretation. The Tribunal will discuss this argument later in this decision.

[51] This having been clarified, the evidence reveals that Mr. Adam asked Ms. West to provide him with a document, specifically an affidavit supporting her nomination, within 48 hours. Ms. West filed a short sworn statement with the elections officer, in which she declared before a commissioner of oaths that she was eligible to stand as councillor under subsection 5(G) of the 1986 Election Law given that she was a direct descendant of original treaty citizens.

[52] Even though Ms. West did not send this sworn statement directly to the elections officer, Mr. Adam, she did forward the document to a person on the band council, and Mr. Adam confirmed receipt of it to Ms. West.

[53] That being said, the evidence reveals that no other documents were submitted to Mr. Adam. Ms. West did not submit her family tree or the document confirming her North American Indian Blood Quantum as she did at the hearing.

[54] On June 25, 2016, Mr. Adam found that Ms. West did not fulfill the requirements under subsection 5(G) of the 1986 Election Law, and wrote the following in a short letter:

> Based upon my review of all of the information provided to me, I have determined that you are not eligible for nomination as you do not meet the criteria set out in section 5.G of the Election Law. You did not provide the paperwork. ln addition, I have been provided with access to a committee of Elders to advise me on the traditional laws of the Cold Lake First Nations people.

[55] Ms. West testified that after receiving the elections officer's decision by email, she asked him which additional documents were needed to establish that she could stand as a candidate for election.

[56] The evidence reveals that Mr. Adam did not answer her question. None of the parties in this case called the officer in question to testify on this subject. It is uncertain whether he saw or received the question.

[57] Ms. West also stated that the Elders, who were members of the council advising the elections officer on his decision, were unfamiliar with her family history and therefore the fact that she is a direct descendant of original treaty citizens. However, none of the parties chose to call the members of the committee of Elders as witnesses.

[58] Ms. West filed an appeal of the June 25, 2016, decision before the appeal committee provided for under the 1986 Election Law. The committee, consisting of three members, reviewed various appeals of the June 2016 election, including Ms. West's appeal. She was able to show the committee a series of documents, including her family tree, her treaty card, the confirmation of her blood quantum and her family history.

[59] These documents, which were also filed as evidence at the hearing, supported the fact that Ms. West met the requirement in subsection 5(G) of the 1986 Election Law, specifically that she is a direct descendant of original treaty citizens.

[60] The evidence shows that Ms. West is a direct descendant of original treaty citizens (the signatories of Treaty No. 6) through her father's maternal line. This ancestry is related to Chief Peh-ye-sis (or Chief Pee-Nay-Sis, or Chief François). Ms. West's father, William Peter Janvier, was adopted by two members of the Nation, George Janvier and Juliana Cardinal. Juliana Cardinal's parents are Johny Cardinal and Angele Desjarlais. Finally, Angele Desjarlais's parents are Chief François Desjarlais and Euphrosine Auger. This evidence is also not disputed by the Respondent.

[61] This having been clarified, on August 11, 2016, the appeal committee issued a decision containing a number of remedial measures, including the holding of a new, accelerated election for councillors only. This directly affected Ms. West's nomination.

[62] Without going into all the details, after the August 11, 2016, decision was made, the CLFN band council adopted a resolution stating in general terms that the appeal committee had exceeded its jurisdiction and that accordingly there would be no new election.

[63] The band council's resolution concerning the appeal committee's decision was judicially reviewed. There is no need to elaborate on this further as it is not determinative here.

[64] Suffice it to say that the band council's resolution was upheld and it was determined that the appeal committee had indeed exceeded its jurisdiction. Ultimately, therefore, there was no new election of councillors, and Ms. West did not have an opportunity to stand in the 2016 election.

B. Characteristics Protected under CHRA

[65] Ms. West alleges that she experienced an adverse impact in the provision of a service because of her race, national or ethnic origin, and her family status, contrary to section 5 of the CHRA.

[66] There is little to say about Ms. West's characteristics, which are undoubtedly protected by the CHRA. The Respondent also did not dispute the prohibited grounds of discrimination alleged in the complaint.

[67] Ms. West identifies as a Cree First Nations woman and as a member of CLFN. As evidence, Ms. West filed her Certificate of Indian Status (to use the term used by the former Department of Indian and Northern Affairs to describe the certificate). She also filed her blood quantum, showing her Cree origins, and her family tree.

[68] The evidence establishes on a balance of probabilities that Ms. West, who is a First Nations woman of Cree origin and a member of CLFN, has the characteristics of race and national or ethnic origin.

[69] Moreover, Ms. West established that her father, William P. Janvier, was adopted by Juliana Cardinal and George Janvier. Ms. West's origins have been passed on through her father's maternal line and make her a descendant of original treaty citizens.

[70] I need little to persuade me that the creation of this relationship, by the adoption of Ms. West's father by two CLFN members, is covered by "family status" under section 3 of the CHRA.

[71] The CHRA does not define the concept of "family status", but it is well established that its interpretation includes relations between individuals that are created by a parent-child relationship arising from adoption (see, for example, *Seeley v. Canadian National Railway*, 2010 CHRT 23; *Canada (Attorney General) v. McKenna*, 1998 CanLII 9098 (FCA), [1998] FCJ No 1501 (QL); *Grismer v. Squamish First Nation*, 2006 FC 1088; *Worthington v. Canada*, 2008 FC 409, [2009] 1 FCR 311; *Beattie v. Aboriginal Affairs and Northern Development Canada*, 2014 CHRT 1, at paragraph 106; *Rivers v. Squamish Indian Band Council*, 1994 CanLII 1217 (CHRT); *Tanner v. Gambler First Nation*, 2015 CHRT 19, at paragraphs 33 and following). This point was also not disputed by any of the parties.

[72] I therefore conclude that Ms. West has, on a balance of probabilities, three characteristics protected under the CHRA (section 3 of the CHRA).

C. Analysis of Applicability of Section 5 of CHRA and Provision of Services Customarily Available to Public

[73] One of the fundamental issues in this complaint is whether section 5 of the CHRA applies to the facts alleged by Ms. West.

[74] The English and French versions of section 5 of the CHRA read as follows:

> It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public (a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or (b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.
>
> Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public : a) d'en priver un individu; b) de le défavoriser à l'occasion de leur fourniture.

[75] Two key decisions guide the Tribunal with regard to “services”: *Gould v. Yukon Order of Pioneers*, 1996 CanLII 231 (SCC), [1996] 1 SCR 571 [*Gould*], of the Supreme Court and *Watkin v. Canada (Attorney General)*, 2008 FCA 170 [*Watkin*], of the Federal Court of Appeal. The Commission and the Respondent both rightfully cited these decisions.

[76] First, I must clarify that the applicability of section 5 of the CHRA is a legal question, one for the Tribunal to answer given that it is the decision-making body to do so (*Gould*, at page 589).

[77] In *Watkin* and *Gould*, the higher courts instruct that when dealing with a “service”, the Tribunal has to clearly describe and analyze the complained of act, action or activity (see *Watkin*, at paragraphs 31 and 33; *Gould*, at paragraphs 16 and 60). This is the first step, defining the essence of the act, action or activity in question. Relying on *Gould*, the Federal Court of Appeal notes that the “services” referred to in section 5 of the CHRA mean something of benefit being held out as services and offered to the public (*Watkin*, at paragraph 31).

[78] Now, regarding the facts alleged in Ms. West’s complaint, the parties do not dispute—and no evidence to the contrary was presented—that the 1986 Election Law is the law that governs elections on CLFN territory.

[79] The 1986 Election Law provides for the appointment of an elections officer by the band council and the sitting chief before the nomination meeting is held. The nomination meeting is a meeting for nominating candidates (subsection 8(A) of the 1986 Election Law). It is at this meeting that members become election candidates.

[80] The elections officer has many duties (section 8 of the 1986 Election Law); in short, the elections officer is in charge of the election (subsection 8(F) of the 1986 Election Law). The officer’s other areas of responsibility in managing the election include the nomination meeting, the electors’ list, the processing of appeals and voting dates.

[81] Moreover, the Nation has established eligibility criteria when it created its 1986 Election Law, and it is provided that an individual will be tasked with examining whether a candidate meets these criteria, in the event of protest.

[82] The evidence reveals that this role is vested in the elections officer to ensure that candidates are in fact truly eligible to stand for election in the Nation.

[83] When a person files a protest, they have to do so at the nomination meeting. If the person did not attend that meeting, they have to do so within 48 hours of the meeting (subsection 7(Q) of the 1986 Election Law). Ms. West made some arguments on this subject at the hearing, to which I will return later.

[84] The evidence does indeed reveal that a protest was filed against Ms. West's nomination. The elections officer, Mr. Allan, was responsible for reviewing the protest.

[85] Mr. Allan, who received the protest, allowed Ms. West to respond to it. He asked her to produce documents to support her eligibility, which Ms. West did by submitting a sworn statement.

[86] On June 25, 2016, the elections officer found that Ms. West did not fulfill the requirement under subsection 5(G) of the 1986 Election Law and that she had not provided the documents needed to establish that she was a direct descendant of original treaty citizens. He therefore rejected her nomination. This decision was appealable internally, and Ms. West appealed it.

[87] This is where Ms. West's complaint comes into play. This complaint, in the manner in which it was approached by the parties throughout the proceeding, consistently related to section 5 of the CHRA. Allegations of retaliation (section 14.1 of the CHRA) were added—as authorized by the Tribunal—and these will be dealt with in a different section of this decision.

[88] In her initial complaint, received by the Commission in August 2016, Ms. West alleges that she is a direct descendant of original treaty citizens and that she therefore fulfills the requirement under subsection 5(G) of the 1986 Election Law. She clearly described what makes her a direct descendant and how CLFN's application of the 1986 Election Law discriminated against her by disqualifying her from standing for election.

[89] In both Ms. West's amended statement of particulars and that of the Commission, the discussion seems to depart slightly from the framework set out in the initial complaint.

[90] First, Ms. West seems to raise a number of shortcomings, a number of flaws, in procedural fairness and compliance with the principles of natural justice by the elections officer in his review of Ms. West's eligibility. I will deal with these other allegations later in this decision.

[91] Having said that, the Respondent finds that both the Commission and Ms. West attempted to change the focus of the dispute. According to CLFN, the dispute has more to do with the enforcement or application of the 1986 Election Law. It finds that Ms. West is directly challenging the law and its requirements, which, it believes, is not a "service" within the meaning of section 5 of the CHRA (see *Matson/Andrews*, above).

[92] In this regard, the Respondent drew the Tribunal's attention to Ms. West's initial complaint and to the relief sought so that the Tribunal could properly understand the complained of acts in their essence.

[93] Ms. West, however, in her amended statement of particulars, stated that the 1986 Election Law is not only discriminatory but also vague and ambiguous. She asks that the 1986 Election Law be clarified and that it be fair to everyone.

[94] The Commission also referred to this idea of ambiguity, although its argument was not quite the same. It stated that the lack of clarity and the vague terminology gave the elections officer some room for interpretation in his review of the eligibility of Ms. West's nomination. The Commission argues more specifically that the terms, the expression "direct descendent of original treaty citizens", are not defined in the law itself. The elections officer therefore had to choose an interpretation and, in the Commission's opinion, should have chosen the non-discriminatory interpretation.

[95] This is where the Commission comes to the thrust of its argument. It considers "service" from a different angle, believing that the "service" at issue in Ms. West's complaint is the review or vetting of candidates' eligibility by the elections officer. In other words, the examination of the Complainant's eligibility created the "service" between Mr. Adam and Ms. West.

[96] CLFN, as mentioned above, describes the act in question differently. In short, it believes that Ms. West's complaint is an attack on the 1986 Election Law and that the act in question is not a "service". Moreover, it states that the application of the law by the elections officer is also not a "service" within the meaning of section 5 of the CHRA.

[97] Clearly, the parties have a different understanding of the very nature of the "service", that is, the activity or action, in its very essence, that is in question in Ms. West's complaint. This point is crucial because it is in fact the basis of the analysis (*Watkin*, at paragraph 31). The Tribunal must determine whether the act in question is a "service" and whether that "service" is customarily available to the general public as described in section 5 of the CHRA. If so, it is necessary for Ms. West to have experienced an adverse impact with respect to the provision of that service by reason of a prohibited ground of discrimination (*Moore*, at paragraph 33).

[98] Indeed, I believe that the action at issue in this case is not the vetting of nominees by the elections officer, as the Commission claims. Rather, based on the evidence before me and the arguments of the parties, I believe that the action at issue is the elections officer's rejection, or denial, of Ms. West's nomination. The rejection is based on a verification as to whether her nomination meets the criteria set out in the 1986 Election Law.

[99] After the elections officer reviewed her eligibility and withdrew her nomination, Ms. West filed her complaint with the Commission, in August 2016. In her complaint, she clearly indicated that she had been discriminated against through the application of the 1986 Election Law when she was declared ineligible to run for election on the grounds that she was not a direct descendant of original treaty citizens.

[100] However, as mentioned above, she confirms that she is a direct descendant of Chief Peh-ye-sis, who signed Treaty No. 6 in 1876. Since her father, William P. Janvier, was adopted by Ms. Cardinal and Mr. Janvier (her grandparents) and since Ms. Cardinal is a descendant of Chief Peh-ye-sis, Ms. West is a direct descendant of original treaty citizens as required under the 1986 Election Law.

[101] It should be noted that the facts of another Tribunal decision, *Tanner v. Gambler First Nation*, 2015 CHRT 19 [*Tanner*], are very similar to Ms. West's allegationsin this complaint.

One similar aspect of the complaint in *Tanner* is that Sharon Tanner alleged that the Gambler First Nation discriminated against her through its creation and application of a rule that persons not having a blood relationship to John Falcon Tanner could not run for election to be a band councillor or chief. The prohibited grounds of race, national or ethnic origin and family status were also raised in Ms. Tanner's complaint.

[102] In my opinion, although similarities exist between Ms. West's and Ms. Tanner's cases, and although the Commission's arguments closely resemble those in *Tanner*, there is an important difference between the two complaints. My colleague, member George U. Ulyatt, raised interesting points in paragraphs 41 to 45 of his decision that confirm a fundamental difference from the complaint before me.

[103] Without going into full detail, in *Tanner*, my colleague accepted the argument that the complainant had indeed experienced adverse impacts from the application of the descent or blood-relationship rule, which prevented her from running for election.

[104] Based on that assumption, he then considered whether the creation and application of the rule was a "service" within the meaning of section 5 of the CHRA (*Tanner*, at paragraph 41). In this regard, the Commission argued that determining the eligibility of a member of the Nation to run for election, through the creation and application of the election law and the decision-making process of the elections officer, was a "service" provided by the Nation pursuant to section 5 of the CHRA (*Tanner*, at paragraph 43).

[105] However, in relation to this fundamental issue of "service", paragraphs 44 and 45 are, in my opinion, critical in terms of the weight to give to the decision in question. Indeed, my colleague considered it necessary to specifically mention that the respondent had made no submissions in response to the Commission's arguments.

[106] He added that, in his opinion, a legitimate, valid question could be raised as to whether the creation and application of the Gambler First Nation's election law were essentially a "service" within the meaning of the CHRA. In this regard, he cited the Tribunal's decisions in *Matson* and *Andrews*. He went on to state that he had no argument or evidence to contradict the Commission's arguments because the respondent had not provided a

response. He therefore accepted the Commission's argument for the purposes of his decision.

[107] Thus, my colleague did not carry out an in-depth analysis of the nature of the act, action or activity in question, in its essence, because he considered that it was unnecessary to do so.

[108] However, in the case of Ms. West's complaint, the Respondent has defended itself; it has specifically responded to her arguments, and I cannot disregard its response and draw hasty conclusions about the nature of the act in question. It is in this specific context that *Tanner* must be read. In my opinion, its weight as a precedent is considerably diminished by the particular circumstances of this complaint.

[109] Given this clarification, the issue is whether section 5 of the CHRA can apply to the act in question in this case, while respecting the teachings of the higher courts, particularly in *Gould* and *Watkin*.

[110] In this regard, the "service" referred to in section 5 of the CHRA must involve some form of benefit or advantage held out and offered to the public (see *Gould* at paragraph 55; *Watkin* at paragraph 31).

[111] It is not the officer who in fact allows candidates to run for election. The elections officer merely determines whether a candidate meets the criteria set out in the 1986 Election Law. Moreover, he or she does so only if someone formally protests the nomination. In other words, the elections officer is the one in charge of ensuring that candidates comply with the 1986 Election Law, in response to a protest. In my opinion, this is strictly a compliance step.

[112] I reiterate that the "service" must offer something of benefit to the recipient. I realize that there is an "interest" or "benefit" for an individual to run for election (*Watkin*, at paragraph 31). This benefit may be thought of as participation in the democratic life of the community in which the individual lives (*Esquega v. Canada (Attorney General)*, 2007 FC 878).

[113] Even with this aspect in mind, I am not sure that a benefit is generated when the elections officer verifies a candidate's compliance or eligibility.

[114] The Commission believes that Ms. West has benefited from having her nomination reviewed by the officer and that this benefit is customarily available to the general public. It has not satisfied me in this regard.

[115] I do not believe that the benefit itself results from the elections officer's review of the candidates' compliance with the criteria set by CLFN when the 1986 Election Law was enacted. The officer is not providing a "service" to Ms. West, in that he is not offering her something of benefit. The officer is merely ensuring that the mandatory compliance step is carried out. It is not the review of nominations that provides the benefit, the interest, in running as an election candidate and thereby participating in the democratic life of her community. It is the criteria themselves that determine the candidates' eligibility: if one meets the criteria, one is eligible to run for election, and if one does not meet the criteria, one is not eligible to run for election.

[116] In other words, the benefit does not result from the officer's review of the nominations. In my opinion, Ms. West has an inherent right, as a Canadian and a member of a First Nation, to participate in the political life of her community. The right to vote and the right to run for election are of fundamental importance in a free and democratic society; these are rights guaranteed by the Canadian Charter (section 3 of the Canadian Charter).

[117] The right to vote and the right to run for office are indeed inherent and constitutionally protected rights available to Canadians.

[118] Accordingly, the benefit or interest flows from Ms. West's fundamental, inherent right to stand for election. It is not provided by the elections officer. I do not believe that Parliament intended to cover this type of activity when it enacted section 5 of the CHRA.

[119] I would add that to consider as a "service" the elections officer's examination of a candidate's eligibility based on the criteria chosen and voted on by the Nation, in my view, ignores the fundamental roots of the democratic rights to vote and be elected in Canada (for similar comments on the issue of citizenship, see *Forward and Forward v. Citizenship and Immigration Canada*, 2008 CHRT 5, at paragraph 41 [*Forward*]).

[120] The officer, on receiving a protest, must at the very least determine the eligibility of the candidate. The review he or she conducts is one of the steps that a person wishing to run for election must go through (if someone protests their nomination). It is therefore a necessary, mandatory step in the expression of their democratic right to run for election.

[121] The elections officer acts as a compliance watchdog for the criteria set out in the 1986 Election Law. Thus, the officer's role is solely to ensure compliance with the criteria—no more, no less. In other words, the officer is in effect a means, a measure, to enforce compliance with the criteria established by the Nation. We also know that law enforcement measures are not "held out" or "offered" to the public (*Gould*, at paragraph 16; *Watkin*, at paragraph 31).

[122] Moreover, the fact that the elections officer verifies nomination compliance in a public context, for the common interest or good, does not in itself create a "service". The Federal Court of Appeal is clear on this point: the fact that the actions were undertaken by a public, governmental officer or body for the common good or in the collective interest does not automatically transform an activity, act or action into a "service" when it is not one (*Watkin*, at paragraph 33).

[123] In this vein, the principles of interpretation developed by the Supreme Court are, in my view, relevant and useful. Although human rights legislation must be given a broad, liberal and purposive interpretation, the words that it contains cannot be ignored.

[124] Indeed, the Supreme Court wrote as follows:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> (See E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), p. 87, adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, at paragraph 21 [*Rizzo*]).

[125] As mentioned above, since human rights legislation provides fundamental protections in our society, the courts must give it a so-called large and liberal interpretation so that its objects may be attained (*Ontario Human Rights Commission v. Simpsons-*

Sears Ltd, 1985 CanLII 18 (SCC), [1985] 2 SCR 536, at pages 546 and 547; *CN v. Canada (Canadian Human Rights Commission)*, 1987 CanLII 109 (SCC), [1987] 1 SCR 1114, at pages 1133 to 1136; *Robichaud v. Canada (Treasury Board)*, 1987 CanLII 73 (SCC), [1987] 2 SCR 84, at pages 89 and 90 [*Robichaud*]).

[126] There is no doubt that the CHRA is a human rights statute that provides so-called quasi-constitutional guarantees (see for example *Canada (Attorney General) v. Johnstone*, 2014 FCA 110; *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2016 FCA 200 (CanLII)).

[127] Consequently,

> . . . courts must favour interpretations that align with the purposes of human rights laws like the Code rather than adopt narrow or technical constructions that would frustrate those purposes (R. Sullivan, *Sullivan on the Construction of Statutes* (6th ed. 2014), at §§19.3-19.7).
>
> (*British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, [2017] 2 SCR 795, at paragraph 31.)
>
> [Emphasis added]

[128] This only confirms what the Supreme Court stated in 1992 in *Zurich Insurance Co v. Ontario (Human Rights Commission)*, 1992 CanLII 67 (SCC), [1992] 2 SCR 321, at p. 339:

> In approaching the interpretation of a human rights statute, certain special principles must be respected. Human rights legislation is amongst the most pre-eminent category of legislation. It has been described as having a "special nature, not quite constitutional but certainly more than the ordinary…" (*Ontario Human Rights Commission v. Simpsons-Sears Ltd.*, 1985 CanLII 18 (SCC), [1985] 2 S.C.R. 536, at p. 547). One of the reasons such legislation has been so described is that it is often the final refuge of the disadvantaged and the disenfranchised. As the last protection of the most vulnerable members of society, exceptions to such legislation should be narrowly construed (*Brossard (Town) v. Quebec (Commission des droits de la personne)*, 1988 CanLII 7 (SCC), [1988] 2 S.C.R. 279, at p. 307; see also *Bhinder v. Canadian National Railway Co.*, 1985 CanLII 19 (SCC), [1985] 2 S.C.R. 561, at pp. 567 and 589).
>
> [Emphasis added]

[129] However, it is recognized that this “interpretive approach does not give a board or a court license **to ignore the words of the Act** in order to prevent discrimination wherever it is found” [emphasis added] (*University of British Columbia v. Berg*, 1993 CanLII 89 (SCC), [1993] 2 SCR 353, at p. 371). The Supreme Court echoed the same comments in *Gould*, mentioned above, at p. 586.

[130] In this case, it is clear that the Tribunal cannot ignore the word “service”. As I mentioned earlier, the Federal Court of Appeal made it clear in *Watkin* that, although we are dealing with a human rights statute, which must generally be given a broad, liberal and purposive interpretation, we cannot ignore the words that it contains. However, this is not a matter of giving the word “service” a generous meaning in order to achieve that goal; this is a matter of not giving the word “service” a meaning that it cannot bear (*Watkin*, at paragraph 34; *Gould*, at paragraphs 13 and 50).

[131] As I have already explained, I believe that the act in question is rather the withdrawal, or rejection, of Ms. West’s nomination. While the CHRA must be given a broad, liberal and purposive interpretation, section 5 of the CHRA cannot apply to this type of alleged act.

[132] That said, I also do not believe that the complaint relates to the conduct of the elections officer or, for example, the implementation of departmental policies or practices. Nor is there any issue of the exercise of discretion by the elections officer as alleged by the Commission (*Forward*, at paragraph 37).

[133] With respect to the alleged discretion of the elections officer, the Commission believes that he had some latitude in interpreting the criterion set out in subsection 5(G) of the 1986 Election Law. In this regard, the Commission cites the Tribunal’s decision in *Beattie v. Indian and Northern Affairs Canada*, 2014 CHRT 1 [*Beattie*].

[134] Specifically, it believes that the elections officer may have interpreted the words “original treaty citizens”. Accordingly, it states that the officer should have chosen the non-discriminatory interpretation, which he allegedly failed to do. This discretion in applying the 1986 Election Law is alleged to be a service within the meaning of section 5 of the CHRA (*Beattie*, at paragraphs 100 and 101).

[135] I find that the evidence does not support the Commission's position. The Tribunal, at the hearing, always understood that the words "direct descendent of original treaty citizens" refer to the original signatories to Treaty No. 6 of 1876. Both Ms. West and the Respondent confirmed this understanding of the words. The documentary evidence also supports this view. The Commission did not submit any evidence that would lead the Tribunal to reach a different conclusion.

[136] Furthermore, I would point out that the elections officer was also not called as a witness at the hearing. I am necessarily bound by the evidence submitted. Indeed, the evidence submitted with respect to the officer's decision of June 25, 2016, is relatively sparse. His letter states that Ms. West was not eligible to run as a candidate, that she had failed to provide documentation and that he had had the opportunity to contact the committee of Elders. Based on the evidence, the Tribunal is unable to determine whether the officer exercised discretion in interpreting the 1986 Election Law.

[137] It should be noted that Ms. West was also able to demonstrate that she is a direct descendant of original treaty citizens, which the Respondent conceded at the outset of the hearing. Moreover, the evidence does not reveal the actual basis for the officer's decision and whether the officer considered Ms. West to be ineligible because her descent is from the line of her father and paternal grandmother, through adoption. It should also be noted that Ms. West filed this evidence with the appeal committee and at the Tribunal hearing. However, she did not provide this evidence to the officer.

[138] It would be difficult to conceive of another interpretation, given that it is understood that this expression refers to the original signatories to Treaty No. 6 of 1876 and given that no evidence to the contrary has been presented to me. Therefore, I do not find that there is any ambiguity, as raised by the Commission. Consequently, in the circumstances, *Beattie* is not determinative.

[139] I am also unable to establish what the officer's decision would have been had he received the relevant documentation. Moreover, the evidence does not reveal the content of the discussions that allegedly took place between the officer and the committee of Elders and how this consultation might have influenced the officer's decision.

[140] Moreover, Ms. West believes that the Elders were unaware of her family background and her descent from Chief Peh-ye-sis. Even given this premise, which is not supported by a preponderance of evidence, the evidence does not reveal the influence of the committee of Elders on the elections officer.

[141] A final point must be made. There is a similarity in the Tribunal's reasoning in the decision in this case and that in *Forward*. According to the evidence before me, Ms. West is not disputing the elections officer's review process, but rather the result itself, the rejection of her nomination. In other words, Ms. West is challenging the rejection of her nomination, which resulted from the verification of whether she met the eligibility criteria set out in the 1986 Election Law.

[142] In applying the 1986 Election Law and the candidate eligibility criteria, the officer was merely ensuring that Ms. West met or complied with the criteria established by the Nation when it created and passed its own election law. Therefore, it appears that Ms. West's challenge is more an issue with the 1986 Election Law itself and its selection criteria (*Forward*, at paragraph 38).

[143] This is also substantiated by the remedy Ms. West is seeking, namely changes to the 1986 Election Law to make it fair for all, in her words. Moreover, in the complaint, she challenges the criterion of "direct descendent of original treaty citizens", yet she asserts and presents evidence that she meets this criterion, which I find contradictory.

[144] For all intents and purposes, we know that the passage of legislation by Parliament has been found not to be a "service" within the meaning of section 5 of the CHRA (*Matson/Andrews*). In the case at hand, the band council also exercised its authority by enacting its own 1986 Election Law within its jurisdiction, which, it should be noted, falls within the federal sphere (*Francis v. Mohawk Council of Kanesatake*, 2003 FCT 115 (CanLII), [2003] 4 FC 1133 at paragraph 40 [*Francis*]).

[145] The fact that the Department of Indian Affairs and Northern Development allowed CLFN, by order in council dated December 29, 1989, to adopt its own election law does not render the 1986 Election Law immune from scrutiny under the Canadian Charter (*Ratt v.*

Matchewan, 2010 FC 160, at paragraph 106 [*Ratt*]; *Taypotat v. Taypotat*, 2013 FCA 192, at paragraph 37).

[146] In my opinion, the type of challenge Ms. West has brought should have been brought in the right forum, the Federal Court. Indeed, I believe that the Federal Court has jurisdiction over the officer's actions as well as over matters relating to the Nation's elections (*Ratt*, at paragraphs 105 and 106; *Ballantyne v. Nasikapow*, 2000 CanLII 16594 (FC), [2001] 3 C.N.L.R. 47, 197 F.T.R. 184, at paragraphs 5 and 6; *Francis*, at paragraphs 11 to 18). This jurisdiction of the Federal Court also extends to reviews relating to the application of the Canadian Charter and its section 15, regarding equality rights.

[147] For all of these reasons, I find that Ms. West failed to meet the burden of her case with respect to section 5 of the CHRA. Therefore, this portion of the complaint is dismissed. Accordingly, I need not pursue the analysis set out in *Moore*, among other cases, and I need not address the other elements of the Respondent's defence or the remedies.

VI. Other Allegations by Ms. West

[148] Both in her amended statement of particulars and during the hearing, Ms. West raised other allegations related to her complaint. These allegations can be summarized in four main topics: the filing of a protest form by a member of CLFN, the attestation of the protest form, a breach of procedural fairness and natural justice by the elections officer, and the lack of knowledge of the committee of Elders, which was not informed of Ms. West's family history.

A. Protest Against Ms. West's Nomination

[149] As mentioned above, a member of CLFN may protest a person's nomination as a candidate in the elections of the Nation.

[150] Although it is unclear whether Ms. West is alleging that protesting a nomination is a "service" within the meaning of section 5 of the CHRA, if so, I am not at all persuaded by this argument. Nevertheless, the Respondent defended itself in this regard by arguing that

the act of protesting a nomination bears no characteristics of a “service”. Indeed, I agree with the Respondent.

[151] I will not dwell upon this allegation because it seems clear to me, following the teachings of the higher courts in *Gould* and *Watkin*, that a protest by another member of the Nation against a nomination is not a “service” within the meaning of section 5 of the CHRA.

[152] On its face, a person’s protest against Ms. West’s nomination does not create any provider-receiver relationship that would in any way involve the Complainant.

[153] Ms. West alleges that CLFN is primarily of Dene ancestry, while her family is of Cree ancestry. It should be noted that her father was adopted by members of the Nation. Ms. West’s family thus appears to be facing exclusion and marginalization by some members of CLFN. Her mother, Mrs. Lorraine Janvier, and her daughter, Jolene Janvier, also made similar statements. Each told the Tribunal that they felt excluded and isolated from CLFN, and that they felt they did not belong and were not an integral part of the community—of their community.

[154] In her testimony on this matter, Ms. West was particularly emotional when she described to the Tribunal the extent to which she feels excluded and rejected by some members of CLFN. The Tribunal cannot remain indifferent to the emotions and genuine suffering of the Complainant.

[155] Nonetheless, the Tribunal must rely on the evidence presented at the hearing. With respect to the protest made by a member of the Nation, I find that the act in question is not a “service” within the meaning of section 5 of the CHRA.

[156] Since the act in question is not a “service”, the grounds or reasons underlying the protest are not relevant or determinative in the circumstances.

[157] Therefore, inasmuch as the Complainant has not met her burden of proof with respect to the allegation based on section 5 of the CHRA, this portion of her complaint is dismissed.

B. Attestation of Protest Form

[158] In her testimony, Ms. West additionally stated that the commissioner of oaths who attested Ms. Angnaluak's protest form also discriminated against her.

[159] The Respondent argues that the commissioner of oaths was not providing a "service" within the meaning of section 5 of the CHRA when attesting the protest form. I agree with this argument.

[160] Again, it appears clear to me that when the commissioner of oaths administered the protester's oath and attested their form, he was not providing a "service" to Ms. West. Again, there is no service provider-receiver relationship involving Ms. West, as per the higher courts in *Gould* and *Watkin*, mentioned above. As far as the act of administering the oath and attesting the form is concerned, Ms. West necessarily remains a stranger to the transaction, which took place between the protester and the commissioner.

[161] Moreover, Ms. West also seems to be arguing that the commissioner knew or should have known that she was a direct descendant of original treaty citizens. In other words, she appears to allege that the commissioner attested a document containing inaccurate information. The Respondent stated that the evidence filed at the hearing does not support this thesis and that it is not possible to determine whether the commissioner was (or was not) aware of Ms. West's ancestry.

[162] In any case, whether or not the commissioner was aware that Ms. West was a direct descendant of original treaty citizens is not, in my view, determinative in the circumstances. The decisions in *Gould* and *Watkin* are clear: it is first necessary to determine whether the action or activity in question constitutes a "service".

[163] As I have explained above, I do not find that this action between the protester and the commissioner, namely, the commissioner's administration of the protester's oath and attestation of their form, creates a "service" as far as Ms. West is concerned. Therefore, because the action in question does not constitute a "service" within the meaning of section 5 of the CHRA, the underlying grounds or justifications are not determinative.

[164] Because Ms. West has not discharged her burden of proof with respect to section 5 of the CHRA for this allegation, I dismiss this portion of the complaint.

C. Elections Officer and Committee of Elders

[165] Ms. West alleges that the committee of Elders did not have the competence to assist the elections officer in his decision regarding her eligibility, as its members knew nothing of her family history. The officer therefore did not act diligently in relying on the information supplied by the council.

[166] She adds that the officer, in his letter of ineligibility dated June 25, 2016, stated that she had not submitted the required documentation to establish her eligibility. She therefore asked him what additional documentation she needed to supply, but the officer allegedly never replied to her inquiry.

[167] Finally, she alleges that the officer accepted a protest in contravention of the rules set out in the 1986 Election Law. More specifically, he accepted a protest 48 hours after the nomination meeting, despite the fact that the protester was present at the meeting. According to Ms. West, the protest must be made at the nomination meeting.

[168] I am sensitive to Ms. West's concerns with respect to her allegations regarding the involvement of the committee of Elders, the potential deficiencies in the officer's diligence and his acceptance of a protest in contravention of the rules set out in the 1986 Election Law. That said, I find that the actions complained of by Ms. West do not fall under section 5 of the CHRA.

[169] As the Tribunal has already stated on several occasions, it is first necessary to define the actions or activities at issue and determine whether they constitute "services" within the meaning of the CHRA (see *Gould* and *Watkin*, mentioned above).

[170] First, the fact that the officer accepted a protest in contravention of the rule set out in the 1986 Election Law can hardly constitute a "service" within the meaning of section 5 of the CHRA. The officer was not providing any service to Ms. West of the provider-receiver variety. No connection or relationship of this type was created between them. Moreover, no

benefit was gained from the fact that the officer accepted a protest after the deadline or under conditions that differed from or contravened the 1986 Election Law. Section 5 of the CHRA cannot apply to this fact.

[171] I find that if Ms. West disagreed with the fact that Mr. Adam accepted a protest in contravention of the rules set out in the 1986 Election Law, she had other avenues open to her to challenge the action, such as the appeal committee established by the 1986 Election Law, or even the Federal Court.

[172] The same comments apply to Ms. West's allegation that she tried to contact Mr. Adam to ask him exactly which documents were required to establish that she was indeed eligible to run in the election. The officer failed to answer her, and this is what Ms. West is criticizing before the Tribunal.

[173] To determine her eligibility, the officer asked her to provide documentary evidence that would enable him to establish her eligibility. Ms. West provided a sworn statement. However, she did not provide any further documentation in support of this statement. The officer rejected her nomination on the basis that he was unable to establish her eligibility, given that he could not establish that she was a direct descendant of original treaty citizens. In his decision of June 25, 2020, he specifically stated that Ms. West had not provided the documentation necessary to support her claims.

[174] Therefore, whether or not the officer should have allowed Ms. West to provide the additional documentation is not determinative in the circumstances. This fact is relevant to neither the applicability of section 5 of the CHRA nor the concept of "service" as explained in the decisions in *Gould* and *Watkin*, mentioned above. I find instead that this is a question of procedural fairness and principles of natural justice as regards the actions of the elections officer, which falls outside my jurisdiction. I would add that the evidence does not allow for a determination of why the officer failed to follow up on Ms. West's subsequent enquiry.

[175] The Tribunal lacks the jurisdiction to oversee and review the decisions of an elections officer who may have breached the principles of procedural fairness or natural justice, just as the Tribunal lacks the jurisdiction to review the decisions of a band council in matters of procedural fairness and natural justice (see *Polhill v. Keeseekoowenin First Nation*, 2019

CHRT 42, at paragraphs 133 and following. See also *Dulce Crowchild v. Tsuut'ina Nation*, 2020 CHRT 6, at paragraph 72).

[176] In this case, it appears from Ms. West's arguments that she objects to the manner in which the officer reached his decision. She is challenging, in my view, the procedural fairness and natural justice of the decision-making process of Mr. Adam, who did not give her the opportunity to supplement her documentation and who accepted a protest in contravention of the rules established in the 1986 Election Law.

[177] My role in this complaint is to determine whether or not there was discrimination under the CHRA. While I am sensitive to Ms. West's arguments, it is not the Tribunal's role to monitor or review potential procedural deficiencies or to rectify them.

[178] It seems to me that other avenues would have been more appropriate for raising these arguments, such as the appeal process set out in the 1986 Election Law. Without taking a definite position on this point, I find it plausible that the Federal Court would have had jurisdiction to judicially review the decision of the officer or the committee.

[179] For these reasons, I dismiss Ms. West's allegations.

[180] Finally, as for the committee of Elders, I find that the same reasoning applies. Ms. West alleges that the elections officer consulted the committee of Elders, which was unaware of her family history and ancestry and did not know that she was in fact a direct descendant of original treaty citizens.

[181] The Tribunal recognizes that the committee of Elders is a committee composed of members of CLFN. According to the evidence presented at the hearing and Mr. Adam's written decision, it appears that the committee of Elders primarily has a consultative role, as under the 1986 Election Law, the elections officer cannot be a member of the Nation. The officer may consult this committee to be advised on the traditional laws of the Nation.

[182] I do not find that the action complained of by Ms. West, namely, the officer's having consulted the committee of Elders on the traditional laws of CLFN, falls under section 5 of the CHRA. Here again, no "service" provider-receiver relationship has been created with

respect to the Complainant. Moreover, it is clear that the relationship is between the elections officer and this other entity rather than between him and Ms. West.

[183] I would add that the evidence presented to me at the hearing was quite sparse with respect to the committee of Elders, the consultation by the elections officer and Ms. West's nomination for the June 2016 election.

[184] Neither Mr. Adam nor any member of the committee sitting at the time of that election was called as a witness. The Tribunal has no evidence before it with respect to the essence or the content of this consultation, the information provided by the committee, or any effect that the committee or its information may have had on the decision of the elections officer, Mr. Adam. Nothing has been presented to me on these points.

[185] While the testimony of Ms. West and Ms. Janvier does suggest that their family was marginalized and excluded by the other members of the community, a point to which the Tribunal is very sensitive, no evidence was filed with respect to the committee of Elders, its members or the elections officer.

[186] Not only do I find that it has not been established that section 5 of the CHRA applies to this activity, I also consider it impossible to draw any inferences whatsoever regarding what the committee may have said or done, or how it may have influenced the elections officer's decision, given the lack of evidence.

[187] Ms. West was unable to discharge her burden of proof with respect to section 5 of the CHRA regarding these allegations. Therefore, I dismiss this part of her complaint.

VII. Retaliation

[188] Ms. West also alleges that she was a victim of retaliation under section 14.1 of the CHRA. More specifically, she alleges that the Nation committed an act of retaliation, through her daughter, Jolene Janvier, insofar as it had promised her access to a new house in the community. Ms. West believes that the fact that the Nation did not give the house to her daughter was retaliation for the complaint she herself had filed under the CHRA.

[189] On the matter of retaliation, section 14.1 of the CHRA reads as follows, in English and in French:

> It is a discriminatory practice for a person against whom a complaint has been filed under Part III, or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.
>
> Constitue un acte discriminatoire le fait, pour la personne visée par une plainte déposée au titre de la partie III, ou pour celle qui agit en son nom, d'exercer ou de menacer d'exercer des représailles contre le plaignant ou la victime présumée.

[190] To establish retaliation, Ms. West must demonstrate:

> (1) that she filed a complaint under the CHRA;
>
> (2) that she experienced an adverse impact; and
>
> (3) that the complaint was a factor in the adverse impact.
>
> (*Family Caring Society*, mentioned above, at paragraphs 4 and 5).

[191] Neither party contests the fact that Ms. West filed a complaint under the CHRA in August 2016.

[192] In this case, it was through Ms. West's daughter that the acts of retaliation were allegedly committed. In other words, the act of retaliation suffered by Ms. West arises from the fact that the Nation allegedly denied access to a house to her daughter, Ms. Janvier, or delayed access.

[193] The Tribunal has already dealt with a similar situation in *Polhill v. Keeseekowenin First Nation*, 2017 CHRT 34, at paragraph 32, and in *Polhill,* 2019 CHRT 42, mentioned above, at paragraph 221, in which it was held that section 14.1 of the CHRT could be applicable to acts committed against a person connected to the complainant as a result of a complaint filed by the complainant under the CHRA.

[194] That said, in the decisions involving Ms. Polhill, the respondent had admitted, or conceded, that it was possible to retaliate against the complainant by way of acts committed against her spouse or her daughter. In that decision, the Tribunal was starting from that premise, this hypothesis having been conceded by the respondent.

[195] In the case at hand, the Nation has not contested this hypothesis either, namely, that retaliation against Ms. West could consist of acts committed against her daughter.

[196] However, the Respondent has stated clearly and expressly that no retaliation has occurred in this case. More specifically, the Respondent states that Ms. Janvier's house was not assigned to her for reasons that have nothing to do with Ms. West's filing a complaint under the CHRA.

[197] The Tribunal finds itself in an unusual situation in that it is not quite clear whether section 14.1 of the CHRA, regarding retaliation, can be interpreted so as to include acts committed against a third party connected to a complainant as a result of the latter's filing of a complaint under the CHRA. Furthermore, it is clear that the Tribunal did not conduct a detailed analysis of this issue in *Polhill,* 2019 CHRT 42, mentioned above.

[198] The parties made no submissions to guide the Tribunal through this line of reasoning. The parties' analysis appears to focus more on the connection between the filing of Ms. West's complaint and the delay in assigning or failure to assign a house to her daughter, Ms. Janvier. Without fully interpreting section 14.1 of the CHRA, it would be imprudent for the Tribunal to make a final determination of this issue in this case.

[199] Therefore, solely for the purposes of this decision, the Tribunal will assume that section 14.1 of the CHRA applies in the circumstances. Even with this premise in mind, I find that, in any case, the preponderance of evidence does not support Ms. West's claims: the evidence does not support the claim that her daughter did not receive the house promised to her as a result of the filing of Ms. West's complaint, for the following reasons.

[200] Ms. Janvier lives in the CLFN community. She was informed by Carol Sales, a consultant for the Nation, that she was to receive a house to replace the one she was living in.

[201] At the time, Ms. Sales was working for CLFN as a consultant, and she continued to do so until November 2019. Her duties included developing strategic plans and government bids. She also served as acting director of capital assets and day-to-day operations relating

to CLFN's infrastructure, which included housing, public work roads, building infracstructure, repairs and buildings.

[202] The evidence shows that the house in which Ms. Janvier and her family lived was in poor condition. Among other things, there were problems with flooding and mould. In her testimony, Ms. Janvier noted that her house had been considered condemned on various occasions.

[203] A few weeks later, Ms. Janvier received a call from Ms. Sales, informing her that she would not be receiving her house as planned; the assignment of her house would be delayed until the spring of the following year.

[204] Ms. West explained to the Tribunal that, during that same period, she learned in the course of a discussion with George Noel, another member of the community, while she was in a restaurant with her sister, that the house promised to her daughter had instead been assigned to Mr. Noel himself. Jolene Janvier allegedly received the same information from Mr. Noel, which angered her greatly. According to Ms. West's testimony, Mr. Noel also questioned Ms. West about the ongoing legal proceedings during the same discussion. He asked her how they were going.

[205] Finally, before the hearings, in June 2020, Ms. Janvier received a call from the chief of CLFN, Mr. Martin, informing her that she would be receiving a new house later.

[206] Ms. Sales was called to testify before the Tribunal at the hearing. She testified about facts relating specifically to the assignment of a house to Ms. Janvier. She recalled that the plan had indeed been for Ms. Janvier to receive a new house in August 2019 or thereabouts.

[207] Ms. Sales explained that when CLFN receives funding for new houses, the choice of who will receive them must be made using a database kept by the Nation. Members can also submit applications for housing. An assessment is conducted, and houses are assigned. When the houses arrive in the Nation, the assignment list is proposed to the chief and band council. In this case, this step was taken in May.

[208] However, an election was held during the summer. The new chief and band council decided to re-evaluate the housing assignment list. Ms. Sales presented her comments to

the chief and band council in favour of assigning a new house to Ms. Janvier. In her view, the cost of repairing the house was too high, and the house was too old; it would be better to replace it. In August, the chief and band council agreed to add Ms. Janvier's name to the housing assignment list.

[209] Ms. Sales recalled having contacted Ms. Janvier to tell her that she would be receiving a house. However, according to Ms. Sales' testimony, shortly after she had talked with Ms. Janvier, it was discovered that an elderly member of the community was also living in a mould-infested house.

[210] Ms. Sales explained that, for this reason, a house meant to be assigned to somebody on the list had to be assigned to the elderly person in question, namely, Mr. Noel. It was decided that the house earmarked for Ms. Janvier would be reassigned to Mr. Noel, which had the effect of delaying Ms. Janvier's assignment to the following spring.

[211] Ms. Sales remembers having informed Ms. Janvier of the decision to reassign the house to George Noel. This corroborates the testimony of Ms. West and Ms. Janvier. Ms. Sales was also aware of the poor condition of Ms. Janvier's house and the need to make some repairs before the following winter.

[212] Ms. Sales left her position in November 2019. She confirmed that upon her departure, Mr. Noel still had not received his house, but the work was progressing. It should also be noted that on the dates of the Tribunal hearing, in July 2020, Ms. Janvier had still not received the house she had been promised.

[213] Ms. Sales confirmed that at the time the house was assigned and when she made her report in the spring, she was unaware that Ms. West had filed a complaint of discrimination with the Commission. Nor was the filing of Ms. West's complaint brought up in the discussions held between Ms. Sales and the chief and band council regarding the reassignment of the house to Mr. Noel.

[214] When Ms. Sales was asked to explain her reasoning in reassigning the house from Ms. Janvier to Mr. Noel, she provided her reasons for the decision, which was based on, among other factors, the number of houses available, the number of bedrooms in these

houses, Ms. Janvier's needs and the needs of another family in the community that had no house at all. She also mentioned the level of mould in Mr. Noel's house, which was considered higher than that in Ms. Janvier's current house.

[215] The Tribunal has no reason, based on the evidence presented at the hearing, to question the credibility and reliability of Ms. Sales' testimony. She answered the questions frankly, directly, calmly and to the best of her memory. Moreover, several parts of her testimony are corroborated by various aspects of the testimony of Ms. West and Ms. Janvier.

[216] I do not find that the evidence establishes, as Ms. West claims, that the delay in assigning a house to her daughter constituted retaliations for her discrimination complaint against the Nation. The evidence simply does not support this thesis on a balance of probabilities.

[217] On the contrary, Ms. Sales was able to provide reasons for reassigning the house to another member of the community. The grounds listed by Ms. Sales were credible and were not contradicted by the evidence presented at the hearing.

[218] Nor did I receive any evidence indicating that the chief and band council had decided to reassign Ms. Janvier's house to Mr. Noel in retaliation for the complaint filed by Ms. West.

[219] Ms. West was therefore unable to discharge her burden of proof with respect to section 14.1 of the CHRA; accordingly, I dismiss this aspect of the complaint.

VIII. Decision

[220] For all the reasons provided in this decision, I dismiss Ms. West's complaint in its entirety.

Signed by

Gabriel Gaudreault
Tribunal Member

Ottawa, Ontario
January 4, 2021

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2400/5919

Style of Cause: Bonnie West v. Cold Lake First Nations

Decision of the Tribunal Dated: January 4, 2021

Date and Place of Hearing: July 29, 30 and 31, 2020

By videoconference

Appearances:

Bonnie West, for herself

Jessica Walsh and Brian Smith, for the Canadian Human Rights Commission

Keltie Lambert and Justine Mageau, for the Respondent