

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2023 CHRT 43

Date: September 18, 2023

File Nos.: T2525/8220; T2540/9720; T2542/9820

Between:

Denny Bilac

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Shona Abbey, Arthur Currie and NC Tractor Services Inc.

Respondents

Decision

Member: Colleen Harrington

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I. Overview

[1] The Complainant, Denny Bilac, is a transgender man who uses the masculine pronouns “he, him and his”. He uses the name Denny in all aspects of his ordinary life. Mr. Bilac was assigned another name at birth which he has not been able to legally change, referred to in this decision as his “deadname”.

[2] Around the end of August of 2018 Mr. Bilac became employed as a truck driver with a company called NC Tractor Services Inc. (“NC Tractor”), one of the Respondents in this matter. NC Tractor was owned by Arthur Currie, who is also a Respondent. Shona Abbey, the third Respondent, was an employee of NC Tractor for the entirety of Mr. Bilac’s employment there. Prior to Mr. Currie starting NC Tractor, Mr. Bilac, Mr. Currie and Ms. Abbey were all employees of another trucking company called Edenbank Trading Co Ltd. (“Edenbank”) which operated out of the same location as NC Tractor. They had all worked together since June of 2017, when Mr. Bilac was hired as a truck driver by Edenbank.

[3] Mr. Bilac alleges that the Respondents harassed him on the basis of his gender identity or expression and failed to provide a harassment-free work environment, contrary to section 14 of the *Canadian Human Rights Act*, RSC 1985, c.H-6 [CHRA]. Specifically, he says that Mr. Currie and Ms. Abbey repeatedly referred to him by his deadname (“deadnamed” him) and that they misgendered him by using feminine pronouns. He also says that both Mr. Currie and Ms. Abbey asked him invasive questions about being transgender, including questions of a sexual nature, and that Mr. Currie harassed him by way of sexual comments, gestures and touching.

[4] Mr. Bilac says that the discriminatory harassment eventually led him to resign from his employment with NC Tractor in November of 2018.

[5] While Mr. Currie denies that he engaged in some of the alleged behaviours, and Ms. Abbey does not recall several of the incidents Mr. Bilac testified about, both acknowledge that they repeatedly deadnamed and misgendered Mr. Bilac during the period they worked together.

II. Decision

[6] I find that Mr. Bilac was harassed in the workplace on the basis of his gender identity or expression by being repeatedly misgendered and deadnamed by Mr. Currie and Ms. Abbey, both at Edenbank and at NC Tractor, contrary to section 14(1)(c) of the *CHRA*. I also find that Mr. Currie engaged in additional acts of discriminatory harassment against Mr. Bilac on the basis of his gender identity or expression, by making comments and asking questions that communicated Mr. Currie's belief that Mr. Bilac was not really a man.

[7] I also find that NC Tractor failed to meet the conditions set out in section 65(2) of the *CHRA* to avoid liability for the discriminatory harassment engaged in by Mr. Currie and Ms. Abbey, who deadnamed and misgendered Mr. Bilac for the approximately three months he worked for NC Tractor.

[8] As his complaint is substantiated, I have decided that Mr. Bilac is entitled to damages for pain and suffering from each of the three Respondents, as well as special compensation from Mr. Currie and NC Tractor for discrimination that was engaged in recklessly.

III. Preliminary Matter: Scope of the Complaint

[9] In September of 2020, the Canadian Human Rights Commission ("Commission") asked the Tribunal to inquire into three separate complaints made by Mr. Bilac against NC Tractor, Mr. Currie and Ms. Abbey. The Tribunal agreed to join these three complaints so that they could be heard together (2021 CHRT 4 (CanLII)).

[10] The complaints referred to the Tribunal by the Commission indicate that Mr. Bilac had complained of harassment on the basis of his "gender identity or expression" and his "sexual orientation", both of which are prohibited grounds of discrimination under section 3 of the *CHRA*. He did not check off "sex" on the Commission's complaint forms. Although he alleges in his complaints that he was sexually harassed in the workplace, the Commission did not refer the complaint on the basis of the prohibited ground of sex. The Commission addressed this in its Statement of Particulars ("SOP"), filed during case management prior to the hearing. The Commission stated that, once it had received the other parties' SOPs, it

might file a Motion to add sex as a ground of discrimination. The Commission did not file such a Motion.

[11] In his own SOP, Mr. Bilac stated his agreement with the characterization of the legal issues as set out in the Commission's SOP. He did not file a Motion to add sexual harassment as a discriminatory practice either.

[12] At the hearing, Mr. Bilac testified about certain workplace incidents that he had characterized as sexual harassment in his complaint form and SOP. These include allegations that Mr. Currie touched Mr. Bilac inappropriately and asked questions of a sexual and personal nature, including about Mr. Bilac's body.

[13] Both the Commission and Mr. Bilac say in their closing submissions that, if the Tribunal finds that these alleged incidents occurred, it should make a finding that Mr. Bilac was sexually harassed under section 14(2) of the *CHRA*. Neither mentions the reference in the Commission's SOP to potentially filing a Motion to add sex as a prohibited ground of discrimination or sexual harassment as a discriminatory practice.

[14] The Tribunal's jurisdiction to inquire into these complaints comes from the Commission's referral pursuant to section 44(3)(a) of the *CHRA* (*R.L. v Canadian National Railway Co.*, 2021 CHRT 33 (CanLII) [*R.L. v CNR*] at para 20). In the present case, the Commission referred a complaint of harassment under section 14 to the Tribunal on the grounds of gender identity or expression and sexual orientation. It did not refer a complaint of sexual harassment pursuant to section 14(2), nor did it file a Motion to add this discriminatory practice despite raising the possibility of doing so.

[15] It would be procedurally unfair to the Respondents, who are both self-represented, for the Tribunal to consider an additional discriminatory practice that has been raised by the Complainant and Commission in their closing submissions. As the Federal Court of Appeal in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (CanLII) stated, whether a party was given "a right to be heard and the opportunity to know the case against them" is a question that is "fundamental to the concept of justice" (at para 56). As such, I decline to add the additional prohibited ground of sex or the additional discriminatory practice of sexual harassment to the scope of the complaint before the Tribunal.

[16] This does not mean, however, that the Tribunal has not considered the allegations made by Mr. Bilac relating to the behaviours that he has characterized as sexual harassment. As I stated, these behaviours were described by Mr. Bilac in his 2019 human rights complaint filed with the Commission. In its Record of Decision, the Commission requested that the Chairperson of the Tribunal “institute an inquiry into the allegations raised in these complaints.”

[17] I note that, in his closing submissions, Mr. Bilac submits that the misgendering and deadnaming and the unwelcome questions and comments about his body and his sex life arose because he is transgender. He says that the allegations he characterizes as sexual harassment occurred because Mr. Currie did not see Mr. Bilac as a man. He argues that the complained of conduct is related to his status as a transgender man. I agree and, while I decline to make a finding of sexual harassment based on the evidence presented at the hearing, I have considered whether the conduct that he has described as sexual harassment constituted discriminatory harassment on the basis of his gender identity or expression.

[18] With regard to the prohibited ground of sexual orientation, Mr. Bilac states in his closing submissions that the allegation of discrimination on this basis relates to certain questions that Mr. Currie and Ms. Abbey asked him about his sex life. He submits that, given the overlap between the grounds of discrimination (sexual orientation and gender identity or expression), and the fact that Mr. Bilac was viewed by the Respondents as a woman and asked about sexual practices between women, it is open to the Tribunal to find a violation based on both grounds. Mr. Bilac submits, however, that a finding based on gender identity would be most appropriate. I agree and will therefore not consider whether he was discriminated against on the basis of his sexual orientation.

IV. Issues

[19] The issues for the Tribunal to decide are:

1. Has Mr. Bilac established that he was harassed on the basis of his gender identity or expression by Mr. Currie and/or Ms. Abbey during his employment, contrary to section 14(1)(c) of the CHRA?

2. If I decide that Mr. Bilac experienced harassment on the basis of his gender identity or expression, is NC Tractor liable for the discriminatory conduct of Mr. Currie and/or Ms. Abbey pursuant to section 65 of the CHRA?
3. If the complaint has been established and NC Tractor is unable to rebut the presumption of liability pursuant to section 65(2) of the CHRA, what remedies should be ordered against Mr. Currie, Ms. Abbey and NC Tractor that flow from the discrimination?

V. Analysis

A. Issue 1: Mr. Bilac has established that he was harassed on the basis of his gender identity or expression during his employment

(i) Legal Framework

[20] Section 14(1)(c) of the *CHRA* states that it is a discriminatory practice to harass an individual on a prohibited ground of discrimination in matters related to employment. Gender identity or expression is a prohibited ground of discrimination as set out in section 3 of the *CHRA*.

[21] Gender identity refers to how a person internally and individually experiences gender, and gender expression refers to how a person publicly presents their gender. Trans individuals such as Mr. Bilac have a gender identity which differs from the sex they were assigned at birth.

[22] In order to establish a *prima facie* case of discriminatory harassment contrary to section 14(1)(c) of the *CHRA*, Mr. Bilac must establish that the behaviours or conduct he has complained about were:

- a. related to a prohibited ground of discrimination;
- b. unsolicited or unwelcome; and
- c. persistent or serious enough to create a hostile or negative work environment that undermined Mr. Bilac's dignity (R.L. v CNR at para 95; Nielsen v Nee Tahi Buhn Indian Band, 2019 CHRT 50 (CanLII) at paras 116-117).

[23] A *prima facie* case of discrimination 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” (*Ontario Human Rights Commission and O’Malley v Simpsons-Sears*, 1985 CanLII 18 (SCC) at para 28).

[24] A protected characteristic need only be a contributing factor, not the sole factor, in the adverse treatment (*Holden v Canadian National Railway*, 1990 CanLII 12529 (FCA) at para 8). A causal connection is not required, nor is proof of intention to discriminate (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (CanLII) at paras 56, 40).

[25] Mr. Bilac must prove on a balance of probabilities that he was harassed, meaning he must show that it is more likely than not that the harassment occurred. The evidence must be “sufficiently clear, convincing and cogent” to satisfy the balance of probabilities test (*F. H. v McDougall*, 2008 SCC 53 (CanLII) [*F.H. v McDougall*] at para 46).

[26] In determining whether discrimination occurred, the Tribunal must consider the evidence of all parties. Where respondents present evidence in an effort to refute an allegation of *prima facie* discrimination, their explanation for the impugned conduct must be reasonable, it cannot be a “pretext” - or an excuse - to conceal discrimination (*Moffat v Davey Cartage Co.(1973) Ltd.*, 2015 CHRT 5 (CanLII) at para 38).

[27] If a complainant is able to meet the burden of proof and establishes *prima facie* discrimination, respondents may put forward a defence justifying the discrimination under section 15 of the *CHRA* or they may argue that their liability is limited pursuant to section 65(2) of the *CHRA*.

Evidence

[28] The evidence presented at the hearing may be separated into two categories: uncontested and contested evidence of harassment. I will consider each category separately to determine whether Mr. Bilac experienced discriminatory harassment during his employment.

(ii) Uncontested evidence

(a) Findings of Fact

[29] The Tribunal heard that Mr. Bilac has presented as a man for more than twenty years and has used the chosen name Denny for about 15 years and masculine pronouns since the 1990s. However, he has not legally changed his name, so his driver's licence and banking and tax information identify him by his deadname.

[30] In June of 2017 Mr. Bilac posted his resumé online and was hired by Edenbank as a truck driver. He moved from Vancouver to Chilliwack for the job, where he met Mr. Currie and Ms. Abbey. He worked for Edenbank from June of 2017 until he started with NC Tractor around the end of August of 2018.

[31] Ms. Abbey worked as a dispatcher and office administrator at both Edenbank and NC Tractor. Mr. Currie was a mechanic and floor manager at Edenbank. He worked there for 7 years. After Edenbank's owner died, Mr. Currie wanted to continue the business, so he purchased some trucks and started NC Tractor, which was incorporated on August 30, 2018. Mr. Currie is the sole owner of this business.

[32] NC Tractor rented out part of the building where Edenbank had operated and hired several former Edenbank employees, including Ms. Abbey and Mr. Bilac. It also purchased several of Edenbank's trucks and entered into contracts with approximately one-third of Edenbank's former customers. The business was active from August of 2018 until August or September of 2019. Although NC Tractor had ceased operations and payroll activities by the end of 2019, as of the hearing dates it had not been formally wound up.

[33] In addition to dispatching for NC Tractor, Ms. Abbey did some additional tasks like data entry and paperwork and she was the Safety Officer. She worked there until August of 2019.

[34] Mr. Bilac worked as a truck driver for NC Tractor until November of 2018. He testified, and the Respondents agreed, that shortly after he began working with Mr. Currie and Ms. Abbey at Edenbank, he told them that, although his deadname was still his legal name and

it appeared on his driver's licence, he uses the name Denny and masculine pronouns and asked them to do the same. He repeated this request many times while working for both Edenbank and NC Tractor.

[35] Mr. Bilac testified that Mr. Currie only called him Denny on his last day of work and that he did not recall Ms. Abbey ever calling him Denny. During his cross-examination by Ms. Abbey, Mr. Bilac accepted that Ms. Abbey had apologized to him for using his deadname and said she would make every effort to use Denny instead.

[36] Both Respondents acknowledged that they misgendered and deadnamed Mr. Bilac even after being corrected. Ms. Abbey agreed that both she and Mr. Currie used feminine pronouns and Mr. Bilac's deadname to refer to him in conversations with him, with each other, with other drivers, and with other people generally, including Mr. Bilac's friends, Dr. Nicholson and Ms. Thomson, when they visited him at the workplace. Both Dr. Nicholson and Ms. Thomson were witnesses who testified at the hearing that they heard the Respondents deadname and misgender Mr. Bilac.

[37] Ms. Abbey said she was confused by Mr. Bilac's request to use the name Denny and had difficulty using this name because she was used to seeing his deadname in the logbooks and other paperwork she handled. She recognized that she did not go far enough in her efforts to correct herself and she apologized to Mr. Bilac during the hearing. In her closing submissions, Ms. Abbey says, "I acknowledge that I failed in my responsibility to respect the human rights of Mr. Bilac."

[38] Mr. Currie testified that Mr. Bilac had asked him to call him Denny but that he refuses to call anyone by a name other than their legal name in the workplace because doing so would be unprofessional and illegal. He emphasized that Mr. Bilac had applied for the job using his deadname. Mr. Currie testified that he believes he has a legal obligation to use the name that appears on an employee's government-issued documents in the workplace, despite the fact that several people in the workplace, including him, used shortened versions of their legal names or nicknames on a regular basis.

[39] Mr. Currie also said that using masculine pronouns and the Complainant's chosen name would cause problems when dealing with certain businesses the trucking company

dealt with such as railways and ports. He believed that using Mr. Bilac's chosen name at work would be fraudulent. During his testimony he apologized for upsetting Mr. Bilac but held to his belief that he did not have to use his chosen name in the workplace.

[40] During the course of the hearing both Ms. Abbey and Mr. Currie misgendered Mr. Bilac - Mr. Currie more frequently than Ms. Abbey - even after being corrected by Mr. Bilac's counsel and the Tribunal.

[41] In addition to the misgendering and deadnaming, Mr. Bilac also testified that Ms. Abbey asked which washroom he uses even though there was only one washroom in the workplace. Ms. Abbey testified during the hearing that she did ask this question and she recognized the question was in bad taste, but that she only asked because Mr. Bilac was so willing to share and educate them about being transgender.

(b) Applying the law to the facts as I have found them

- a. The conduct was related to a prohibited ground of discrimination

[42] I agree with Mr. Bilac's position that the conduct complained of is related to his status as a trans man. Referring to Mr. Bilac using feminine pronouns and by his deadname which, as he testified, is distinctly a woman's name, are clear examples of misgendering. Misgendering is intrinsically linked to Mr. Bilac's gender identity or expression.

[43] As the British Columbia Human Rights Tribunal ("BCHRT") has stated, transgender employees "are entitled to recognition of, and respect for, their gender identity and expression. This begins with using their names and pronouns correctly. This is not an 'accommodation', it is a basic obligation that every person holds towards people in their employment" (*Nelson v Goodberry Restaurant Group Ltd. dba Buono Osteria and others*, 2021 BCHRT 137 (CanLII) [*Nelson v Goodberry*] at para 80 citing *BC Human Rights Tribunal v Schrenk*, 2017 SCC 62 (CanLII) [*Schrenk*]).

[44] I agree with the BCHRT that, "like a name, pronouns are a fundamental part of a person's identity. They are a primary way that people identify each other. Using correct pronouns communicates that we see and respect a person for who they are. Especially for

trans, non-binary, or other non-cisgender people, using the correct pronouns validates and affirms they are a person equally deserving of respect and dignity” (*Nelson v Goodberry* at para 82).

[45] I further agree with Mr. Bilac that asking him about which washroom he uses only arose because he is transgender and the Respondents thought it was acceptable to ask him personal questions about his body.

b. The conduct was unsolicited or unwelcome

[46] Mr. Bilac repeatedly asked Mr. Currie and Ms. Abbey to stop using his deadname and to use his chosen pronouns and they did not do so. I accept that the repeated misgendering was both unsolicited and unwelcome.

[47] Mr. Bilac says the question about which washroom he uses was also unwelcome. Ms. Abbey testified that she did ask him this question because she did not know and she thought Mr. Bilac was receptive to having this conversation. In his closing submissions Mr. Bilac says, in relation to this question and others that related to him being transgender, that he “made a good faith effort to try to educate his employers about transgender issues but eventually came to experience these questions as unwelcome and felt that the Respondents were ganging up on him.”

[48] Mr. Bilac testified that, while the deadnaming and misgendering persisted throughout his employment with both Edenbank and NC Tractor, he did not know if the question about which washroom he uses happened while he was working for Edenbank or for NC Tractor.

[49] All parties agreed there was only one washroom at the workplace (which remained the same for Edenbank and NC Tractor), so a conversation about which washroom he uses was not relevant to the workplace. I accept that the question was unsolicited. Such a personal question is not appropriate to ask of a transgender or non-binary person unless it is necessary to do so for a legitimate work-related purpose. Mere curiosity would not qualify as a reason to ask such a personal question of a coworker or employee.

- c. The conduct was persistent or serious enough to create a hostile or negative work environment that undermined Mr. Bilac's dignity

[50] There is no question that the deadnaming and misgendering persisted throughout Mr. Bilac's employment with Mr. Currie and Ms. Abbey, both at Edenbank and at NC Tractor up until he quit. There is also no question that this conduct was serious enough to create a negative work environment that undermined Mr. Bilac's dignity.

[51] Mr. Bilac says he told the Respondents about the potential dangers of being outed as a trans person in a small town. He said the misgendering alienated him and made him feel unsafe. This sentiment was affirmed in *Nelson v Goodberry*, where the BCHRT noted that, especially for trans or non-binary people, pronouns are fundamental to feeling like they exist and, when people do not use the right pronouns, their safety is undermined (at para 82).

[52] The Commission referred the Tribunal to a source that describes misgendering as a "critical stressor that is experienced as humiliating, stigmatizing, psychologically distressing, and dehumanizing" (Chan Tov McNamarah, *Misgendering as Misconduct*, (2020) 68 UCLA L. Rev Discourse 40-71 as cited in Amy Salyzyn & Samuel Singer, "Challenging 'Compelled Speech' Objections: Respectful Forms of Address in Canadian Courts" (14 December 2021)).

[53] With respect to Ms. Abbey's question about which washroom Mr. Bilac uses, while this question by itself may not have constituted discriminatory harassment, I do accept that such a question of a personal nature could certainly add to the negative work environment for Mr. Bilac in conjunction with the persistent misgendering and deadnaming. The question was not asked in relation to the workplace, and it clearly related to Mr. Bilac's gender identity and expression.

(c) Respondents' explanation for the discriminatory behaviour

[54] Ms. Abbey testified that she was confused by Mr. Bilac's request to call him Denny because she was used to seeing his deadname in the logbooks and other paperwork. Mr. Currie says in his closing submissions that he did not intentionally try to embarrass Mr. Bilac

or hurt his feelings by calling him by his deadname. Rather, he believed that he was legally required to use his deadname during his employment as this was the name on Mr. Bilac's driver's licence and other government documents.

[55] It is unclear what law Mr. Currie relied on in persisting to call Mr. Bilac by his deadname in the workplace. He did not refer the Tribunal to any such law and I am unaware of any that would require an employer to do so. Human rights legislation across Canada, including the *CHRA*, requires employers to respect the dignity of their employees by not discriminating against them on the basis of their gender identity or expression.

[56] The *CHRA* is quasi-constitutional legislation, enacted to give effect to the fundamental value of substantive equality. Its purpose is to ensure that individuals have an equal opportunity to make for themselves the lives that they are able and wish to have, consistent with their duties and obligations as members of society, without being hindered by discriminatory practices based on prohibited grounds of discrimination (s.2). Misgendering and deadnaming an employee who has specifically and repeatedly asked to have their gender identity respected is a discriminatory practice that is contrary to the *CHRA*.

[57] The issue of whether Ms. Abbey or Mr. Currie intentionally tried to embarrass Mr. Bilac or hurt his feelings is also not relevant in determining whether discrimination occurred. Human rights legislation is concerned not with a Respondent's intentions, but with the impact of the discriminatory conduct or behaviour (*Schrenk, supra* at para 88 (per Abella J, concurring)). However, as the BCHRT has stated:

A person's intention can go a long way towards mitigating or exacerbating the harm caused by misgendering. Where a person is genuinely trying their best, and acknowledges and corrects their mistakes, the harm will be reduced. ... On the other hand, where a person is callous or careless about pronouns or – worse – deliberately misgenders a person, the harm will be magnified (*Nelson v Goodberry, supra* at para 84).

[58] As the BCHRT in *Nelson v Goodberry* stated, "for many people the concept of gender-neutral pronouns is a new one. They are working to undo the 'habits of a lifetime' and, despite best intentions, will make mistakes. Unfortunately, this learning is done at the expense of trans and non-binary people, who continue to endure the harm of being misgendered" (at para 83).

[59] In the case of Mr. Bilac's employment with NC Tractor, I cannot conclude that either Mr. Currie or Ms. Abbey made much, if any, effort to respect Mr. Bilac's request to be called Denny and to use masculine pronouns when referring to him.

(d) Conclusion with respect to the uncontested evidence

[60] I agree that Ms. Abbey and Mr. Currie harassed Mr. Bilac on the basis of his gender identity or expression contrary to section 14(1)(c) of the *CHRA*, by repeatedly misgendering and deadnaming him. Ms. Abbey's unwelcome question about which washroom he uses added to the impact of the discriminatory harassment he experienced.

(iii) Contested evidence

[61] In addition to the misgendering and deadnaming that occurred in the workplace, and asking which washroom he uses, Mr. Bilac alleges behaviour mainly by Mr. Currie that made the workplace even more uncomfortable for him as a trans man. Specifically he testified that Mr. Currie: grabbed his buttocks over his clothing one time; asked him if he had hair on his buttocks; bragged about how his penis felt during intercourse; chased Mr. Bilac out of the shop; "farted" on his shoulder and rubbed his buttocks against Mr. Bilac's shoulder while Mr. Bilac was sitting in a chair; exposed his buttocks to Mr. Bilac; rubbed his crotch against the back of Mr. Bilac's body while he was reaching to plug in a cell phone charger; pretended to "hump" another driver in front of Mr. Bilac; told him his Mormon religion does not allow for transsexuality; threatened to rub grease on his body and face; and told him to expose his breast to another driver. Mr. Bilac says he experienced these encounters as sexual and unwelcome.

[62] In addition to this alleged behaviour by Mr. Currie, Mr. Bilac says that Ms. Abbey asked him who he has sex with and that Mr. Currie asked him about how two women have sex.

(a) These allegations were “related to employment” pursuant to section 14(1)(c) of the CHRA

[63] It is uncontested that Mr. Bilac was living at the worksite during his employment with Edenbank. He was permitted to live on the property first in a camper and then in a motorhome that he was purchasing from the son of Edenbank’s owner. Mr. Bilac did not pay rent to live on the property. He did not have a working washroom in his motorhome so he used the one in the shop and also got his water from the shop. He was given a key and the security code to the shop so he could use the facilities and the microwave after hours. He also ran an extension cord from the shop to the motorhome for electricity, which sometimes tripped the breaker and cut the power to Ms. Abbey’s computer.

[64] Mr. Currie said that, after Edenbank’s owner died and he started NC Tractor, he was “stuck” with Mr. Bilac living on the property and not paying rent. Mr. Currie testified that he tried to get Mr. Bilac to move to a campground where he would have access to water, sewage and electricity, but that Mr. Bilac told him he could not afford to live in a campground.

[65] As Mr. Bilac was living on the property, he would often come into the shop to visit with Ms. Abbey and Mr. Currie, who would often be working late into the evening.

[66] Ms. Abbey testified that, as Mr. Bilac was a truck driver for both Edenbank and NC Tractor, he was only working when he was out driving a truck. He was not working when he was in the shop visiting with others, even if they were working.

[67] I accept that none of the alleged discriminatory behaviour happened while Mr. Bilac was driving a truck, either for Edenbank or NC Tractor, with the exception of the misgendering and deadnaming, as well as an incident with another driver named Bill, which I will discuss later. The alleged unwelcome conversations and conduct happened when Mr. Bilac was in the shop visiting with Mr. Currie and Ms. Abbey.

[68] Mr. Bilac was not the only employee who stopped by the shop to visit, but he would have been around more frequently because he lived on the property. Ms. Abbey described the work environment as not “strictly professional”, meaning there was overlap between the personal and professional. She testified that they were like a family, and it was a place where

people supported one another even outside of work. She said that drivers who had been working alone for 13 hours would often talk to her for a while afterwards and they would share things about themselves.

[69] Mr. Currie's witness Mr. Burns also testified that the atmosphere in the shop was more like a family than a workplace, saying there was often laughter and joking and food to share.

[70] Clearly for Mr. Bilac, the workplace became part of his social life, as he even brought his friends into the shop to visit with Ms. Abbey and Mr. Currie when they came to see him. Both Ms. Abbey and Mr. Currie testified that they considered Mr. Bilac to be a friend.

[71] Section 14 of the *CHRA* does not require that someone actually be working in order to be afforded protection from discrimination. Rather, section 14(1)(c) states that it is a discriminatory practice "in matters related to employment" to harass an individual on a prohibited ground of discrimination. The Tribunal in *Nielsen v Nee Tahí Buhn Indian Band*, *supra* stated that "the important element is ... the existence of a sufficient connection with the employment context" (at paras 118-119, citing *Duverger v 2553-4330 Québec Inc. (Aéropro)*, 2019 CHRT 18 (CanLII) at paras 108-158, and *Schrenk*, *supra* at paras 37, 38 and 40).

[72] Mr. Bilac was living on the property of Edenbank and NC Tractor while he was working there and relying on certain amenities in the shop. The conversations he had with Ms. Abbey and Mr. Currie in the workplace occurred when they were working, even if he was not. I accept that they were "related to employment" for the purposes of the *CHRA*.

(b) Determining which allegations relate to Mr. Bilac's gender identity or expression

[73] As indicated, this group of allegations is largely contested. The evidence from the Respondents conflicts with Mr. Bilac's evidence or that of his witness Dr. Nicholson. As Mr. Bilac has characterized these incidents or comments as being discriminatory, the Tribunal must weigh the oral testimony of all witnesses and assess the reliability and credibility of each witness and make findings of fact based on these assessments. In doing so, I have

considered *Faryna v Chorny*, 1951 CanLII 252 (BC CA), in which Mr. Justice O'Halloran stated at p. 357:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[74] Mr. Bilac has made a number of allegations about behaviours he found to be unwelcome that are disputed by the Respondents. In order to be more efficient, before I go through the process of determining whose evidence I believe with regard to each allegation, I will first consider which allegations could actually constitute harassment on the basis of Mr. Bilac's gender identity or expression. I have already determined that this is the only ground of discrimination that I am considering in this decision. Determining that that the allegation is related to a prohibited ground of discrimination is the first part of the 3-part test for discriminatory harassment.

[75] Solely for the purpose of conducting this assessment, I will accept that the incidents happened as described by Mr. Bilac, without considering the Respondents' positions. This does not mean, however, that I am making a finding that they actually did occur as Mr. Bilac has described. If I do not find a particular allegation to be related to Mr. Bilac's gender identity or expression, it will not be considered any further in this decision, as it is irrelevant to the determination I must make.

[76] I accept that the allegations that Mr. Currie grabbed Mr. Bilac's buttocks over his clothing and rubbed his crotch against the back of Mr. Bilac's body could relate to Mr. Bilac's gender identity or expression. Similarly, I accept that the following comments made or questions asked by Mr. Currie could relate to Mr. Bilac's gender identity or expression: asking Mr. Bilac if he had hair on his buttocks; bragging about how his penis felt during intercourse; telling Mr. Bilac his Mormon religion does not allow for transsexuality; telling Mr. Bilac to expose his breast to another driver; and asking him who he has sex with and about

how two women have sex. These comments and actions either relate directly to Mr. Bilac's gender identity (the comment about transsexuality) or to Mr. Bilac's body, which concurs with Mr. Currie's view that Mr. Bilac is not a man. Mr. Currie's own evidence at the hearing confirmed that he held this view. When asked by Mr. Bilac's counsel "do you think Denny Bilac is a woman?" Mr. Currie stated, "I really don't care." He said that, when they first met, Mr. Bilac did not look like he did during the hearing, implying he did not present as being male. He persisted in calling Mr. Bilac "she" and using his deadname throughout the hearing.

[77] I do not consider the following allegations against Mr. Currie to relate to Mr. Bilac's gender identity or expression: chasing Mr. Bilac out of the shop, "farting" on him and rubbing his bum against his shoulder, exposing his buttocks to Mr. Bilac, pretending to hump another employee behind his back, and threatening to rub grease on Mr. Bilac.

[78] Ms. Abbey and Mr. Currie both described the workplace as being somewhat "rough", that there were jokes and swearing and sometimes roughhousing. These particular incidents, while certainly inappropriate, fit the description of Mr. Currie joking around with his coworkers, including Ms. Abbey and other truck drivers. I understand that Mr. Bilac found such behaviours to be unwelcome. But even if these incidents happened as Mr. Bilac described them, I do not find they are sufficiently related to Mr. Bilac's gender identity or expression or to Mr. Currie's view that Mr. Bilac is not a man. As such I will not consider them further in this decision, including making a finding as to whether they actually did or did not happen.

[79] I will now go through the allegations I have agreed could be related to Mr. Bilac's gender identity or expression to determine whether they occurred and whether I accept that they constitute discriminatory harassment under the *CHRA*.

i. Touching Mr. Bilac's buttocks or private parts over his clothes

[80] The first allegation is that Mr. Currie touched Mr. Bilac's buttocks over his clothes. Mr. Bilac did not even testify about this in his evidence in chief. The Commission's counsel took him through the allegations in his human rights complaint, one of which was that Mr. Currie "touched [him] on [his] sexual parts (over clothing) and he grabbed [his] buttocks." When this allegation was put to Mr. Bilac at the hearing, he testified that he did not remember

if it happened when he was employed at Edenbank or at NC Tractor and that he did not remember if anyone was around or how he reacted. In his evidence, Mr. Currie stated that this allegation is a lie, that he did not touch Mr. Bilac's sexual parts or his buttocks.

[81] The Tribunal considers the following quote from the Ontario Court of Appeal in *R v Morrissey*, 1995 CanLII 3498 (ONCA), 97 CCC (3d) 193 to be of assistance in considering the differing evidence given about the various allegations:

Testimonial evidence can raise veracity and accuracy concerns. The former relates to the witness's sincerity, that is his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is honest witness, may, however, still be unreliable (at p.205).

[82] I find that Mr. Bilac's evidence with respect to this allegation is not reliable in that he did not have the ability to accurately recall or recount this event in any useful detail. He did not describe where in the shop it happened, what he was doing or even how he was touched. It is up to the Complainant to prove on a balance of probabilities that discrimination occurred, not for a Respondent to disprove that it happened. I do not find that Mr. Bilac's evidence with regard to this allegation satisfies the requirement of being "sufficiently clear, convincing and cogent" (*F.H. v McDougall, supra*) to prove on a balance of probabilities that this incident occurred.

ii. Rubbing his crotch against the back of Mr. Bilac's body

[83] Mr. Bilac testified that Mr. Currie rubbed his crotch against the back of his body while he was reaching to plug in a cell phone charger. Mr. Currie denied any allegation of improper conduct against Mr. Bilac in this regard. He said the shop was thirty by one hundred feet and he is a big guy and there were big trucks jammed in there that he was working on, and sometimes he had to squeeze by people to reach things. If this happened as Mr. Bilac described, Mr. Currie says Bilac did not mention anything to him about feeling uncomfortable.

[84] Mr. Bilac's evidence was that Mr. Currie did not have to squeeze past him from behind, that he could have gone another way to reach the plug, and that he put his crotch against Mr. Bilac's back or rear end.

[85] I find that both Mr. Bilac's and Mr. Currie's evidence with regard to this incident are credible. There is no real conflict with respect to the facts. Mr. Currie acknowledges he could have had to squeeze past Mr. Bilac, while Mr. Bilac says Mr. Currie could have gone a different way. The issue is more about how this contact made Mr. Bilac feel. He says he felt like he was being bullied and he perceived all of the incidents involving Mr. Currie that he described in his complaint as being sexual. I accept that Mr. Bilac felt he was being touched in a way that made him feel uncomfortable or unsafe as a transgender man and so this behaviour could reasonably relate to Mr. Bilac's gender identity or expression.

[86] Applying the second and third parts of the test to determine whether Mr. Bilac has proven that this allegation constitutes *prima facie* discriminatory harassment, I find that the conduct was unsolicited or unwelcome. In terms of whether it was persistent or serious enough to create a hostile or negative work environment that undermined Mr. Bilac's dignity, I accept that, along with the other comments and behaviours that related to Mr. Bilac's gender identity or expression, this experience would have added to his experience of feeling uncomfortable in the workplace. However, while Mr. Currie could have been more mindful of Mr. Bilac's personal space, I also accept Mr. Currie's explanation that the shop was very small, full of large equipment and that he had a job to do even when there were other people in there. Mr. Bilac could have been in his way and he would have had to squeeze behind him.

[87] While I do accept that it made Mr. Bilac feel uncomfortable and perhaps unsafe as a transgender employee, especially in light of the overall lack of respect he received as a trans man in the workplace, I do not find that this incident constituted discriminatory harassment.

iii. Asking if he had hair on his buttocks

[88] Mr. Bilac's evidence was that this conversation happened around the same time as Ms. Abbey asked him which washroom he uses and when she and Mr. Currie asked him

about how he has sex, which I discuss below. Ms. Abbey testified that she did not hear Mr. Currie ask Mr. Bilac if he had hair on his buttocks.

[89] Mr. Currie said he did not ask this question but that he did buy Mr. Bilac a belt because he was constantly telling him to pull his pants up. He says he may have said “pull up your pants, no one wants to see your hairy ass” because it really bothers him when people walk around with their pants falling down.

[90] Although he was aware of the allegation that he had asked Mr. Bilac whether he has hair on his buttocks since it appeared in Mr. Bilac’s November 2019 human rights complaint, Mr. Currie did not put to Mr. Bilac in cross-examination that he had bought him a belt or suggested that he had to tell him to pull his pants up. Mr. Currie’s testimony when he was being cross-examined by the Commission was the first time the information about the belt was raised in this proceeding. Mr. Currie did not participate in the Commission’s investigation, nor in the Tribunal’s case management proceedings until shortly before the hearing. His late-filed SOP made no mention of him buying a belt for Mr. Bilac.

[91] I do not accept Mr. Currie’s evidence that he bought a belt for Mr. Bilac or that he may have made the comment “no one wants to see your hairy ass.” I do not find it meets the requirement of being convincing and cogent in order to satisfy the balance of probabilities test. I view it rather as a “pretext” to conceal discrimination.

[92] Rather, I find it is more likely than not that Mr. Currie asked Mr. Bilac if he has hair on his buttocks. This question is consistent with Mr. Currie’s other comments or questions about Mr. Bilac’s trans identity and his apparent belief that he was not really a man. As such, I accept that this comment could reasonably relate to his gender identity or expression.

[93] Applying the second and third parts of the test to determine whether Mr. Bilac has proven that this allegation constitutes *prima facie* discriminatory harassment, I find that this question was unsolicited and unwelcome. In terms of whether it was persistent or serious enough to create a hostile or negative work environment that undermined Mr. Bilac’s dignity, I accept that, along with the other comments and behaviours that related to Mr. Bilac’s gender identity or expression, this personal question about his body would have made Mr. Bilac feel uncomfortable and perhaps unsafe as a transgender employee, especially in light

of the overall lack of respect he received as a trans man. I find that the question constituted discriminatory harassment on the basis of his gender identity or expression.

iv. Bragging about how his penis feels during intercourse

[94] With regard to this allegation, Mr. Bilac testified that Mr. Currie said to him how wonderful it was to have a penis and to use it. Mr. Currie expressed surprise that he would be accused of saying this to Mr. Bilac, saying that he did not engage in “sex talk” in the workplace.

[95] Ms. Abbey was asked about this and said she did not hear Mr. Currie say this to Mr. Bilac, although she said that there was a conversation between the three of them about intimacy. In his submissions, Mr. Bilac describes Ms. Abbey as being credible and I agree. As Mr. Bilac points out, Ms. Abbey was willing to admit details she could not recall, and she confirmed evidence which did not advance her own position, like admitting to deadnaming and misgendering him. She was also forthcoming about the work environment, describing it as not always being professional, as a place where people sometimes had personal conversations, and where sometimes there were inappropriate or off-colour comments made, although not in an aggressive manner and not all the time.

[96] I found Ms. Abbey to be a very credible and reliable witness, sometimes more so than Mr. Bilac. For example, although Mr. Bilac persisted in arguing that his monthly payments for the motorhome came off of his paycheque, none of the evidence presented at the hearing, including that of the company bookkeeper, confirmed this. Mr. Bilac also insisted that he worked for another company called Wagon Wheel during his time at this worksite, but he had no pay stub or other paperwork related to this. Ms. Abbey said that one of the trucks that was leased to Edenbank had “Covered Wagon” written on the side of a truck. It was driven by Edenbank employees, but no one ever worked for Covered Wagon.

[97] I accept that Ms. Abbey may not have noticed all of Mr. Currie’s behaviours or heard everything he said to Mr. Bilac when she was in the workplace doing her job. With regard to the penis comment, although she said she did not hear Mr. Currie say this to Mr. Bilac, she did say the three of them had a conversation about intimacy. Both Mr. Bilac and Ms. Abbey

say this conversation occurred. Only Mr. Currie denies it. I find that it is more likely than not that such a conversation did occur.

[98] I accept Mr. Bilac's evidence that Mr. Currie made this comment to Mr. Bilac during a conversation about intimacy. I accept that such a comment could reasonably be seen as being related to Mr. Bilac's transgender identity, and that Mr. Currie may have made the comment to underline his belief that Mr. Bilac was not really a man.

[99] Applying the second and third parts of the test to determine whether there was discriminatory harassment, I accept that this comment would be unwelcome to Mr. Bilac as a trans man, especially if he felt Mr. Currie was making an assertion that he was not really a man. While it appears the comment was only made once – and it is unclear if it was made when Mr. Bilac worked for Edenbank or NC Tractor – I accept that, along with the misgendering and other behaviour that amounted to discriminatory harassment against him on the basis of his gender identity or expression, it would have had a negative impact on the workplace by making him feel less than accepted and respected as a trans man. I find that this comment constituted discriminatory harassment on the basis of Mr. Bilac's gender identity or expression.

v. Saying his religion does not allow for transsexuality

[100] With regard to the allegation that Mr. Currie said in a conversation with Mr. Bilac that his Mormon religion does not allow for transsexuality, I note that this is another allegation that Mr. Bilac did not testify about in his evidence in chief. He was asked about it by the Commission's counsel, who took him through the allegations in his human rights complaint. Mr. Bilac testified that Ms. Abbey was present for this comment and that it was said in the context of him asking them to call him Denny and to use his male pronouns. Mr. Bilac said that Ms. Abbey understood that spirituality was part of his trans identity.

[101] Mr. Currie testified that he is not Mormon or religious but does remember talking about religion with Mr. Bilac, although not about his own beliefs about transsexuality. Ms. Abbey testified that "at one point Mr. Currie did say he was Mormon" and she seemed to support that the comment was made.

[102] Given Ms. Abbey's confirmation that Mr. Currie said he was Mormon, and that it was consistent with Mr. Currie's other comments or questions that confirm his belief that Mr. Bilac's trans identity was not legitimate, and his apparent belief that he was a woman, I accept that the comment was made as alleged. I accept that it was unwelcome and, in conjunction with the other discriminatory comments and behaviours by Mr. Currie, it made Mr. Bilac uncomfortable in the workplace. I find that this comment constituted discriminatory harassment on the basis of his gender identity or expression.

vi. Telling him to show his breast to another driver

[103] With regard to this allegation, Mr. Bilac testified that this was not a comment he heard himself, but rather one that his witness Dr. Nicholson heard Mr. Currie make when she was visiting Mr. Bilac at the workplace. Dr. Nicholson testified that she recalled visiting the shop in May of 2018. As such, the employer would have been Edenbank at that time, not NC Tractor.

[104] Dr. Nicholson testified that Mr. Bilac was complaining to Mr. Currie and Ms. Abbey about another driver, Bill, screaming at him and she heard Mr. Currie say to Mr. Bilac "why don't you slip out a tit and flash him." She said she was shocked by this comment but none of the other employees reacted. Mr. Currie testified that Mr. Bilac and Dr. Nicholson are lying about this. Ms. Abbey did not recall hearing Mr. Currie say this.

[105] Mr. Bilac testified that he had an ongoing conflict with Bill and that he had complained about how Bill treated him. He said Bill was unprofessional with him and swore and yelled at him. He testified that he had asked Ms. Abbey and Mr. Currie to do something about Bill and he thinks Ms. Abbey tried to because she championed him sometimes. Ms. Abbey confirmed that Mr. Bilac had complained to her about Bill.

[106] Mr. Currie also confirmed that he had talked to Bill after Bill had yelled at Mr. Bilac during an argument. Mr. Currie testified that he told Bill he could not talk to people like that. He said that Mr. Bilac was an asset to his company, that he was a good driver and was good at keeping driving logs. Mr. Currie testified that any work-related complaints came to him or Ms. Abbey, even at Edenbank because the owner was not well, and they would deal with

them. He said that Ms. Abbey, as the dispatcher, could keep certain people separated if necessary.

[107] On the occasion described by Dr. Nicholson, Bill was apparently upset with Mr. Bilac about where he parked his truck in the yard and he started yelling at him. Mr. Bilac was changing in the back of his truck and Bill opened the door. Mr. Bilac was upset because he is transgender and did not want Bill to see his body. The general description of this incident between Mr. Bilac and Bill was not disputed by the Respondents.

[108] I accept Dr. Nicholson's evidence that Mr. Currie told Mr. Bilac to "slip out a tit and flash" Bill. I reject Mr. Currie's evidence, which is simply that Mr. Bilac and Dr. Nicholson are lying. Mr. Bilac's evidence was that he did not hear the comment, so he has nothing to lie about. I was given no reason to believe that Dr. Nicholson was not telling the truth when she testified before the Tribunal. "Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides. ... Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time" (*Bradshaw v Stenner*, 2010 BCSC 1398 (aff'd 2012 BCCA 296, leave to appeal refused at [2012] SCCA No. 392) at para 186).

[109] I found Dr. Nicholson to be a credible witness and accept that her evidence was reliable. She had good recall of the setting and events that led up to the comment being made. She testified that Mr. Bilac was upset that Bill had yelled at him, which was confirmed by both Ms. Abbey and Mr. Currie. I accept that her recollection of the words Mr. Currie used are accurate and that she was telling the truth. She is not a party and had no reason to lie to the Tribunal, unlike Mr. Currie who has an interest in denying that he made such a clearly inappropriate comment.

[110] I find that it is more likely than not that Mr. Currie made this comment and Dr. Nicholson heard it. Her evidence is consistent with other descriptions of the workplace at the time the comment was made. All parties agree that Mr. Currie and Ms. Abbey used Mr. Bilac's deadname and misgendered him in the presence of Dr. Nicholson. As it does not appear that Mr. Bilac heard Mr. Currie's comment about showing Bill his breast, it is also

possible that Ms. Abbey did not hear it. This also accords with Dr. Nicholson's observation that no one else seemed shocked by the comment like she was.

[111] I accept that telling Mr. Bilac to "flash a tit" at another driver was clearly related to his gender identity or expression. Such a comment suggests that Mr. Currie viewed Mr. Bilac as a woman. The comment was unsolicited and would be unwelcome. Even if Mr. Bilac did not hear the comment himself, it was serious enough to contribute to a negative or hostile environment for Mr. Bilac to work in. I find that Mr. Currie's comment constituted discriminatory harassment on the basis of Mr. Bilac's gender identity or expression.

vii. Asking questions of a sexual nature

[112] The final allegation is that Mr. Currie and Ms. Abbey asked Mr. Bilac questions of a sexual nature. Mr. Bilac testified that they asked him who he has sex with and how. He further testified that Mr. Currie asked him how two women have sex and that he wanted sexual details.

[113] Ms. Abbey testified that she recalled a late-night conversation with Mr. Currie and Mr. Bilac about intimacy on one occasion, but she did not recall Mr. Currie asking Mr. Bilac how two women have sex. She said she did not believe that her question was offensive to Mr. Bilac at the time and she recognized that Mr. Bilac was trying to educate them and share part of his journey as a trans man. Mr. Currie said he did not recall this conversation about intimacy and that he did not ask Mr. Bilac how women have sex with other women.

[114] I accept Mr. Bilac's evidence that questions were asked of him by Ms. Abbey and Mr. Currie that were of a sexual nature and that Mr. Currie asked him how two women have sex. I accept that this occurred during a conversation about intimacy, as Ms. Abbey testified, and that Mr. Bilac was forthcoming with information about his own experience as a trans man. The conversation clearly occurred and I do not accept Mr. Currie's evidence that he did not ask Mr. Bilac how women have sex with other women during the conversation.

[115] This was obviously a situation where the lines around what is appropriate to discuss in the workplace were crossed, as Ms. Abbey testified sometimes happened when employees shared personal information with her. Mr. Currie and Ms. Abbey were often working in the shop in the evening and, as Mr. Bilac lived at the worksite, he would often be

in the shop and visited with them. Mr. Bilac was an adult and entitled to engage in conversation with his coworkers as he liked. He socialized with Mr. Currie sometimes and with Ms. Abbey more often, even going to her home and meeting her family. He said he considered her to be a friend.

[116] I accept that Mr. Currie's question about how two women have sex was unwelcome to Mr. Bilac, as such a question indicates that Mr. Currie viewed Mr. Bilac as a woman. The question clearly relates to Mr. Bilac's gender identity and expression.

[117] I also accept that Mr. Currie's unwelcome question about how two women have sex was serious enough to create a hostile or negative work environment for Mr. Bilac that undermined his dignity. It is unclear when this conversation happened, so I cannot conclude that Mr. Currie was Mr. Bilac's employer at the time. However, the question would have communicated Mr. Currie's view that Mr. Bilac was not a man and was undeserving of having his gender identity recognized and respected in the workplace. I find that Mr. Currie's question constituted discriminatory harassment on the basis of Mr. Bilac's gender identity or expression.

[118] Mr. Bilac did not provide evidence that Ms. Abbey's question of a sexual nature implied that he was a woman. He confirmed that he had a friendship with Ms. Abbey that extended outside of the workplace. He and Ms. Abbey both testified that Mr. Bilac was willing to share information in an effort to educate her about his experience as a trans man. Mr. Bilac did not prove on a balance of probabilities that Ms. Abbey's question about sex was unwelcome or serious enough to create a negative work environment for him. I do not find that her question constituted discriminatory harassment.

(iv) Evidence about the end of Mr. Bilac's employment

[119] The evidence about how Mr. Bilac's employment ended is largely uncontested. The Tribunal heard that Mr. Bilac had an ongoing conflict with the other driver, Bill, including the incident witnessed by Dr. Nicholson.

[120] On his last day of work on November 27, 2018, Mr. Bilac testified that he came into the shop where Ms. Abbey, Mr. Currie and Bill were. He had called Ms. Abbey beforehand

to tell her he was going to give her a paper that he did not want her to show to anyone else. He asked her not to read it in front of others. He gave her all of his driving logs and a paper about human rights.

[121] Ms. Abbey testified that she took the pamphlet he gave her about human rights and placed it on the table behind her so no one would read it, as Mr. Bilac had asked her not to show anyone. In spite of this, Bill saw what was written on the paper and made a comment about it. At this point Mr. Bilac became upset that his human rights concerns were made known to a coworker who was treating him badly, and he quit.

[122] Ms. Abbey and Mr. Currie testified that they were surprised and that no one said anything or followed him as he left the shop because he was upset. Ms. Abbey said that, although she was surprised that he quit, she respected his decision.

[123] After he quit, Mr. Bilac continued to live outside of the shop rent-free in his motorhome for a period of time. Ms. Abbey said he closed the curtains in the motorhome so no one could see in, which indicated to her that he did not want to interact with anyone. Ms. Abbey said she did not go to the motorhome to talk to Mr. Bilac. Mr. Currie testified that the morning after Mr. Bilac quit he went to talk to him and asked him if he was going to get his windshield fixed. Mr. Currie said he did not take Mr. Bilac's quitting seriously. He thought he was just blowing off steam.

[124] In his closing submissions, Mr. Currie says he did not fire Mr. Bilac or force him to quit his job. He says that the mental state of an employee due to their "personal choice" is not the responsibility of the employer unless it is interfering with the employee's work performance and that Mr. Bilac was a good worker and did not show his unhappiness until he quit.

[125] Mr. Bilac said he gave Ms. Abbey the information about human rights because she had asked him why he kept correcting people about his name and pronouns and had disagreed with him that trans people were entitled to human rights protection in the workplace.

[126] I accept that at least part of the reason Mr. Bilac quit working for NC Tractor was because of the discriminatory harassment he experienced by being repeatedly deadnamed and misgendered. When he provided written information to show he was entitled to human rights protections, as he had been telling the Respondents, he felt they did not take this seriously and he believed nothing would change. I accept that Mr. Bilac ultimately felt he had no choice but to leave the workplace as a result of the Respondents' dismissive attitudes and failure to respond to his concerns about the deadnaming and misgendering. The loss of his employment was another form of adverse impact he experienced as a result of the discriminatory harassment.

B. Issue 2: NC Tractor is liable for the discriminatory conduct of Mr. Currie and Ms. Abbey pursuant to section 65 of the CHRA

[127] The Commission argues that, if the Tribunal finds that the alleged harassment occurred, NC Tractor should be held liable for the discriminatory practices committed by its employees Ms. Abbey and Mr. Currie pursuant to section 65(1) of the CHRA. Section 65(1) states that, subject to section 65(2), any act or omission committed by a director or employee of an organization in the course of their employment shall be deemed to be an act or omission committed by that organization. Section 65(2) sets out conditions an employer must meet to acquire a statutory right to avoid such liability for its employees' discriminatory actions.

[128] In *Peters v United Parcel Service Canada Ltd. and Gordon*, 2022 CHRT 25 (CanLII), the Tribunal stated:

[337] Specifically, the respondent employer must satisfy the conditions stated in section 65(2) to be "exculpated" and thereby be exempted from the statutory vicarious liability in section 65(1). To avoid liability, section 65(2) requires that the employer respondent establish three things:

- 1) that the employer did not consent to the harassment;
- 2) that the employer exercised all due diligence to prevent the harassment from being committed in the first place; and,
- 3) that the employer exercised due diligence subsequent to the harassment to mitigate or avoid the effect of the harassment.

[129] The Commission says that, as Mr. Currie was the sole owner, NC Tractor was aware of Mr. Bilac's request to have his gender identity recognized and respected in the workplace and so consented to the harassment. It argues that NC Tractor failed to meet its obligations to take reasonable due diligence measures to prevent and respond to the harassment. I agree.

(i) Section 65(1) of the CHRA

[130] Pursuant to section 65(1), I find that the discriminatory harassment conducted by Ms. Abbey when she was an employee of NC Tractor and by Mr. Currie when he was the owner of NC Tractor, are deemed to be discriminatory acts conducted by NC Tractor itself.

[131] Mr. Bilac's employment with NC Tractor could not have started any earlier than the time of its incorporation on August 30, 2018. Mr. Bilac was apparently unable to drive a truck due to an injury from September until November of 2018, and then quit on November 27, 2018. I accept that Mr. Currie and Ms. Abbey continued to deadname and misgender him after he started working for NC Tractor, up until he quit. However, I do not find that Mr. Bilac was able to prove on a balance of probabilities that the other discriminatory comments made by Mr. Currie occurred while he was employed by NC Tractor. The only one of these incidents where clear evidence was provided about the timing was Dr. Nicholson's evidence about Mr. Currie saying that Mr. Bilac should show Bill his breast, which happened in May of 2018, when he still worked for Edenbank.

[132] As such, liability for those additional discriminatory incidents rests solely with Mr. Currie, not with NC Tractor or Ms. Abbey, as I did not find Ms. Abbey to have engaged in any of these additional discriminatory behaviours.

(ii) Section 65(2) of the CHRA

[133] In order to establish that it is exempt from liability for the discriminatory practices of Mr. Currie and Ms. Abbey, NC Tractor would have to establish that it did not consent to the harassment. As Mr. Currie was the sole owner of the business and felt he was legally obliged to use Mr. Bilac's dead name and he admits to repeatedly misgendering him throughout his

employment, I can only conclude that NC Tractor was aware of the discriminatory harassment and consented to it. Mr. Currie was aware of Ms. Abbey similarly deadnaming and misgendering Mr. Bilac as well and did nothing about it.

[134] In determining whether NC Tractor exercised all due diligence to prevent the harassment from being committed in the first place, both Ms. Abbey and Mr. Currie testified that they were not aware there was human rights protection for trans people relevant to their workplace. They both confirmed that neither Edenbank nor NC Tractor had an anti-discrimination or harassment policy or any formal harassment complaint process. They each said the ordinary informal process was for employees to bring concerns to either of them. As Mr. Bilac points out, they did not provide an alternative mechanism for situations like this one, when they were both involved in conduct about which an employee needed to raise a concern. Both Respondents also confirmed that no human rights or inclusion training had occurred for NC Tractor employees. I cannot reasonably find that “all due diligence”, or really anything, was done to prevent the deadnaming and misgendering that occurred while Mr. Bilac was employed by NC Tractor.

[135] Similarly, in terms of the requirement that the employer exercise due diligence subsequent to the harassment to mitigate or avoid the effect of the harassment, clearly nothing was done. Mr. Bilac testified that he repeatedly asked Mr. Currie and Ms. Abbey to call him Denny and to use masculine pronouns and they did not do so. Rather than taking Mr. Bilac’s concerns seriously and agreeing to use his chosen name and pronouns, Mr. Currie and Ms. Abbey were dismissive of this request. He testified that Ms. Abbey asked him why he kept correcting people and bringing this up, which highlights the fact that the request was seen as an annoyance rather than something to take seriously.

[136] Mr. Bilac testified that he had become so frustrated with the way he was being treated and their ignorance of their human rights obligations that he finally provided them with written information setting out his human rights protections under the law. However, when he did so, another driver with whom he had an ongoing conflict and who made Mr. Bilac feel unsafe in the workplace, saw the document he delivered and commented on it, and Mr. Bilac quit.

[137] As NC Tractor did not have an anti-harassment or discrimination policy or any formalized complaints process, it did not respond to or investigate Mr. Bilac's allegations of misgendering or deadnaming or the reasons why he quit, even after being provided with written human rights information.

[138] The Commission is correct that an employer has a legal obligation to ensure its workplace is free of harassment on all of the prohibited grounds of discrimination set out in the *CHRA*. NC Tractor's duty to take the complaint seriously and conduct an investigation, or at the very least make sufficient inquiries, was triggered the moment it became aware of possible harassment taking place in the workplace, irrespective of the type of harassment. It also had an obligation to deal with allegations of discrimination in a sensitive manner.

[139] The Tribunal has previously stated that the term "all due diligence" in section 65(2) of the *CHRA* does not require a standard of perfection but rather that the employer exercise "reasonable" due diligence at all times (*Cassidy v Canada Post Corporation & Raj Thambirajah*, 2012 CHRT 29 (CanLII) at para 158). NC Tractor did not exercise all due diligence or act reasonably to meet its obligations under section 65(2) of the *CHRA*.

[140] Pursuant to section 65(1) of the *CHRA*, I find that the corporate Respondent NC Tractor is liable for the discriminatory actions of Ms. Abbey and Mr. Currie, specifically deadnaming him and misgendering him for the time period he worked for NC Tractor, which was approximately 3 months.

C. Issue 3: Mr. Bilac is entitled to the following remedies

[141] As I have found that Mr. Bilac's complaint is substantiated, I can award one or more remedies set out in section 53 of the *CHRA*. The purpose of the remedial provisions under the *CHRA* is to put victims of discrimination back in the position they would have been in had the discrimination not occurred, in an effort to make them whole (*Public Service Alliance of Canada v Canada Post Corporation*, 2010 FCA 56 (CanLII) (aff'd 2011 SCC 57) at para 299).

[142] In his closing submissions, Mr. Bilac seeks the following remedies for the discrimination he experienced: damages for pain and suffering in the amount of \$20,000;

special compensation in the amount of \$20,000; lost wages; and that the Respondents receive training on trans issues.

[143] The Commission is seeking a public interest remedy consisting of training for the individual respondents concerning harassment and trans and gender diverse individuals.

(i) Pain and Suffering

[144] The Tribunal can award up to \$20,000 for the pain and suffering that a victim of discrimination has experienced because of a respondent's discriminatory practice (*CHRA* s.53(2)(e)). The Tribunal tends to reserve the maximum amount of \$20,000 for the very worst cases or the most egregious of circumstances (*Christoforou v John Grant Haulage Ltd.*, 2021 CHRT 15 (CanLII) (aff'd 2022 FCA 182 (CanLII)) at para 98 [*Christoforou*]).

[145] Mr. Bilac is asking the Tribunal to award him the maximum allowable amount of \$20,000 for pain and suffering. He argues that, if Mr. Currie's business did not cross a provincial boundary, the complaint would have been made to the BCHRT, whose empowering legislation does not have a cap on damages and so can award amounts which exceed \$20,000. He suggests that, if his complaint had been decided by the BCHRT, an award in the range of \$22,000 to \$30,000 would be appropriate. He says his case is comparable to *Nelson v Goodberry*, *supra* a case decided by the BCHRT and to *EN v Gallagher's Bar and Lounge*, 2021 HRTO 240 (CanLII) [*EN v Gallagher's Bar*], decided by the Human Rights Tribunal of Ontario ("HRTO").

[146] In *EN v Gallagher's Bar*, the Respondent persistently misgendered the complainants throughout their employment and referred to them by a transphobic slur in a public setting, effectively outing them in a derogatory and non-consensual way and causing them to fear for their safety. The OHRT awarded each complainant \$10,000 for injury to their dignity, feelings and self-respect.

[147] The BCHRT in *Nelson v Goodberry* awarded \$30,000 as compensation for injury to the complainant's dignity, feelings and self-respect. The Tribunal in that case noted that such an award is compensatory and not punitive and the amount awarded is context and fact-specific (at para 33). The same is true for awards made under the *CHRA*. The amount

awarded depends on the findings of fact made in the particular case. The factors applied by the BCHRT to determine compensation for injury to dignity, feelings and self-respect are similarly useful in determining an award for pain and suffering under the *CHRA*. These factors include the nature of the discrimination, the complainant's social context or vulnerability, and the effect on the complainant (*Torres v Royalty Kitchenware Ltd.*, 1982 CanLII 4886 (ON HRT); *Gichuru v Law Society of British Columbia (No. 2)*, 2011 BCHRT 185 (CanLII) (aff'd 2014 BCCA 396) at para 260).

[148] In Mr. Bilac's case, the discrimination started early in his employment with Edenbank and continued until he chose to leave his employment with NC Tractor. There was no particular escalation of the treatment as there was in *Nelson v Goodberry*, rather the deadnaming and misgendering were consistent throughout his employment. Nor was Mr. Bilac terminated from his employment, as in *Nelson v Goodberry*, although I accept that the persistent discriminatory harassment and lack of respect for his human rights played a role in his decision to quit. This is a very serious outcome.

[149] With respect to Mr. Bilac's social context or vulnerability, I find the following comment by the BCHRT to be very relevant to the present complaint: "Vulnerability has different aspects, including that which relates to a complainant's individual situation and that which relates to their membership in a group which society has stereotyped, disadvantaged, or marginalized" (*Client v Spruce Hill Resort & Spa*, 2021 BCHRT 104 (CanLII) at para 42).

[150] There are several aspects to Mr. Bilac's vulnerability in this case. Like the complainant in *Nelson v Goodberry*, Mr. Bilac was "vulnerable because of the forces of systemic inequality that continue to oppress, marginalize, and discriminate against transgender people" (at para 37). This context was effectively summarized by the BCHRT in *Oger v. Whatcott (No. 7)*, 2019 BCHRT 58 (CanLII) [*Oger (No.7)*] as follows:

And so, despite some gains, transgender people remain among the most marginalized in our society. Their lives are marked by "disadvantage, prejudice, stereotyping, and vulnerability"... Transpeople face barriers to employment and housing, inequitable access to health care and other vital public services, and heightened risks of targeted harassment and violence. The results include social isolation, as well as higher rates of substance use, poor mental health, suicide, and poverty ... (para. 62, citations omitted).

[151] With respect to his individual situation, Mr. Bilac described feeling exposed or placed in potential danger by being outed as transgender in a small community that he had moved to from Vancouver to take the job. Also, as an employee he was uniquely vulnerable as he lived at the worksite and used the shop's washroom, water, electricity and microwave. He was precariously housed and relied on the goodwill of his employers to permit him to live onsite and use their facilities.

[152] At the outset of the hearing, Mr. Bilac had been seeking \$10,000 for pain and suffering and \$10,000 as compensation for the motorhome that was apparently removed from the worksite after he left it there. In his closing submissions he abandons his request for compensation for the value of the motorhome. Instead, he asks the Tribunal "to consider the substandard accommodations he was provided by the Respondent employer NC Tractor in making an award for pain and suffering, because that Respondent plausibly took over his accommodation arrangement from Edenbank, as its successor, and because his living conditions contributed to the impact of the harassment."

[153] I do not accept that NC Tractor, Mr. Currie, or Ms. Abbey were responsible for Mr. Bilac's substandard accommodations. I accept Mr. Currie's testimony that, when he started NC Tractor on the same property as Edenbank, he was left with the arrangement that the previous owner had made with Mr. Bilac to allow him to park his motorhome on the property and to use the washroom, water, electricity and microwave in the shop. I accept Mr. Currie's evidence that he tried to get Mr. Bilac to move to a campground where he would have had better amenities, but that Mr. Bilac refused, so Mr. Currie continued to allow Mr. Bilac to stay on the property rent-free and to use the shop.

[154] Mr. Bilac's housing situation had been substandard before he started working at Edenbank, as he had been living in a camper on a truck that did not run. He testified that he was unable to obtain a good reference in order to rent an apartment in Chilliwack because he had been homeless for the previous 6 years. I agree that Mr. Bilac's accommodations were substandard and this added to his overall vulnerability, but I do not find that the Respondents were responsible for his unfortunate housing situation.

[155] Finally, Mr. Bilac testified about the impact of the discrimination on him. He said that he felt frustrated, angry, hurt and disrespected by being called the wrong name and that it ebbed away at his spirit to be outed as female when he has identified as male for many years. The use of his deadname and the wrong pronouns in front of others put him in danger and alienated him. He testified that he felt depressed, doubted his gender identity, and had suicidal thoughts following his experiences at NC Tractor. Mr. Bilac's friend Dr. Nicholson testified that she felt fearful for him after what she observed when visiting him at the shop.

[156] Mr. Bilac says in his closing submissions that, after he quit his job he became sick to the point that he was hospitalized in late November 2018. He says that, had Veterans Affairs not helped him move and find housing he would have been homeless. The Tribunal did not receive sufficient evidence about what led to Mr. Bilac's hospitalization to agree that it was related to the discriminatory harassment he experienced in his employment. He provided no medical records indicating the reason for his hospitalization.

[157] Nonetheless, I accept that the impact on Mr. Bilac of being repeatedly deadnamed and misgendered was serious. Mr. Bilac had only worked for NC Tractor for less than three months, and was apparently unable to drive a truck for much of that time, but he had worked with Mr. Currie and Ms. Abbey since June of 2017. He experienced the discriminatory harassment for over a year and eventually left his job when he realized his human rights concerns would not be taken seriously.

[158] Considering the nature of the discrimination, Mr. Bilac's social context and vulnerability, and the impact of the discrimination on him, I find that an award near the higher end of the scale is warranted and appropriate. I award Mr. Bilac \$15,000 for pain and suffering.

(ii) Special compensation

[159] The Tribunal can award up to a maximum of \$20,000 in special damages if it finds that the respondent has engaged in the discriminatory practice willfully or recklessly (*CHRA* s. 53(3)).

[160] Special damages are punitive and intended to provide a deterrent and discourage those who deliberately discriminate (*Christoforou* at para 107). A finding of wilfulness requires an intention to discriminate and to contravene a person's rights under the *CHRA*. Recklessness usually denotes acts that disregard or show indifference to the consequences, such that the conduct is done wantonly or needlessly (*Canada (Attorney General) v Johnstone*, 2013 FC 113 (CanLII) at para 155). A finding of recklessness does not require proof of intention to discriminate (*Christoforou* at para 107).

[161] In determining whether to award special damages, the Tribunal must focus on the respondent's conduct, and not on the effect that the conduct has had on the complainant (*Beattie and Bangloy v Indigenous and Northern Affairs Canada*, 2019 CHRT 45 (CanLII) (aff'd *Bangloy v Canada (Attorney General)*, 2021 FCA 245 (CanLII)) at para 210).

[162] Mr. Bilac seeks special compensation against the Respondent Mr. Currie in the amount of \$20,000. He cites two reasons for this request.

[163] First, he argues that such an order is appropriate because of Mr. Currie's conduct as an employer. He says Mr. Currie demonstrated a worrying disregard for the minimum obligations of an employer under the law. He took no action to educate himself about his obligations as an employer under the *CHRA* and he should have done so. He did nothing to ensure the workplace was free from harassment for any of his staff. Mr. Bilac also says Mr. Currie allowed Bill's treatment of Mr. Bilac to continue unchecked and that he failed to investigate a potential human rights violation when one was signaled to him with a pamphlet. He says Mr. Currie was inflexible and adamant when asked to respect Mr. Bilac's rights and decided Mr. Bilac was not entitled to be referred to by his chosen name and pronouns. He says Mr. Currie outed Mr. Bilac to others in the community, exposing him to tremendous danger.

[164] Mr. Bilac says this behaviour was reckless. He also argues that, when he suggested he might have some legal protection, Mr. Currie became entrenched in his position, which was willful. He argues that, in effect, what Mr. Currie expressed was "a ferocious intention

to continue to discriminate against people in Mr. Bilac's position. This is not the appropriate approach to the human rights regime.”

[165] The second reason Mr. Bilac argues that a special compensation award should be ordered relates to Mr. Currie's conduct during the human right complaint process and during the hearing. He argues that Mr. Currie was uncooperative with the Commission's investigation and he failed to use respectful language in relation to Mr. Bilac during the hearing, despite being asked repeatedly to do so.

[166] Mr. Bilac argues that, if the Tribunal accepts that he was also subject to unwanted sexual comments and touching, the value of a special compensation award should rise with the impact of having to face his harasser at the hearing. He says he was hurt by Mr. Currie during the hearing and his conduct made access to the Tribunal process immensely difficult for Mr. Bilac. Mr. Bilac argues that a significant special compensation award would protect future complainants who may be dissuaded from pursuing justice at the Tribunal, and would protect the Tribunal's jurisdiction over its own proceedings.

[167] Mr. Bilac relies on the BCHRT case of *Oger (No.7)*, *supra* in which the BCHRT ordered the respondent to pay the complainant \$20,000 for improper conduct during the complaint. Mr. Bilac describes the circumstances of that case as similar to his, although more egregious.

[168] I note that the section of the BC *Human Rights Code* under which the BCHRT made the award of \$20,000 (section 37(4)) allows the BCHRT to order costs against a party to a complaint who has engaged in improper conduct during the course of the complaint. This is not the same as section 53(3) of the *CHRA*, which states that the special compensation may be awarded if the Tribunal finds that the person has engaged in the discriminatory practice wilfully or recklessly. The *CHRA* does not have a costs section similar to section 37(4) of the BC *Human Rights Code*.

[169] While the Tribunal has previously agreed to award costs for abusive and obstructive conduct during an inquiry based on what the Federal Court of Appeal in *Tipple v Canada*, 2012 FCA 158 described as an “inherent authority for a Tribunal to control its process” (see *First Nations Child and Family Caring Society of Canada et al. v Attorney*

General of Canada, 2019 CHRT 1 (CanLII)) that case is very different from Mr. Bilac's and such costs have not been requested in this case in any event.

[170] However, I do agree with Mr. Bilac that Mr. Currie acted recklessly during Mr. Bilac's employment, without regard to the consequences of his actions. Prior to becoming Mr. Bilac's employer, Mr. Currie was asked repeatedly to use Mr. Bilac's chosen name and pronouns and refused. He was told by Mr. Bilac that, as a transgender person, his rights were protected by human rights law, yet Mr. Currie persisted in his belief that he was required to use Mr. Bilac's legal name. He made no effort to look into the application of the *CHRA* to the workplace, even when he started his own company, NC Tractor.

[171] I do not find that Mr. Currie willfully discriminated against Mr. Bilac because this requires a finding of an intention to discriminate. Rather, I find that Mr. Currie, as the sole owner of NC Tractor, acted recklessly in failing to respect Mr. Bilac's human rights by remaining ignorant of his obligations under the *CHRA*. Although Mr. Bilac had worked with Mr. Currie as a coworker for over a year, he only worked for him at NC Tractor for about three months.

[172] NC Tractor was a small and unsophisticated employer with no human resources policies or training or awareness of its human rights obligations. Mr. Currie clearly demonstrated an indifference to the consequences of having an employee endure ongoing discriminatory harassment. He was Mr. Bilac's employer at the time Mr. Bilac provided the written human rights information to Ms. Abbey, he was present when Mr. Bilac quit, and he should have acted to investigate Mr. Bilac's human rights concerns at least after they were brought to his attention in this way. Instead, he did nothing to investigate or to educate himself, even up to the point of the hearing, where he persisted in his belief that he did not have to respect Mr. Bilac's human rights as a trans man.

[173] I echo Mr. Bilac's submissions that employers must protect trans employees from conduct related to the workplace which has a discriminatory impact, including the use of language, whether from management, other employees, or from customers. Trans people should expect to be called by their chosen names and referred to by their chosen pronouns. The use of accurate and correct pronouns for trans people is not a question of preference,

it is a matter of right. When this does not occur, trans workers should expect their employers to take steps to rectify the breach of the *CHRA*. Employers should be expected to investigate reports of human rights contraventions promptly and to address them with urgency. Employers should not expect trans employees to conceal their trans identities while at work, or as a condition of work.

[174] Having been made aware of Mr. Bilac's chosen name and pronouns for over a year prior to becoming his employer, I find that Mr. Currie engaged in the discriminatory practice recklessly for the short period of time that Mr. Bilac worked for him, and I find that an award of \$3,000 in special compensation against Mr. Currie and NC Tractor is warranted in these circumstances.

(iii) Lost wages

[175] The Tribunal can compensate a victim of discrimination for some or all of the wages that they were deprived of as a result of the discriminatory practice (s.53(2)(c) of the *CHRA*). Mr. Bilac asks the Tribunal to award him lost wages from the time he quit his employment with NC Tractor up to the date of the Tribunal's decision, with interest.

[176] Mr. Bilac would not be entitled to lost wages up to the date of the decision, or even to the date of the hearing. The Tribunal heard uncontested evidence that NC Tractor became unprofitable sometime after Mr. Bilac's departure and is no longer operating. Mr. Currie testified that he was unable to keep up with the rising costs of doing business. After Mr. Bilac quit he had to let Bill go, as well as another driver, then it was only Mr. Currie and Ms. Abbey working for NC Tractor. He had to let Ms. Abbey go because he could not afford to pay her wages. Ms. Abbey confirms that she had stopped working for NC Tractor by August of 2019.

[177] Mr. Currie says NC Tractor owes money to the government for taxes, as well as money to the fuel company. Ms. Kolodychuk, who was the bookkeeper for NC Tractor, confirmed this. She testified that the business is still active in that she still receives letters from Revenue Canada addressed to NC Tractor, but that the bank accounts were closed in 2019. She has not done anything for NC Tractor since 2020, when she filed their 2019 tax

information. She was not aware that bankruptcy proceedings had been started, and Mr. Currie confirmed they had not. He was trying to pay off the amounts owing by NC Tractor himself. He testified that he had sold or scrapped everything the company owned, as well as some of his own possessions, to pay down the company's debts.

[178] While Mr. Bilac argues in his closing submissions that the failure of a business venture is not a reason that the protection of the *CHRA* should not apply, it is clear that, had he not quit, Mr. Bilac would not have remained employed with NC Tractor for much longer. I decline to award him lost wages for a job that he would not have had.

[179] Mr. Bilac says he has not worked since his employment at NC Tractor ended and attributes this to his experience with the Respondents. He currently has Persons with Disability status and says his sole income is derived from social assistance payments. He asks for an order compensating him for the lost wages of which he was deprived, and the expenses he incurred had he not been harassed to the point that he left his employment. He submits that this should be his regular annual earnings indicated on his tax records, minus the amounts he received from other sources for the relevant period, which include British Columbia Workers Compensation, employment insurance, and British Columbia Income Assistance payments.

[180] Mr. Bilac provided evidence that he had earned \$33,488 in 2018, from both Edenbank and NC Tractor. His Notice of Assessment for 2019 shows his total income was \$45,689, with \$37,848 being a workers compensation disability award, \$2,235 social assistance, and \$5,605 medical Employment Insurance. It appears that he actually earned more from these other sources than he would have earned from his employment with NC Tractor, employment which would have ended sometime in 2019 if he had been able to work. However, it appears he was not able to continue to work after he left NC Tractor due to disability.

[181] Mr. Bilac did not provide evidence to support his contention that the Respondents were responsible for his Persons with Disability status. While I accept that he experienced discriminatory harassment in the workplace through Mr. Currie and Ms. Abbey deadnaming and misgendering him and that, when he quit, he was upset that Bill had seen the human

rights information, and so the discrimination was at least part of the reason for his quitting, the Tribunal must exercise its discretion to award lost wages on a principled basis. The amount of the loss is determined by the circumstances of each case, and the Tribunal can impose a limit to losses caused by the discriminatory practice suffered (*Christoforou* at paras 52-54). There must be a causal link between the discrimination and the loss claimed. The onus is on the complainant to establish that it is more likely than not that this causal connection exists.

[182] The Complainant's evidence about why he quit and what happened after he did so were somewhat vague. I accept that, in an effort to end the discriminatory harassment he had been experiencing through the deadnaming and misgendering, he provided the pamphlet about human rights to show Ms. Abbey that he was entitled to such protections in the workplace. However, he did not quit because someone made another discriminatory comment, but rather because Bill read the human rights pamphlet. This is not discriminatory in itself.

[183] His evidence about what happened after he quit was that he lived in his motorhome on the shop grounds, but that it was very cold so he went into the hospital and then Veterans Affairs moved him to a motel and gave him money for food.

[184] Mr. Bilac suggests that he could have continued to work as a truck driver were it not for his disability or disabilities, the exact nature of which the Tribunal is unaware. However, he provided no evidence that would support a finding that the discriminatory harassment of the Respondents was responsible for the disabilities which have prevented him from working since he quit on November 27, 2018. Prior to quitting, Mr. Bilac was apparently unable to drive a truck from September to November due to an injury. The Tribunal received evidence that Mr. Bilac received workers compensation benefits after he quit. He gave evidence that the physiotherapy he had received for the injury to his knee had been inadequate, which has led to his inability to continue to work as a truck driver.

[185] Although he suggests there is a link between the discrimination he experienced in the workplace and the fact that he has not worked since his employment at NC Tractor

because he is now disabled, Mr. Bilac has not provided sufficient clear, convincing and cogent evidence by which to establish this on a balance of probabilities.

[186] I do not find that Mr. Bilac has established that it is more likely than not that there is a causal connection between the discriminatory harassment he experienced in the workplace and the lost wages he claims.

(iv) Training for the individual respondents

[187] The Commission says that, since NC Tractor is no longer an active company, it is not seeking public interest remedies against the corporate respondent. The Commission suggests that the individual Respondents should undergo training and counselling concerning harassment and trans and gender diverse individuals. Mr. Bilac recommends organizations that could offer human rights training specific to transgender people in the workplace for all of the Respondents to prevent them from committing future discriminatory practices.

[188] The Commission notes that a similar remedy was awarded by the Tribunal in *Bushey v Arvind Sharma*, 2003 CHRT 21 (CanLII). In that case, at the time the Tribunal ordered the Respondent to undergo training, he was still employed by the same employer as he had been at the time he engaged in the sexual harassment. In the present case, NC Tractor is not operational. It is unclear whether Mr. Currie and Ms. Abbey are currently employed. Mr. Currie said he had been working as a mechanic but that he had some health issues he was dealing with.

[189] The Commission says that the aim in making orders under section 53 is not to punish a respondent, but rather to (i) meaningfully vindicate any losses suffered by the victim of discrimination, and (ii) eliminate and prevent discrimination, for example by crafting remedies designed to educate individuals about the rights enshrined in the *CHRA (First Nations Child and Family Caring Society et al. v Attorney General of Canada*, 2016 CHRT 10 (CanLII) at paras 10-17). Certainly, if NC Tractor were still operating, I would order that it implement an anti-discrimination policy and ensure all employees are aware of their rights and responsibilities under the *CHRA*. I would also consider it appropriate to order training

for Mr. Currie and Ms. Abbey as requested by the Commission and Complainant specific to transgender people in the workplace.

[190] While certainly policy implementation and training are common public interest remedies, especially in employment-related complaints, the Tribunal's decisions are also a form of public education about the *CHRA* and, in this case, the types of conduct that can constitute discriminatory harassment. I am satisfied that Ms. Abbey and Mr. Currie have learned through this process that their workplace was subject to the *CHRA* and that Mr. Bilac was entitled to human rights protections related to his gender identity and expression, including being called Denny and using masculine pronouns when addressing him, regardless of the name that appeared on his government documents.

[191] I decline to order Mr. Currie and Ms. Abbey, whose employment status remains unknown, to undergo training as requested. However, if NC Tractor becomes operational again under Mr. Currie in the one-year period following the date of this decision, I order that Mr. Currie contact the Commission in order to receive advice about training for him and his employees concerning harassment in relation to trans and gender diverse individuals.

(v) Allocation of Liability

[192] Mr. Bilac argues that the *Schrenk* decision (*supra*) makes it clear that the actions of coworkers are not immune from scrutiny, but that *Robichaud v Canada (Treasury Board)*, 1987 CanLII 73 (SCC) determined that the responsibility to provide a healthy work environment ultimately rests with the employer. He notes that Ms. Abbey's participation in the hearing stands in stark contrast to that of Mr. Currie. Ms. Abbey was cordial even in the face of Mr. Bilac's allegations and the stress of the long complaint process. Mr. Bilac testified that she had been a friend to him. She was not hurtful in her cross-examination and she offered Mr. Bilac a sincere and moving apology during the hearing. Neither was she responsible for the operation of either Edenbank or NC Tractor, as Mr. Currie was. As such, Mr. Bilac proposes that 10% of the responsibility for any monetary order be allocated to the Respondent Ms. Abbey and that 90% is allocated to Mr. Currie and NC Tractor.

[193] I have determined that Mr. Bilac is entitled to pain and suffering in the amount of \$15,000 from Ms. Abbey and Mr. Currie for the period of time they worked at Edenbank together, and from Ms. Abbey, Mr. Currie and NC Tractor for the time period he worked at NC Tractor. Ms. Abbey and Mr. Currie were his coworkers at Edenbank, while Mr. Currie was his boss at NC Tractor.

[194] Mr. Currie was responsible for more discriminatory behaviour at Edenbank than Ms. Abbey. I have found that both of them deadnamed and misgendered him, but only Mr. Currie engaged in additional discriminatory comments and questions. Mr. Currie's behaviour demonstrated clearly that he did not consider Mr. Bilac to be a man, thus rejecting his gender identity.

[195] I find that, in the circumstances, of the total amount of \$15,000 for pain and suffering awarded against Ms. Abbey, Mr. Currie and NC Tractor, Ms. Abbey is responsible to pay 20% or \$3,000. Mr. Currie and NC Tractor are jointly and severally liable to pay 80% of the pain and suffering, so \$12,000, as well as 100% of the wilful and reckless damages in the amount of \$3,000.

(vi) Request that Tribunal remain seized

[196] The Commission has asked that the Tribunal remain seized of this matter and retain jurisdiction to receive evidence and/or make such further orders as may be required, until the parties confirm that the remedies ordered by the Tribunal have been implemented.

[197] I decline to retain jurisdiction in this matter. I see no reason to do so in this case, where the remedies are limited to monetary compensation. Section 57 of the *CHRA* allows parties to file a Tribunal order made under section 53 with the Federal Court, for the purposes of enforcement if necessary.

VI. Order

[198] Within 6 months of this decision, Ms. Abbey is ordered to pay the following to Mr. Bilac:

- \$3,000 for pain and suffering experienced as a result of the discriminatory practices (s. 53(2)(e));

[199] Within 6 months of this decision, Mr. Currie and/or NC Tractor are ordered to pay to Mr. Bilac:

- \$12,000 for pain and suffering experienced as a result of the discriminatory practices (s. 53(2)(e)); and
- \$3,000 in special compensation (s. 53(3)).

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
September 18, 2023

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2525/8220; T2540/9720; T2542/9820

Style of Cause: Bilac v Abbey, Currie and NC Tractor Services Inc.

Decision of the Tribunal Dated: September 18, 2023

Date and Place of Hearing: By Zoom Videoconference

December 14 and 15, 2021 and February 9 and 11, 2022

Appearances:

Adrienne Smith, for the Complainant

Giacomo Vigna and Brittany Tovee, for the Canadian Human Rights Commission

Shona Abbey, for herself

Arthur Currie, for himself and NC Tractor Services Inc.