Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2024 CHRT 81
Date: May 10, 2024
File No.: T2718/9421

Between:

Judith Iron

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

Canoe Lake Cree First Nation

Respondent

Decision

Member: Colleen Harrington

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I. Context

[1] The Complainant in this proceeding, Judith Iron, is a Cree woman and a Kokum (a grandmother). She is a member of the Respondent Canoe Lake Cree First Nation (Canoe Lake). Canoe Lake is located on the traditional hunting grounds of the Woodland Cree. The First Nation is a member of the Meadow Lake Tribal Council. It is governed by its own Chief and Council and has approximately 2900 members who live both on and off reserve.

[2] Ms. Iron was born in Canoe Lake and lived there until she was seven years old, when she moved to Saskatoon. She returned to Canoe Lake in 2017 and stayed for a few months. Then, she returned to live there from 2018 to 2021. At the time of the hearing, Ms. Iron was 53 years old and she was single, with five adult children and seven grandchildren.

[3] In March of 2019, Ms. Iron filed a human rights complaint with the Canadian Human Rights Commission (the "Commission") alleging that Canoe Lake's Chief and Council had discriminated against her for the past two years. Following a review, the Commission referred Ms. Iron's complaint alleging that she had been discriminated against contrary to sections 5, 6 and 14.1 of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6 (CHRA) to the Tribunal for an inquiry. The Commission participated as a separate party at the hearing.

[4] Ms. Iron alleges that, contrary to section 5 of the CHRA, Canoe Lake discriminated against her on the basis of a prohibited ground of discrimination by denying her post-secondary education funding. She also says that Canoe Lake discriminated against her on the basis of her age by not permitting her to attend part of the Annual Elders Holiday Gathering (the "Annual Gathering").

[5] She further alleges that Canoe Lake denied her housing in the community on the basis of her age and family status, contrary to section 6 of the CHRA. Ms. Iron also says that Canoe Lake retaliated against her for filing a human rights complaint, contrary to section 14.1 of the CHRA, by removing her name from the housing waitlist and by denying her access to the Annual Gathering.

[6] Canoe Lake denies that it discriminated or retaliated against Ms. Iron and asks the Tribunal to dismiss her complaint.

II. Decision

[7] I am dismissing Ms. Iron's complaint against Canoe Lake because she has not established that she was discriminated against in relation to the provision of a service or residential accommodation on the basis of her age or her family status, nor that she was retaliated against for filing a human rights complaint.

III. Issues

[8] In this decision I determine the following issues:

1) Did Canoe Lake discriminate against Ms. Iron in relation to the provision of a service contrary to section 5 of the CHRA:

   (i) based on a prohibited ground of discrimination by not providing her with funding for her post-secondary studies for a period of time?
   (ii) based on her age by not permitting her to attend part of the Annual Gathering because she was under the age of 60?

2) Did Canoe Lake discriminate against Ms. Iron in the provision of residential accommodation, contrary to section 6 of the CHRA, by not providing her with housing, either based on her family status as a single person with no children residing with her, or due to her age, as she was not elderly?

3) Did Canoe Lake retaliate against Ms. Iron for filing a human rights complaint contrary to section 14.1 of the CHRA by not permitting her to attend the Annual Gathering or removing her name from the housing waitlist?

IV. Legal Framework

[9] Section 5(a) of the CHRA, which is applicable to Ms. Iron's complaint, states that it is a discriminatory practice in the provision of a service "customarily available to the general public" to deny an individual access to any such service on a prohibited ground of discrimination.

[10] Section 6 of the CHRA states that it is a discriminatory practice in the provision of residential accommodation to (a) deny occupancy of such premises or accommodation to an individual, or (b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

[11] To establish that Canoe Lake engaged in a discriminatory practice contrary to sections 5 or 6 of the CHRA, Ms. Iron has the burden of establishing what the Supreme Court of Canada refers to as a "*prima facie* case" of discrimination (*Ontario Human Rights Commission and O'Malley v Simpsons-Sears Ltd*., [1985] 2 SCR 536 [*O'Malley*]). A *prima facie* case is "...one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent" (*O'Malley* at para 28).

[12] To establish a *prima facie* case of discrimination on the basis of sections 5 or 6 of the CHRA, Ms. Iron must prove that:

> 1) she has a characteristic or characteristics protected from discrimination under the CHRA;
> 2) she has been denied a service customarily available to the general public, or occupancy of residential accommodation, or been adversely impacted in the provision of a service or accommodation by the Respondent; and
> 3) the protected characteristic was a factor in the adverse impact or denial (*Moore v British Columbia (Education)*, 2012 SCC 61 at para 33).

[13] To prove the third element of the *prima facie* discrimination test, the complainant must show that there is a connection between the first two elements. The protected characteristic need not be the only factor in the adverse impact or denial, and a causal connection is not required, nor is an intention to discriminate.

[14] A *prima facie* case of discrimination must be proven on a balance of probabilities, meaning the Tribunal must find that it is more likely than not that the events described by the complainant happened that way.

[15] A respondent can either present evidence to refute the allegations of discrimination, put forward a statutory defence justifying the discrimination, or do both (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 [*Bombardier*] at para 64). Where a respondent refutes an allegation of discrimination, this explanation must be reasonable; it cannot be a "pretext"—or an excuse—to conceal discrimination (*Moffat v Davey Cartage Co.(1973) Ltd.,* 2015 CHRT 5 at para 38).

[16] If the respondent does not establish a justification, proof of these three elements on a balance of probabilities will be sufficient for the Tribunal to find that the CHRA has been contravened (*Bombardier* at para 64).

[17] In responding to Ms. Iron's complaint of discrimination contrary to sections 5 and 6 of the CHRA, Canoe Lake has led its own evidence and made arguments to refute her claims of discrimination. Therefore, the Tribunal's task is to consider all of the evidence and arguments presented by the parties to determine whether Ms. Iron has proven the three elements of a discriminatory practice on a balance of probabilities (see *Bombardier* at paras 56 and 64; see also *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada),* 2016 CHRT 2 [*Caring Society 2016*] at para 27).

[18] With regard to Ms. Iron's claim that Canoe Lake retaliated against her contrary to section 14.1 of the CHRA, I would note that retaliation complaints are founded on the fact that a previous human rights complaint was filed, rather than on a prohibited ground of discrimination. The onus is on complainants to establish a *prima facie* case of retaliation by proving on a balance of probabilities that:

1) they previously filed a human rights complaint under the CHRA;
2) they experienced adverse treatment following the filing of their complaint from the person they filed the complaint against or anyone acting on their behalf; and
3) the human rights complaint was a factor in the adverse treatment (*First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada),* 2015 CHRT 14 [*Caring Society 2015*] at para 5).

[19] With respect to the third element, a complainant must establish a connection between the filing of a complaint and the adverse treatment following the complaint. If this connection is not demonstrated in a complete and sufficient manner, the complainant will not have met the burden of proof. A causal connection is not required, and the previous complaint need not be the sole reason for the adverse treatment. Proof of intention to retaliate is also not necessary, and the Tribunal may rely on a complainant's reasonable perception that the act was retaliation for filing a human rights complaint (see *Millbrook First Nation v Tabor*, 2016 FC 894 at paras 63-64).

[20] Respondents may present evidence to refute the allegation of *prima facie* retaliation, although their explanation must be reasonable and not a pretext. Canoe Lake argues that Ms. Iron's allegations of retaliation are without merit and asks that they be dismissed.

V. Analysis

A. Issue 1: Did Ms. Iron experience discrimination in the provision of services contrary to section 5 of the CHRA?

[21] No, Ms. Iron has not established that Canoe Lake discriminated against her contrary to section 5 of the CHRA, either with respect to the denial of education funding for her post-secondary studies for the 2017-2018 school year, or with respect to being denied access to part of the Annual Gathering in December of 2018.

(i) Ms. Iron was not discriminated against on the basis of a prohibited ground of discrimination contrary to section 5 of the CHRA, by not receiving education funding for the 2017-2018 school year

[22] Ms. Iron testified that she was pursuing a university degree and that Canoe Lake had funded her post-secondary studies from 2014 until the winter of 2016, when she withdrew from school so that she could begin working for Canoe Lake at its urban office. As a result of withdrawing from university at that time, she lost her "continuing student status".

[23] When Ms. Iron applied for education funding again, to be able to return to university in the fall of 2017, Canoe Lake denied her application. The reason provided to her at the time, and confirmed by Canoe Lake's evidence at the hearing, was that, as Canoe Lake received a limited amount of funding for post-secondary education from Indigenous Services Canada (ISC), it had established categories to determine which students would receive funding each year.

[24] Wilfred Iron, the Canoe Lake Band Councillor responsible for the education portfolio, testified that there are more applicants than there is funding from ISC but that Canoe Lake tries to help as many students as it can. The categories utilized by Canoe Lake to prioritize funding in the summer of 2017 were included in its Post-Secondary Student Support

Program (PSSSP) Policy. The PSSSP Policy gives first priority to students continuing their post-secondary studies (without taking a break like Ms. Iron did), then to recent Grade 12 graduates and then to "returning students". In the fall of 2017, Ms. Iron was considered a returning student because she had withdrawn from school to pursue employment in December of 2016.

[25] As set out in the PSSSP Policy, all applications for post-secondary funding must be received by June 30 of each year. Canoe Lake's evidence was that a list is then made of all of the applicants and their requested funding, which can include tuition and books as well as living and travel costs. The initial work of compiling the information from the applications and making recommendations about who should receive funding is an administrative task completed by the Post-Secondary Funding Coordinator and other staff of Canoe Lake. Final decisions on the allotment of the funding are then made by the Chief and Council.

[26] Canoe Lake's former Post-Secondary Funding Coordinator, Ms. Kennedy, testified that, in accordance with the PSSSP Policy, if an applicant were to quit school and then reapply the following academic year, they would move to the bottom of Canoe Lake's priority list for education funding. This was the situation Ms. Iron found herself in when she applied for funding again in the summer and fall of 2017.

[27] Ms. Iron testified that she understood in late 2016 that, when she began working for Canoe Lake at their urban office in Saskatoon, she would not be eligible to continue to receive education funding. She said that she chose to put her schooling on hold in order to focus on her job at the urban office. She did not receive funding in 2017 because she had lost her priority status as a "continuing student" and was instead considered a "returning student" for the purpose of receiving education funding from Canoe Lake, pursuant to its PSSSP Policy.

[28] Ms. Iron alleges that Canoe Lake did not provide her with education funding in order to continue her university studies for the 2017-2018 academic year for a discriminatory reason. She says that this is contrary to section 5 of the CHRA. The Commission and Canoe Lake submit that Ms. Iron has failed to establish a *prima facie* case of discrimination with respect to the allegations of denial of education funding. I agree.

[29] Even if it were true that Canoe Lake treated Ms. Iron in an adverse or differential manner by "denying [her] years of access to government funding for [her] educational pursuits since 2017 then telling [her] she can go to university and refusing to pay leaving [her] with a large tuition bill" as stated in her closing submissions – which Canoe Lake denied - she has not established that a protected characteristic under the CHRA was a factor in the unfavourable treatment she claims to have experienced. Ms. Iron has never clearly indicated in her complaint, her Statement of Particulars, her testimony at the hearing or her closing submissions that she was discriminated against on the basis of any particular discriminatory ground under section 3 of the CHRA with respect to this allegation. This is required in order to prove *prima facie* discrimination under the CHRA.

[30] I agree with the Commission and Respondent that Ms. Iron has not established a *prima facie* case of discrimination with respect to the denial of education funding for the 2017-2018 school year and therefore dismiss this aspect of her complaint.

(ii) Ms. Iron was not discriminated against based on her age contrary to section 5 of the CHRA, by not being permitted to attend the meeting portion of the Annual Gathering

[31] Ms. Iron testified that she was a member of the Canoe Lake Kokoms, Mushooms, and Chapans (KMC) group while she resided in Canoe Lake. This is a group for grandmothers, grandfathers and great-grandparents in the community. The KMC group meets monthly. In her human rights complaint, Ms. Iron says that members of the KMC group "are often referred to as Elders". She wrote in her complaint that, because she is a grandmother and had attended KMC meetings for two years, she qualified as an Elder.

[32] The evidence before the Tribunal highlights that the word "Elder" is used in different contexts within Canoe Lake. There is a more traditional use of the term to describe someone who is respected in the community and offers leadership and guidance to others. This traditional use of the word is not necessarily based on one's age. Then there is what might be considered a more practical or administrative use of the word "Elder" which has an age limit and is used to determine who qualifies for certain services and benefits that may have a financial cost to Canoe Lake.

[33] The evidence before the Tribunal shows that Canoe Lake provides various age-based benefits to its members. For example, minutes from a Chief and Council meeting from 2016 state: “Elders – all elders to qualify must be band members and 60 years of age. Elders will be paid $500 each. Discussion on how to pay out the elders. No decision.” The minutes do not specify to what this particular $500 benefit relates. Chief and Council meeting minutes from October of 2018 refer to an “Ages 65 plus Elders Propane” benefit of $500. The minutes from a November 2019 Chief and Council meeting state that the Annual Gathering will take place December 20-22, 2019 and says: “Elders – 60+ and on Reserve”.

[34] The evidence shows that there is no age requirement to be a member of the Canoe Lake KMC group. Some grandparents are in their 40s, while others are much older. Canoe Lake’s evidence was that a number of community members who are over the age of 60 attend KMC meetings, whether they are grandparents or not, because many issues of importance to Elders are discussed at these meetings. However, none of the evidence presented at the hearing by Ms. Iron or by Canoe Lake supports Ms. Iron’s assertion that all members of the KMC group, or all grandparents in Canoe Lake, are considered Elders in either the traditional or the administrative sense of the word. Simply being a member of the KMC group does not make someone an Elder under either use of the term.

[35] Bernice Iron, Canoe Lake Band Councillor responsible for the health and Elders portfolios, testified that she was responsible for dealing with all issues relating to Elders in the community. She testified that an important part of her role as Councillor was to keep a list of Canoe Lake members who are 60 years of age and older. She would attend the monthly KMC meetings, at which members of the group would discuss issues and concerns of importance to them, as well as any upcoming activities. An Elder mentor would chair these monthly meetings, which took place in Council chambers, and a Canoe Lake staff person would take minutes of the meetings.

[36] One of the KMC group’s tasks is to plan the Annual Gathering. Bernice Iron testified that the Annual Gathering had been happening for at least the previous eight years and that it had always been meant for those 60 and older from Canoe Lake. She testified that the Elders themselves, along with the Chief and Council, had determined the 60-plus age requirement.

[37] Bernice Iron testified that the community's Elders are involved in planning the Annual Gathering and setting the agenda while she, as the liaison between the Chief and Council and the Elders, is responsible for organizing and implementing the event, which Canoe Lake pays for.

[38] Bernice Iron testified that Canoe Lake applies for grants to help cover the costs of the Annual Gathering, including travel and accommodation for the Elders in a location of their choosing, which has usually been Prince Albert, Saskatchewan. While most of the activities and events at the Annual Gathering are meant for those 60 and over, there is a banquet in the evening of the second day that younger family members can attend as well.

[39] Ms. Iron's human rights complaint arose out of a situation in which she was asked to leave part of the Annual Gathering in December of 2018, when she was 49 years old, because she did not meet the age requirement of 60. The evidence shows that, at a December 6, 2018 KMC group meeting, which Ms. Iron recorded, she was approved to bring her father and two others to the Gathering in Prince Albert later in the month. She says in the recording that her father wanted her to attend, so she could look after him. In her complaint, Ms. Iron says that the reason she was attending the Annual Gathering was "to chauffeur elders and to ensure the safety, care, and attention of" her father. At the December 6, 2018 KMC meeting, Bernice Iron approved Ms. Iron to stay with her father in his hotel room during the Annual Gathering.

[40] Ms. Iron's evidence, which was not contested, is that, after she and her father arrived at the Annual Gathering on December 21, 2018, Bernice Iron and a representative from the Meadow Lake Tribal Council asked her to step outside the room. Ms. Iron was recording this interaction as well. Bernice Iron told her that she could not stay in the room because she was not 60 and did not serve a purpose. Bernice Iron also told Ms. Iron that she was not welcome because of what she had written on Facebook.

[41] This reference to what Ms. Iron had written relates to her Facebook page called Blackstone CLCC, which stands for Canoe Lake Concerned Citizens. In September of 2018, Ms. Iron made a post titled "What or WHO is an elder?" in which she says that the "Chief and Council have been using their family members and money hungry puppets as elders to

try to make decisions for us then claiming they ‘had the support’ of some ‘well-respected elders’ … child abusers, thieves, and addicted gamblers are NOT worthy of the status of ‘ELDER’” [as written]. She goes on to say that “not all old people deserve that title. Just because they’re over 65 doesn’t make them an ‘elder’.” She sets out qualities that Elders should and should not have and says, “we need to find this group of real ‘Elders’ and talk to them about what’s been going on lately because true elders would not allow this Chief and Council to do what they are doing to their own people…”.

[42] The Tribunal heard evidence that several Elders were upset by what Ms. Iron had written on her Facebook page and that they had printed it off and given a copy to Bernice Iron. Despite her reference to what Ms. Iron had posted on Facebook, Bernice Iron was clear that Ms. Iron was not permitted to attend the Elders-only portion of the Annual Gathering because of her age. She testified that at least two other people were also asked to leave this part of the meeting because they were under 60.

[43] Although Ms. Iron has alleged discrimination on the basis of both her age and her family status with regard to the Annual Gathering, she has not provided any evidence in relation to the ground of family status. As such, I will only consider the protected ground of age with respect to the Annual Gathering allegation. I note, however, that Ms. Iron’s evidence and cross-examination questions, as well as her closing submissions, primarily focused on how her writing and advocacy, as well as other factors that are not protected under the CHRA, may have led to her exclusion from the Annual Gathering. I will consider whether Ms. Iron has met the requirements of the *prima facie* test for discrimination on the basis of her age because the Commission referred that complaint to the Tribunal for an inquiry.

[44] The Commission’s position regarding this allegation is that Ms. Iron has established *prima facie* discrimination because she was asked to leave the Elders-only part of the Annual Gathering as she did not meet the age requirement to be considered an Elder in Canoe Lake. It says that, as *prima facie* discrimination has been established, Canoe Lake has the burden to show that there is an alternate, wholly non-discriminatory explanation for the way Ms. Iron was treated.

[45] Canoe Lake denies discriminating against Ms. Iron in relation to the Annual Gathering. It says she was not asked to leave the portion of the Annual Gathering that family members were invited to attend. She was simply asked to leave the meeting portion because she was not yet 60 and so did not meet the age requirement to attend. Canoe Lake also denies that the meeting portion of the Annual Gathering was a service available to the public pursuant to section 5 of the CHRA. It argues that Ms. Iron cannot establish *prima facie* discrimination with respect to the Annual Gathering allegation because she has not proven all the elements of the test on a balance of probabilities.

[46] I am of the view that the question of what constitutes the service "customarily available to the general public" for the purpose of section 5 of the CHRA must be determined first, before the Tribunal applies the *prima facie* discrimination test in this case. If Ms. Iron can establish that Canoe Lake was involved in the provision of a service to which she was entitled, she must then demonstrate that Canoe Lake denied her this service on a prohibited ground of discrimination (*Caring Society 2016* at para 24).

(a) What is the service customarily offered to the general public by Canoe Lake pursuant to section 5 of the CHRA?

[47] The wording of section 5 of the CHRA requires complainants to establish that the discriminatory action complained of is in the provision of a service that is "customarily available to the general public". Canoe Lake argues that the part of the Annual Gathering that Ms. Iron was excluded from due to her age does not meet the requirements of section 5 of the CHRA because it was not an event open to the general public but was exclusively for Elders who were over the age of 60.

[48] I will apply a two-step analysis established by the Tribunal to determine what is the service customarily available to the general public that Canoe Lake denied Ms. Iron. First, I must determine what service the Respondent was offering based on the facts before the Tribunal (*Caring Society 2016* at para 30 and *Gould v Yukon Order of Pioneers*, 1996 CanLII 231 (SCC) [*Gould*] per La Forest J. at para 68). Second, I must determine whether the service creates a public relationship between the service provider and the service user (*Caring Society 2016* at para 31 and *Gould* per La Forest J. at para 68).

i) What is the service offered by Canoe Lake?

[49] In determining whether something is a service for the purpose of section 5 of the CHRA, the Tribunal should consider what "benefit" or "assistance" is being held out and "offered" to the public (see *Watkin v Canada (Attorney General)*, 2008 FCA 170 at para 31; *Gould* per La Forest J. at para 55).

[50] The evidence before the Tribunal is that Canoe Lake has been organizing an Annual Gathering each December for several years. The event is referred to in Canoe Lake's December 2021 Elders Benefits Policy as the "Annual Elders' Holiday Gathering".

[51] Bernice Iron's evidence was that the Annual Gathering is planned by and for residents of Canoe Lake who are 60 and over and that it is paid for by the First Nation. She said much of the planning happens at the KMC meetings because that is a group where Elders, who are the intended beneficiaries of the Annual Gathering, consistently meet. She provided evidence about the 2018 Annual Gathering in Prince Albert, which consisted of different events that occurred over two days.

[52] On the first day of the Annual Gathering, December 21, 2018, people travelled to Prince Albert. While Canoe Lake provided Elders with transportation to the Annual Gathering, some like the Complainant's father chose to travel on their own or with relatives.

[53] Bernice Iron testified that the first day of the Annual Gathering, which started at around 2p.m., was for Elders only, meaning those who were at least 60 years old. The activities consisted of a roundtable discussion followed by activities and a dinner. The second day of the Annual Gathering, December 22, 2018, started at around 10a.m., and the first part of this day was also only for Elders 60 and over. On this second day, there were presentations, a report on the previous day's roundtable and discussions among the Elders about topics of importance to them. On the evening of the second day, there was a banquet which was open to Elders and their family members who had accompanied them. Because it was close to Christmas, there was a visit from Santa, and all the Elders received a gift.

[54] Bernice Iron attended all parts of the Annual Gathering in her role as liaison so that she could report back to the Chief and Council on issues of importance to Canoe Lake's Elders that were identified at the Annual Gathering.

[55] Bernice Iron testified that the Annual Gathering allows Elders to come together and discuss issues that matter to them such as: treaties, elder abuse, powers of attorney, children, gangs or drug activity in the community, their residential school experiences, or other topics of their choosing. The Annual Gathering is also an opportunity for Elders to receive certain self-care services like haircuts or foot care, to visit with one another, to watch presentations relevant to them and to enjoy activities like bingo, karaoke and a jigging contest.

[56] Based on the facts before the Tribunal, I find that the Annual Gathering is a once per year special event that takes place just before Christmas and provides Canoe Lake members over the age of 60 with the benefit of coming together with their fellow community members who share common concerns and interests. This is the essential nature of the Annual Gathering. It allows them to discuss these issues together freely and to hear presentations about issues that concern them as older and respected members of the community. They also receive the benefit of self-care services and enjoy some entertainment and fun recreational activities together. Staff who are paid to provide care and assistance to the Elders are present during the Elders-only portion of the Annual Gathering to ensure they are safe and comfortable. All of this constitutes the service provided by the Respondent.

ii) Does the service create a public relationship between the service provider and the service user?

[57] Canoe Lake argues that the part of the Annual Gathering that Ms. Iron was excluded from due to her age does not meet the requirements of section 5 of the CHRA because it was not an event open to the “general public” but was exclusively for Elders who were over the age of 60.

[58] In determining whether the service at issue creates a public relationship between the service provider and the service user, the case law has established that the “general public” as contemplated in section 5 of the CHRA does not necessarily mean the entire public (see *University of British Columbia v Berg*, [1993] 2 SCR 353 [*Berg*] at pp. 374-388;

Gould per La Forest J. at para 68).[1] Rather, a "public" relationship is created by virtue of the "service" being offered by the service provider (see *Gould* per La Forest J. at para 55).

[59] The Supreme Court in *Gould* stated that, "[e]very service has its own public, to be defined through the use of non-discriminatory eligibility criteria" (per La Forest J. at para 57). This means that the recipients of any given service "could be a very large or very small segment of the 'public'" (*Caring Society 2016* at para 31). Once that public has been defined through the use of eligibility criteria, the CHRA prohibits discrimination within that public.

[60] Canoe Lake's evidence was that the Annual Gathering was a service offered to those from the community who are 60 and older. The December 2021 Elders Benefits Policy, approved by Canoe Lake's Chief and Council after Ms. Iron filed her human rights complaint, states that the Annual Gathering is part of a policy seeking to provide "additional benefits to [Elders] and provide certainty to the First Nation, its members and Elders". The Elders Benefits Policy defines an "Elder" as "any person who is sixty (60) years of age or older on the date of the Gathering, residing on [Canoe Lake Cree First Nation] Reserve lands".

[61] Bernice Iron testified that the policy reflects what was Canoe Lake's practice or custom for many years, in terms of the Annual Gathering being available to those who are at least 60 years old and who reside in Canoe Lake. In its closing submissions, Canoe Lake said that the Annual Gathering has traditionally been offered to members who are at least 60 years old and that the 2021 Elders Benefits Policy merely codified this customary age requirement.

[62] The Annual Gathering is not a service meant for all people who may be considered an "Elder" in the more traditional sense of the word. It is only meant for those who are over the age of 60. Therefore, those who might be granted this respected title for their wisdom and guidance to others in the community, but who are not yet 60, would not be permitted to attend the 60-plus part of the Annual Gathering, even if they are members of the KMC group.

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[1] The Supreme Court in *Gould* and in *Berg* found the CHRA's use of "general public" to be functionally synonymous with similar provisions in provincial human rights legislation.

[63] The Commission has argued that Ms. Iron's complaint engages the interpretive provision in section 1.2 of *An Act to Amend the Canadian Human Rights Act*, 2008, c.30, which says the Tribunal is to give due regard to First Nations legal traditions or customary laws when interpreting and applying provisions of the CHRA. The Commission says the provision is a lens with which to read the CHRA, including a contextualized analysis of the grounds of discrimination, discriminatory practices, and any defences. Section 1.2 of *An Act to Amend the CHRA* states:

> In relation to a complaint made under the [CHRA] against a First Nation government, including a band council … operating or administering programs and services under the *Indian Act*, this Act shall be interpreted and applied in a manner that gives due regard to First Nations legal traditions and customary laws, particularly the balancing of individual rights and interests against collective rights and interests, to the extent that they are consistent with the principle of gender equality.

[64] I am not convinced that the evidence in this case would support a finding that Canoe Lake's reliance on a customary definition of an Elder as someone who is 60 or older is either a "legal tradition" or a "customary law" for the purpose of this section. However, I view this provision as being consistent with the case law that favours a "relational" approach to defining the public.

[65] The Supreme Court in *Berg* refers with favour to a Saskatchewan Court of Appeal decision that endorses this relational approach (*Saskatchewan (Human Rights Commission) v Saskatchewan (Department of Social Services)*, 1988 CanLII 212 (SK CA)). In that case, the Court of Appeal stated:

> The fact that a service is offered to the public does not mean that it must be offered to all members of the public. The Government can impose eligibility requirements to ensure that the program or services reaches the intended client group. The only restriction is that the Government cannot discriminate among the client group, that is, the elderly, the poor or others, on the basis of the enumerated characteristics set out in the [human rights legislation] (at para 31).

[66] The Supreme Court in *Berg* went on to give the example of the Canada or Quebec Pension Plan benefits, which are provided to millions of Canadians while an equally large

number of Canadians who have not yet attained the qualifying age do not receive such benefits.

[67] Canoe Lake's Chief and Council are an elected government and bear the responsibility of allocating limited funds to the members of the First Nation in a manner that balances the rights and interests of different community members. Elders are a respected group in First Nations communities, and Canoe Lake offers the Annual Gathering to its older members as a special event to honour, celebrate and hear from these respected community members. As Bernice Iron testified, the age of 60 for the Annual Gathering was chosen by the Elders and the Chief and Council. There is no indication that Canoe Lake has acted arbitrarily or unjustifiably to exclude individuals on the basis of a protected ground (for example on the basis of sex, disability or another ground) within this particular public of 60-plus residents when offering the service of the Annual Gathering.

[68] Ms. Iron testified that she feels the 2021 Elders Benefits Policy discriminates against off-reserve Elders. The Elders Benefits Policy itself was not in place at the time she was asked to leave the Annual Gathering, and it is not the subject of her human rights complaint. The Policy is only relevant to the complaint to the extent that it formally captures the age limit the community had long established to determine who was qualified to attend the Annual Gathering. In any event, the complaint referred to the Tribunal alleges discrimination on the basis of age, it does not allege discrimination against people who live off reserve.

[69] Despite the absence of a formal written policy in December of 2018 defining who was an Elder for the purpose of attending the Annual Gathering, the evidence shows that 60 was the age that Canoe Lake used for that purpose, at the time and for several years prior. I accept that the intended public being served by the Annual Gathering now and in December 2018, as well as prior to that time, consists of Canoe Lake Cree First Nation members who reside in Canoe Lake and are 60 or older.

(b) Can Ms. Iron establish a *prima facie* case of discrimination on the basis of her age?

[70] No, Ms. Iron cannot claim that she experienced an adverse impact in the provision of a service customarily available to her because she was not an intended beneficiary of the Annual Gathering.

[71] Ms. Iron suggests that she should have been able to attend all portions of the Gathering either because she was a member of the KMC group or because she was accompanying her father. However, the Annual Gathering was not for all grandparents, only for those who were 60 and over.

[72] As Ms. Iron was 49 years old in December of 2018, she did not belong to the general public to whom the service of the Elders-only part of the Annual Gathering was customarily available, even though she was a Kokum and attended KMC meetings. While she was residing in Canoe Lake at the time, she was not 60 years old. The evidence was clear that not all members of the KMC group were 60 and over and that membership in the KMC group was not part of the eligibility criteria for attending the Annual Gathering.

[73] It is possible that, in providing the service of the Annual Gathering to Canoe Lake residents who are over 60, Canoe Lake could discriminate on a prohibited ground by, for example, only permitting women to attend or not permitting people with disabilities to attend. However, I cannot find that denying someone entrance to the Elders-only part of the Annual Gathering because they were under 60 is discriminatory because age is one of the eligibility criteria that defines the public served by the Annual Gathering. I do not find this eligibility criteria to be discriminatory. It ensures that the service reaches only its intended beneficiaries and helps to avoid the unnecessary depletion of Canoe Lake's scarce resources.

[74] Indeed, Ms. Iron's own testimony and audio recordings show that she sought permission to escort her father, who was over 60, to the Annual Gathering, and this was approved. Ms. Iron was therefore not seeking to attend the meeting as an Elder herself. Rather, she was there to provide support to her father, who was a member of the public to whom the benefit was offered, being a Canoe Lake resident over the age of 60. She was

approved to escort her father, meaning she would ensure he made it to the Annual Gathering. Her father was not denied entry to the Elders-only meeting, and Ms. Iron's presence as a caregiver was not necessary because the organizers had paid people to care for the Elders attending the meeting. Ms. Iron was permitted to attend the part of the Annual Gathering that other, younger family members were invited to on the evening of the second day for the banquet and entertainment.

[75] The main focus of Ms. Iron's argument is that she was treated in an adverse manner because of her role as an advocate for some members of the community, which she wrote about on her Facebook page. In her closing submissions, Ms. Iron said: "I allege that the act of throwing me out of a public place and preventing me from participating in the elders gathering as a driver, escort and caregiver for my elderly dad was retaliation. They had a 'discussion' about me with the chief and council and decided that I was not welcome there 'because of what you write on Facebook' and what 'I might do or say,' but younger band members were in attendance because the gathering was partially paid for by Jordan's Principle" money. The evidence is that younger people were only present for the banquet, which Ms. Iron was welcome to attend as someone who had accompanied her father to Prince Albert, which Canoe Lake approved.

[76] With respect to Ms. Iron's claim that she was denied entrance to the Annual Gathering because of what she wrote, this does not constitute a prohibited ground of discrimination under the CHRA. While Bernice Iron testified that some of the Elders were upset about what Ms. Iron had posted on Facebook, this does not amount to the Complainant having a characteristic protected under section 3 of the CHRA. Furthermore, I note that, at the end of the recording, Bernice Iron actually says that the Complainant can stay and attend the meeting with her father.

(c) Conclusion

[77] I find that the Annual Gathering creates a public relationship with Elders residing in Canoe Lake who are at least 60 years old. The Complainant was only 49 years old at the time of the Annual Gathering in 2018. She was not a member of the public to whom the

service of the Annual Gathering was being offered. Ms. Iron did not seek to enter the Annual Gathering as an Elder participant, but rather as her father's escort and caregiver.

[78] Likewise, the Elders-only meeting that was held as part of the Annual Gathering was not a benefit held out as a service to people under 60 like Ms. Iron. As she was not part of the general public to whom Canoe Lake was providing this service, she cannot argue that she was denied the service for a discriminatory reason.

[79] As Ms. Iron has not established that she was discriminated against by being denied entrance to part of the Annual Gathering, I dismiss this aspect of her complaint.

B. Issue 2: Did Ms. Iron experience discrimination in the provision of residential accommodation contrary to section 6 of the CHRA?

[80] No, Ms. Iron has not established that she was discriminated against contrary to section 6 of the CHRA, either on the basis of her age or her family status, by not being provided with residential accommodation.

[81] Ms. Iron says that Canoe Lake did not provide her with housing because she was single, had no children living with her and was not elderly. She says this is discrimination on the basis of family status and age, as Canoe Lake prioritizes housing for families and Elders.

[82] Canoe Lake denies that it discriminated against Ms. Iron in the provision of housing.

[83] The Tribunal has previously determined that decisions by First Nations regarding the allocation of housing are subject to review under section 6 of the CHRA (*Ledoux v Gambler First Nation*, 2018 CHRT 26 [*Ledoux*]; see also *Ka-Nowpasikow v Poundmaker Cree Nation*, 2023 CHRT 38 at para 48, issued after the parties filed their closing submissions).

[84] As with her allegations under section 5 of the CHRA, Ms. Iron must prove on a balance of probabilities a *prima facie* case of discrimination. She must show that she has been adversely affected or denied occupancy in relation to residential accommodation provided by Canoe Lake and that a prohibited ground of discrimination played some role in the denial or adverse treatment.

[85] Ms. Iron's evidence is that she applied for housing when she moved back to Canoe Lake in 2018. Her housing application, dated September of 2018, was entered as an exhibit at the hearing. In this application, she stated that she was moving back from the city because she could not afford a house there, that she was seeking a "small bachelor" with "one room or less" and that she currently had no home.

[86] Under "Additional comments or information", she wrote that the Chief had told her that Canoe Lake was building "single person homes" and that she could have one if she applied. She said that, when the time came to allocate these single person homes, she did not get one. Chief Francis Iron was asked about this when Ms. Iron cross-examined him, and he testified that these "single person homes" were not built. He denied having a conversation with Ms. Iron about her wanting housing and said he never promised her anything. He said he cannot make promises to anyone because it would be inappropriate and that is not how things work in Canoe Lake. Chief Iron testified that, if people bring concerns or requests to him or the Band Councillors, they will bring them to the directors of the relevant departments to address. If a problem or request needs to go to the Chief and Council, the directors are to bring the issue to the Councillor responsible for the particular portfolio first.

[87] Ms. Iron applied for housing in September of 2018, and she left Canoe Lake in the spring of 2021. She testified that, during this time, she was living in a shack with no running water or electricity. She said that, during the time she lived in Canoe Lake, she approached a number of Councillors and the Housing Coordinator about her 2018 housing application. She said she was told there was no money for housing, and this was supported by Chief Iron's testimony. Chief Iron testified that the housing situation in Canoe Lake has been terrible for years and that the First Nation only receives $295,000 per year from the federal government to cover housing needs and renovations. He said that this is not sufficient to build enough houses to meet their needs or to keep up with repairs for existing homes. Chief Iron testified that, in addition to overcrowding in many homes, multiple houses were condemned for various reasons.

[88] I note that the "Housing Provision and Allocation" section of Canoe Lake's 2005 Housing By-Law, in effect when Ms. Iron lived there, states that housing is a treaty right.

This means that each “Treaty Family Unit” has the right to adequate shelter and basic amenities. However, the Housing By-Law notes that, because “Canada does not necessarily fulfill its Treaty obligations”, this has resulted “in inadequate funding for the Housing Program being provided to the Canoe Lake Cree Nation.” The Housing By-Law goes on to state that, while the First Nation makes efforts to have Canada honour and fulfill its Treaty obligations, the Chief and Council must deal with the reality of utilizing the funds they receive for the Housing Program “at their discretion impartially, fairly, and with the best interests of the First Nation as a whole in mind.”

[89] PJ Iron was the Housing Coordinator from 1997 to 2020, when he became the Director of Community Infrastructure, the department responsible for housing in the community. Ms. Iron testified that PJ Iron told her there was housing available on the reserve when she moved back in 2018, suggesting she could have the house of someone who passed away. Ms. Iron said she told PJ Iron that she did not want the house of a deceased person but that she was willing to fix up a house herself to make it habitable.

[90] PJ Iron did not remember having any conversations with Ms. Iron to discuss housing and said he did not have the authority to give someone a home, so even if they had a conversation about her fixing up a house, he had no authority to allot one to her. He also testified that an inspector from the Meadow Lake Tribal Council inspects the homes in Canoe Lake and decides if they must be condemned, then the Chief and Council make the ultimate decision about this. If the house can be remediated, they will do it, but he did not think there were any empty units on the reserve when Ms. Iron lived there, except for condemned houses.

[91] PJ Iron testified that the job of the Housing Coordinator is to collect and compile the applications for the Housing Committee (also called the Housing Authority), which is made up of community members. Both PJ Iron and his successor as Housing Coordinator, Melissa Bouvier, testified that they did not make the housing allotment recommendations themselves. They said the Housing Committee was to make such determinations based on need. They testified that the Housing Committee reviewed the applications and applied the allocation priorities set out in Canoe Lake’s 2005 Housing By-Law to determine who should be recommended to receive housing. Their evidence was that the priority of the Housing

Committee was to address the issues of overcrowding caused by having multiple families in one home, relocating families whose houses have been condemned and housing Elders.

[92] These priorities are all set out in Canoe Lake's 2005 Housing By-Law, which includes a list of "Housing Allocation Considerations" which must be considered "in no particular order" and are to merit equal consideration when allocations are made. The list includes: the size of the applicant's family unit, their current residence, availability of alternative living arrangements, relief of overcrowding in existing homes on the First Nation, condition of the current housing, consideration for the elderly and repatriating First Nations citizens. The Housing By-Law says if more than one of these items applies to the applicant, that will be taken into consideration. It also states that the "Housing Allocation Considerations" may be adjusted by events that impact the current housing supply, such as a house being destroyed by flood or fire, a householder being seriously ill and requiring upgraded housing or a house becoming condemned.

[93] As required by Canoe Lake's 2005 Housing By-Law, the Housing Committee's recommendations for who should receive housing were to go to the Chief and Council for approval. The minutes of these Chief and Council meetings acted as a record of these approvals. At the time of the hearing, the 2005 Housing By-Law was still in effect, although a new housing policy had been introduced and was under review. Under the new housing policy, which Canoe Lake's membership still needed to vote on, Chief and Council would no longer be responsible to approve recommendations for housing allotments.

[94] Ms. Iron's name appears on Canoe Lake's list of people who had applied and were waiting for housing for 2018, which was entered as an exhibit, although all of the other names are redacted. Her name also appears on the otherwise redacted housing waitlist for 2019. However, it does not appear on the 2020 waitlist, which is a document titled "2020 Housing Applications". Unlike the 2018 and 2019 waitlists, the other names on the 2020 waitlist have not been redacted. Also, the 2020 list is much more comprehensive, being in the form of a spreadsheet with columns for the applicant's current housing situation, the number of dependents, employment status, the date their application was received and other information, whereas the 2018 and 2019 lists appear to include only the person's name and where they would like to live.

[95] The 2020 Housing Applications list includes 56 people in Canoe Lake and 17 people in Eagles Lake who were waiting for housing, some of whom had applied as early as 2019. Despite the reference to 2020 in the title, the most recent applicant on this list applied for housing in March of 2021. The age of the applicants are not included on the list. Although there are 73 applicants on the 2020 Housing Applications list, with their dependents the list shows that over 200 people were waiting to be housed.

[96] While Ms. Bouvier did not know why Ms. Iron's name does not appear on the list of 2020 Housing Applications, she testified that she updates the housing list nearly every day. Although not required by Canoe Lake's 2005 Housing By-Law, Ms. Bouvier recommends people submit a new housing application every year, so she knows they are still waiting for housing. She testified that she keeps people's names on the bottom of the waitlist for a couple of years but will eventually remove their names if she does not receive a new application. She testified that she had seen Ms. Iron's housing application from 2018 in the housing department's files but that she had not received another application from Ms. Iron after that. Ms. Bouvier testified that, while she prepared the 2020 Housing Applications waitlist, she had never seen the 2018 or 2019 housing waitlists which were entered as exhibits at the hearing. She did not become the Housing Coordinator until 2020. Prior to that, she had been a Housing Clerk.

[97] Ms. Iron's evidence was that she filed another housing application in 2020. She submitted as evidence a copy of an application dated October 11, 2020, that she says she submitted to the housing department, although both PJ Iron and Ms. Bouvier testified that they had not received it. It was not in their files, and no one remembered receiving it. Ms. Iron herself could not remember when she submitted it or to whom, although she remembered these details with respect to her 2018 application.

(a) Ms. Iron has not established *prima facie* discrimination

[98] Ms. Iron has met the first part of the *prima facie* test. She has established that she was single and had no children or dependents living with her and that, as she was in her

late 40s at the time, she was not elderly. As such, she engaged the protected characteristics of family status and age under section 3 of the CHRA.

[99] However, I do not find that Ms. Iron has met the second and third parts of the *prima facie* test. The second part of the test requires a finding that, in providing residential accommodation, Canoe Lake denied Ms. Iron occupancy of such premises or accommodation or otherwise differentiated adversely against her. This means I must find that Canoe Lake was engaging in the provision of residential accommodation at the time Ms. Iron was seeking housing. What has been proven in this inquiry is that Canoe Lake was collecting the names of those members who wanted to receive housing and keeping their names on a list. Ms. Iron's name was on the housing waitlist in both 2018 and 2019. However, no evidence was provided that anyone on those 2018 or 2019 housing waitlists was recommended to receive housing or that anyone actually did receive housing. Although the evidence at the hearing was that a meeting of the Chief and Council would be convened whenever housing became available - to ensure someone from the list could be housed and so there would be a record of the decision - no minutes of any meetings at which housing allotments occurred were provided as evidence in this inquiry.

[100] Canoe Lake's evidence was that the First Nation prioritized families with children and the elderly, as well as those in desperate need, when housing from their fixed pool of approximately 390 homes for nearly 3000 band members became available. However, no evidence was provided that any housing became available during the time Ms. Iron was waiting for housing. Without evidence about Canoe Lake's actual provision or allotment of housing during the time that Ms. Iron lived there and had applied for housing, I cannot conclude that Ms. Iron has proven the second element of the *prima facie* test.

[101] The mere fact that Canoe Lake had priorities in allocating housing does not prove that applying these priorities would necessarily have led to Ms. Iron being adversely affected, especially if she were to be considered someone in desperate need. PJ Iron testified that, based on the photos of Ms. Iron's shack that she entered as evidence, her housing circumstances should have been considered urgent. But his evidence was also that there were no empty units in Canoe Lake while Ms. Iron lived there, except for condemned houses. Simply having a practice or policy of prioritizing some groups of people for housing

is not evidence that Ms. Iron was discriminated against by not receiving housing, especially when there was no evidence that any housing was available.

[102] Even if I were to accept that housing was allocated during the time that Ms. Iron lived in Canoe Lake and that it was denied to her, there is no evidence before the Tribunal that the reason she was not given an available house was related to a protected ground under the CHRA. The third part of the *prima facie* discrimination test requires some evidence that being single or not elderly was at least a factor in Ms. Iron not receiving housing. The Tribunal has noted many times that proving discrimination by direct evidence is often difficult. As overt discrimination is rare, the Tribunal has accepted that "adjudicators should consider all the circumstantial evidence to determine whether what is described as 'the subtle scent of discrimination' can be drawn from the evidence" (*Ledoux* at para 59 referring to *Basi v Canadian National Railway*, 1988 CanLII 108 (CHRT)). In this case, a consideration of whom was actually provided with housing during the time that Ms. Iron was waiting would be useful. But there is no evidence that anyone was provided with housing during this time.

[103] The only evidence that anyone was recommended to receive housing during the time Ms. Iron lived in Canoe Lake is the 2020 Housing Applications list, which includes five names with "Recommended" written beside them. No evidence was provided about why these people were recommended to receive housing, nor whether the Chief and Council approved the recommendations. This 2020 Housing Applications waitlist covers those who applied for housing from 2019 until the spring of 2021, which is when Ms. Iron said she left Canoe Lake. While this list provides the only evidence that recommendations for housing allotments were made while Ms. Iron lived there, her name was not on that 2020 list. I will consider whether her name being removed from the housing waitlist was retaliation for filing a human rights complaint in the next section. However, even if her name had been on the 2020 list, the Tribunal was provided with no evidence about the people who were recommended to receive housing, in terms of their ages. According to the 2020 Housing Applications list, three of the five people recommended for housing had dependents. The other two, like Ms. Iron, did not. No evidence was provided about whether the two without dependents were elderly or not. There was also no evidence that the Chief and Council approved the five

“recommended” people to receive housing. According to Ms. Bouvier, sometimes the Chief and Council do not agree with the recommendations of the Housing Committee.

[104] Ms. Iron also argued that, because she lived in a shack with no running water and electricity, she should have been given priority for housing. While her housing situation was obviously unacceptable, it does not constitute a protected ground under the CHRA. I would also note that there is one person on the 2020 Housing Applications waitlist who had two dependents and whose current housing situation was “homeless”. This person had applied for housing in November of 2019, yet they were not one of the five who was recommended for housing. I point this out merely to highlight that we simply do not know how the people recommended for housing were evaluated based on the priorities set out in Canoe Lake’s 2005 Housing By-Law. While Ms. Iron argues that she was someone in desperate need of housing and therefore should have been prioritized, there is no evidence to suggest that she was not prioritized because of a prohibited ground of discrimination.

[105] Without knowing whether anyone was allotted housing from the 2020 Housing Applications list, or at any time while Ms. Iron lived in Canoe Lake, and whether they were elderly or single or had children, there is not even circumstantial evidence by which the Tribunal could conclude that Ms. Iron was discriminated against. The evidence does not raise even the subtle scent of discrimination.

[106] Ms. Iron’s arguments relating to her human rights complaint also allege that she experienced unfavourable treatment by Canoe Lake’s leadership because of her advocacy on behalf of others. If this is the case, this does not raise a prohibited ground of discrimination under the CHRA. For example, she testified that she did not receive a house because the Chief and Council were mad at her for the posts she made on her Facebook page Blackstone CLCC, as discussed above, and because of her involvement in negative news stories about Canoe Lake. On the Blackstone CLCC page, she posted about housing issues in the community and says she helped people, including Elders, with their housing issues. One of her posts was about how she lived in a shack with no water and electricity while the Chief was building a new house by the lake. Much of her evidence, cross-examination questions and closing submissions focused on the Chief’s new house.

[107] Ms. Iron introduced as an exhibit an article dated August 16, 2019 from a publication called the Post Millennial. The article was not written by Ms. Iron, but includes allegations she and others made about corruption in Canoe Lake. The article includes Ms. Iron's views about the living conditions in Canoe Lake and pictures of her father's home in a state of disrepair. Ms. Iron is quoted as saying, "Council built ten new houses for their relatives while neglecting on-reserve members" and that, once she learned of the poor housing conditions experienced by people in Canoe Lake, she knew she had to "step in". She then says that the Chief has not done repairs or renovations on homes in Canoe Lake for two years because of a lack of funds, but at the same time he built himself a house by the lake using band employees and resources. With regard to the construction of his own house, Chief Iron testified that 100% of the cost was paid by him from his personal funds.

[108] Even if there had been evidence in this inquiry about ten new houses having been built in Canoe Lake during the relevant period of this complaint – and there was not - the suggestion that they were allocated to relatives of the Band Council does not support Ms. Iron's complaint of discrimination on the grounds of being single or not elderly.

(b) Conclusion

[109] Ms. Iron has the onus of proving on a balance of probabilities that she was not allotted housing that she had applied for at least in part because of her age or her family status, as a younger, single person with no dependents. However, the Tribunal was not provided with any evidence about who, if anyone, was provided with housing at the time that Ms. Iron was waiting for housing. She did not prove that any houses were allocated during the time she lived there. Without evidence that Canoe Lake actually provided housing to anyone during the period Ms. Iron lived there and had applied for housing, no determination can be made as to Ms. Iron being denied housing for a discriminatory reason.

[110] As she has not proven a *prima facie* case of discrimination on a balance of probabilities, I dismiss this complaint.

C. Issue 3: Did Ms. Iron experience retaliation by Canoe Lake for filing her human rights complaint contrary to section 14.1 of the CHRA?

[111] No, I do not find that Ms. Iron was retaliated against contrary to section 14.1 of the CHRA, either by being removed from the housing waitlist or by not being permitted to attend the Elders-only part of the Annual Gathering.

[112] The Commission asserts that Ms. Iron has established *prima facie* retaliation with respect to both allegations but has provided no support for this argument in relation to Ms. Iron not being permitted to attend the Elders-only part of the Annual Gathering. Canoe Lake points out that the Annual Gathering took place in December of 2018, before she filed her human rights complaint in 2019. As such, denying her entrance to part of the Annual Gathering cannot be retaliation for filing the complaint. I agree with Canoe Lake that not being permitted to attend part of the Annual Gathering in December of 2018 cannot have been retaliation for filing her human rights complaint in March of 2019. As such, I will not consider this allegation any further.

[113] With regard to the housing allegation, the Commission says that Ms. Iron's name was on the housing waitlist when she filed her human rights complaint in March of 2019. Following the filing of her complaint, her name was removed and does not appear on the 2020 Housing Applications waitlist.

[114] The Commission says that PJ Iron had no explanation as to why Ms. Iron's name was removed from the waitlist. He said her name should not have been removed, as she had applied for housing in 2018. The Commission argues that, in the absence of an explanation, it is more probable than not that retaliation against her for filing her human rights complaint has occurred.

[115] Canoe Lake denies retaliating against Ms. Iron for filing a human rights complaint. In response to the Commission's submission, Canoe Lake says that PJ Iron was not involved in the day-to-day operations of the housing department in 2020, since he had become the Director of Infrastructure. Ms. Bouvier was the Housing Coordinator who prepared the 2020 Housing Applications list submitted as evidence at the hearing, and her evidence was that she regularly updated this spreadsheet.

(a) No *prima facie* retaliation

[116] The first element of the *prima facie* test for retaliation under section 14.1 of the CHRA has been met. Ms. Iron filed her human rights complaint against Canoe Lake with the Commission in March of 2019.

[117] I accept that Ms. Iron has also met the second element of the test: adverse treatment by Canoe Lake following the filing of the 2019 human rights complaint. Having her name removed from the housing waitlist, as confirmed by Canoe Lake's own documentary evidence, resulted in unfavourable or adverse treatment. By not being on the 2020 Housing Applications list, Ms. Iron missed *the opportunity* to be considered for housing allocation if an appropriate unit became available. However, given my conclusion above that there is no evidence before the Tribunal that any housing became available in 2020-2021, I cannot conclude that Ms. Iron actually missed out on receiving housing by not being on the list. There is no evidence before the Tribunal that even the five individuals on the 2020 Housing Applications list who were recommended for housing received it. The unfavourable treatment or adverse differentiation Ms. Iron experienced is therefore more theoretical than real, as she did not lose a tangible benefit by not being on the list.

[118] The Tribunal's case law is clear that, in order to establish the third element of the *prima facie* test, the onus is on the complainant to establish a connection between the filing of their human rights complaint and the adverse treatment they experienced. If this connection is not demonstrated in a complete and sufficient manner, the complainant will not have met their burden of proof. In other words, it is not sufficient to prove that a complaint was filed and then adverse treatment was experienced. A temporal connection alone is not enough. The evidence before the Tribunal "must demonstrate a link, a connection between the adverse treatment and the filing of a complaint" (*Dixon v Sandy Lake First Nation*, 2018 CHRT 18 [*Dixon*] at para 23).

[119] As with other discriminatory practices under the CHRA, it is rare for there to be direct evidence of retaliation, and this is not required. However, when considering whether a complainant's perception that a human rights complaint was at least in part responsible for the unfavourable treatment they experienced, the Tribunal has required a finding that this

perception be reasonable. The Tribunal has stated that the reasonableness of the complainant's perception must be measured so as not to hold respondents accountable for "unreasonable anxiety or undue reaction by the complainant" (*Dixon* at para 25).

[120] The Tribunal in *Bressette v Kettle and Stony Point First Nation Band Council*, 2004 CHRT 40 [*Bressette*] noted that, when there is a history of conflict between the parties, it can be difficult to determine whether certain incidents occurred as a result of the ongoing conflict, or whether they were linked to the human rights complaint (at para 52). In approaching such a situation, the Tribunal in *Bressette* first determined whether it could accept, on a *prima facie* basis, that the human rights complaint was at least one of the factors influencing the adverse treatment experienced by the complainant. After establishing this is the case, the onus then shifts to the respondent to provide a credible explanation for the treatment.

[121] I do not accept, on a *prima facie* basis, that Ms. Iron's March 2019 human rights complaint was a factor influencing the removal of her name from the housing waitlist. I do not view Ms. Iron's perception that filing her human rights complaint led to her name being removed from the housing list as reasonable. The timing of the events - having her name removed from the housing list after filing her human rights complaint - is not enough in itself to prove *prima facie* retaliation. Nor is the fact that PJ Iron could not explain why her name was not on the 2020 Housing Applications list. The evidence before the Tribunal is that PJ Iron did not know why Ms. Iron's name was not on the 2020 Housing Applications list, and that he had never seen that list before. By the time it was prepared, he was no longer the Housing Coordinator and so he was not responsible for the housing waitlists.

[122] Ms. Bouvier prepared the 2020 Housing Applications list. She testified that she did not prepare the 2018 or 2019 lists and was not familiar with them. She said that she updated the 2020 Housing Applications waitlist daily and that, even though Canoe Lake's 2005 Housing By-Law did not require members to submit a housing application every year, if a new application was not received from someone on the waitlist, she would move their name to the bottom of the list. After a couple of years without a new application to confirm they still needed housing, it was her practice to remove their names from the waitlist.

[123] This would appear to be supported by the 2020 Housing Applications list submitted as evidence at the hearing, which does not show any applications made before January of 2019, although some names do not have an application date indicated. No one on the 2020 list is shown as having applied in 2018 like Ms. Iron did. It is possible that some of the people on the 2020 list had also filed previous applications. They might have been on the 2018 or 2019 lists that Ms. Iron's name appeared on and then filed a subsequent housing application to remain on the list. However, since all of the other names on the 2018 and 2019 lists were redacted, this cannot be confirmed. The Tribunal was provided with no evidence about whether anyone on the 2020 list had applied prior to the date indicated on that list and so may have been in a situation similar to Ms. Iron's.

[124] Although Ms. Iron said she had filed another application with the housing department in 2020, both Ms. Bouvier and PJ Iron testified that there is no record of the application in their files and that neither of them recalled receiving it. They both testified that there is only one application for housing from Ms. Iron on file, the one from 2018.

[125] Ms. Iron herself did not recall when she handed in her 2020 application, or whom she gave it to. She did not recall if she submitted it in person or by email. I accept the evidence of Canoe Lake that it did not receive Ms. Iron's 2020 application. Ms. Iron had a good recollection of whom she had provided the 2018 application to two years prior. Given her inability to recall how or when she filed the 2020 application and the evidence that it was not on record with the housing department, I find it more likely than not that she did not submit the 2020 application to Canoe Lake.

[126] Even without knowing exactly how Ms. Iron's name was removed from the housing waitlist, the evidence supports that her name would no longer be on the 2020 Housing Applications waitlist. Based on the practice of removing people from the list who have not reapplied, Ms. Iron's 2018 housing application would not reasonably be included on the 2020 Housing Applications list, with the application dates ranging from January of 2019 to March of 2021.

[127] The Tribunal was not provided with evidence about who removed Ms. Iron's name such that it did not appear on the 2020 list, which was prepared after she filed her human

rights complaint in March of 2019. While an assumption that her name was removed because she filed a human rights complaint "may be sufficient for an investigation or a mediation, it is not sufficient to make a finding of retaliation under section 14.1 of the CHRA before the Tribunal" (*Dixon* at para 65).

[128] To be successful before the Tribunal, there must be evidence, not only suspicions or presumptions. I acknowledge that it can be difficult to prove retaliation as it is rarely done overtly, but "this cannot override the requirement to support allegations with evidence and not assumptions" (*Dixon* at para 67). The balance of probabilities in this case does not favour Ms. Iron's submission that she experienced retaliatory discrimination by having her name removed from the housing waitlist.

(b) Conclusion

[129] I do not find that Ms. Iron has proven on a balance of probabilities that Canoe Lake retaliated against her contrary to section 14.1 of the CHRA. The evidence presented in this case was not complete and sufficient to find that Ms. Iron's name was removed from the 2020 Housing Applications list at least in part because she filed a human rights complaint.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
May 10, 2024

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T2718/9421

Style of Cause: Iron v Canoe Lake Cree First Nation

Decision of the Tribunal Dated: May 10, 2024

Date and Place of Hearing: August 31-September 2, 2022

Hearing by Zoom Videoconference

Appearances:

Judith Iron, for the Complainant

Christine Singh, for the Canadian Human Rights Commission

Lorne R. Fagnan and Sydney A. Young, for the Respondent