

**Canadian Human
Rights Tribunal**



**Tribunal canadien
des droits de la personne**

Citation: 2024 CHRT 85
Date: June 18, 2024
File No.: HR-DP-2927-23

Between:

Shirley Mason

Complainant

- and -

Canadian Human Rights Commission

Commission

- and -

St. Theresa Point First Nation

Respondent

Decision

Member: Colleen Harrington

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I. Overview

[1] The Complainant, Shirley Mason, is a member of the Respondent St. Theresa Point First Nation (STPFN), which is a fly-in community of around 4000 people, approximately 600 kilometers northeast of Winnipeg, Manitoba. It is also accessible by boat in the summer and by a seasonal winter road.

[2] Ms. Mason says that, in 1996, a traditional healer in the community, Elie Monias, who I will refer to in this decision as “EM”, took advantage of his position to lure her to his office where he touched her without her permission in a sexual manner. He told her no one would believe her if she tried to tell anyone about what he had done to her. After this incident she felt uncomfortable around EM, and scared of him, and she tried to avoid him.

[3] In 2016, twenty years after EM sexually assaulted her, Ms. Mason was working for the STPFN Health Authority when EM was hired as her supervisor. She had worked for the Health Authority since 2011 and, prior to EM becoming her supervisor, she had not received any reprimands or negative feedback about her work performance. Ms. Mason learned that, after EM started working at the Health Authority, he began complaining about her. She alleges that EM unfairly criticized her work to her employer, said false and negative things about her to senior managers and to at least one STPFN Band Councillor, and generally tried to force her out of the workplace. Ms. Mason received a letter of reprimand in April of 2017, and was dismissed from her employment in January of 2019. Ms. Mason says there was no legitimate basis for the termination of her employment.

[4] Ms. Mason believes that she was targeted by EM because she had previously rejected his inappropriate touching, and because she was the only woman working in her program at the Health Authority, and because she was a member of MADD. Ms. Mason says that MADD stands for Mothers Against Drugs and Dealers. MADD is made up of mothers and grandmothers fighting against illegal drugs and drug dealers in STPFN.

[5] Ms. Mason’s complaint is not against EM, who passed away prior to the hearing, but rather is against her employer STPFN. She alleges that both the reprimand and her

dismissal constituted sex-based discrimination by STPFN, contrary to section 7 of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6 [CHRA].

[6] STPFN did not respond to the complaint at any stage of the proceedings and did not participate in the hearing.

II. Decision

[7] The complaint is substantiated. Ms. Mason's sex was at least a factor in STPFN's decision to reprimand her and to terminate her employment, which constitutes discrimination contrary to section 7 of the CHRA. Ms. Mason is entitled to personal remedies to make her whole, and to public interest remedies to prevent a reoccurrence of the discrimination.

III. STPFN's Lack of Participation

[8] The only witness who testified at the hearing of this complaint was Ms. Mason. Counsel for the Canadian Human Rights Commission (Commission) participated in the hearing by asking Ms. Mason questions to ascertain her evidence and by making closing submissions.

[9] In order to comply with the principles of natural justice and procedural fairness, the Tribunal was required to give STPFN a full and ample opportunity, in person or through counsel, to appear at the inquiry, present evidence and make representations (sections 48.9(1) and 50(1) of the CHRA). Although officially notified, STPFN chose not to participate in the inquiry. In fact, STPFN did not participate in the proceedings at any stage, despite numerous attempts at contact by the Commission and the Tribunal.

[10] On January 31, 2023, the Commission referred Ms. Mason's complaint against STPFN to the Tribunal for an inquiry. The Tribunal reached out to STPFN to notify it about this human rights complaint several times. This included a letter from the Tribunal's Chairperson to Chief Elvin Flett dated July 17, 2023, sent by email and certified mail. The letter stated that if STPFN did not respond to the Tribunal it could lose the opportunity to file

a Statement of Particulars, and that case management and a hearing could proceed in its absence. Delivery of this letter to the Respondent was confirmed by Canada Post.

[11] The Tribunal has sent emails, left telephone messages, including with a receptionist for STPFN, and sent letters by certified mail, and has never received a response from STPFN. The Commission also notified the Tribunal of its repeated efforts to reach the Respondent during its screening process. STPFN did not reply to the Commission either.

[12] On September 26, 2023 the Tribunal's Registrar provided a Notice of Hearing to all parties. The Notice was sent by email and by certified mail to STPFN, and Canada Post confirmed that the letter was picked up from the post office in STPFN on October 17, 2023. The Notice of Hearing included the date and time of the hearing, as well as information about how to join the hearing by Zoom videoconference. The Notice states: "If you do not attend the hearing, the Tribunal may proceed in your absence, and you will not be entitled to any further notice in these proceedings."

[13] Despite these efforts, STPFN did not attend the Tribunal's Zoom videoconference hearing on October 30, 2023. With the agreement of the Commission and Complainant, the Tribunal decided to proceed with the hearing in the Respondent's absence as permitted by Rule 9 of the *Canadian Human Rights Tribunal Rules of Procedure, 2021, SOR/2021-137 [Rules of Procedure]*. The Tribunal was satisfied that STPFN had been provided with an ample opportunity to participate and was clearly notified of the hearing date, time and method.

IV. Ms. Mason was a credible witness

[14] The Tribunal "can accept some, all, or none of a witness' evidence depending, in part, on their credibility" (*Dicks v Randall*, 2023 CHRT 8 at para 6).

[15] The British Columbia Court of Appeal described the approach that should be taken to assess credibility in *Faryna v Chorny*, 1951 CanLII 252 (BC CA):

...Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors combine to produce what is called credibility.

The credibility of interested witnesses, particularly in cases of conflict of evidence cannot be gauged solely by the test of whether the personal demeanor 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 the witness in such a case must be in 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 (...) Again a witness may testify to what he sincerely believes to be true, but he may honestly be mistaken (pg. 356-357).

[16] Considering the factors set out in *Faryna v Chorny*, I found Ms. Mason to be a credible witness. Her evidence was reasonable, believable, and internally consistent. As STPFN did not participate, Ms. Mason's evidence was not challenged. None of the evidence presented before the Tribunal, including letters from STPFN to Ms. Mason, contradicted her narrative. As a result, I accepted Ms. Mason's evidence in its entirety.

V. Issues

[17] I must decide the following issues:

- 1) Did STPFN discriminate against Ms. Mason contrary to section 7 of the CHRA by reprimanding her and terminating her employment based, at least in part, on her sex?
- 2) If Ms. Mason has established that she was discriminated against, what personal and/or public interest remedies should be ordered against STPFN?

VI. Analysis

Issue 1: STPFN contravened section 7 of the CHRA

(i) Legal Framework

[18] Section 7(a) of the CHRA says that it is a discriminatory practice, directly or indirectly, to refuse to continue to employ an individual on a prohibited ground of discrimination. Section 7(b) provides that it is a discriminatory practice in the course of employment to differentiate adversely in relation to an employee based on a prohibited ground of discrimination.

[19] Ms. Mason alleges that her sex was a factor in how STPFN treated her during her employment and in its decision to terminate her employment. Ms. Mason must prove that the way she was treated by STPFN was, on its face, discriminatory, which is more formally referred to as establishing a *prima facie* case of discrimination (*Johnson v Membertou First Nation*, 2024 CHRT 16 at para 18). 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” (*Ontario Human Rights Commission and O’Malley v Simpsons-Sears Ltd.*, [1985] 2 SCR 536 at para 28).

[20] To establish a *prima facie* case, Ms. Mason must prove that it is more likely than not (i.e., on a balance of probabilities) that:

- 1) she has a characteristic protected under the CHRA (i.e., a prohibited ground of discrimination);
- 2) she experienced an adverse impact with respect to her employment; and
- 3) the prohibited ground of discrimination was a factor in the adverse impact

(see *Stewart v Elk Valley Coal Corp.*, 2017 SCC 30 at para 69).

(ii) Facts

[21] The following facts are relevant to determining whether Ms. Mason experienced *prima facie* discrimination.

[22] STPFN is governed by a Chief and Councillors who are elected by the First Nation’s membership. Ms. Mason has lived in STPFN most of her life. She has 5 children and 14 grandchildren. She provides for her family, including those who live with her in STPFN and some family members who live in Winnipeg to attend school.

[23] After her youngest child was born in 1996, when she was 30 years old, she experienced severe depression with anxiety and panic attacks for which she sought treatment. She attended the health centre in the community and she also received treatment from traditional healers. She attended sweat ceremonies almost daily at the two sweat lodges in STPFN at that time. One of them was operated by EM, who was well-respected

in the community. She described herself as very vulnerable at the time and said she would have done anything he told her.

[24] Ms. Mason testified that EM took advantage of her vulnerability and one evening he told her she needed to meet with him for healing. He took her to his office where they were alone and he touched her without her permission in an inappropriate and sexual manner, unbuttoning her shirt and trying to undo her bra. Ms. Mason said she felt uncomfortable and confused and moved away from him. EM told her no one would believe her if she told anyone about what he did. She left and she later asked the other sweat lodge holder if what EM did to her was appropriate. He said what had happened to her was wrong. However, he did not do anything about it. When she told her uncle what happened, he told her not to tell anyone. Ms. Mason told her sister, who believed her, and said EM had tried to do something inappropriate with her as well in a hotel room in Winnipeg. Ms. Mason did not tell the police what EM did to her.

[25] Ms. Mason said whenever she saw EM in the community after this incident, she felt scared and uncomfortable around him. She said she could not avoid him entirely because it was a small community. He continued to be well-respected. A page from STPFN's website entered as an exhibit at the hearing shows EM was a member of the Council of Elders. Ms. Mason said the Council of Elders works for the people and their role is to protect the community, and to advocate for them to the Chief and Council.

[26] Ms. Mason started working for the STPFN Health Authority in or around September of 2011 as a receptionist for the Traditional Healing Program. Her job title and role changed over time as she worked there. Sometimes she would coordinate programs and she eventually became a traditional support worker.

[27] Ms. Mason reported to the Coordinator of her program. All of the supervisors at the Health Authority were men when she worked there, as were all of the other people who worked in the Traditional Healing Program with her.

[28] Ms. Mason testified that she did not receive any performance reviews while she worked for the Health Authority. From 2011 to 2016, she did not receive any complaints about her workplace conduct or performance. She eventually applied for the job of

Traditional Healing Coordinator and, despite being ranked second out of five applicants, the job was given to EM, who was ranked fourth. She felt this was unfair and she was disappointed. She also felt frustrated and anxious about having EM as her supervisor and she was fearful of what he would do to her. She testified that she had heard that EM had been asking STPFN's then-Executive Director Robert Flett to hire him for the Coordinator position even before the job was posted. She said that Robert Flett and EM were very close.

[29] In the spring of 2016, EM became Ms. Mason's supervisor. She had lost respect for him because of what he had done to her twenty years before. She said she was scared of him and she thinks he knew this. Ms. Mason said that EM was ok with the other staff, but there were no other women working in their program. She tried to avoid EM as much as she could but it was difficult because she was working for him.

[30] Ms. Mason said she told two women who worked for STPFN what EM had done to her in 1996 and that she was afraid of what might happen working with him. One of these women was the human resources worker Charlene Mason. The other was Angela Mason, who she described as the Director of Operations, and who she said worked for her brother. Ms. Mason's brother, Elvin, was the Health Director at the time. Neither of these women did anything after Ms. Mason told them what EM had done to her.

[31] After working with EM for a while, other people, including her brother Elvin, told her EM had been complaining about her, trying to get her fired. One of the Band Councillors once said to her that he was surprised to see Ms. Mason at her desk because EM had told him she was never there.

[32] Although some of Ms. Mason's evidence was hearsay, much of it was supported by documentary evidence presented at the hearing. In April of 2017, Ms. Mason received a letter of reprimand signed by the then-Executive Director of STPFN, Robert Flett (the "Reprimand Letter"). The Reprimand Letter says that it had been brought to Mr. Flett's attention that Ms. Mason had been absent from her post on a daily basis and had not been available to perform her duties as the Secretary to the IRS (Indian Residential School) program. Mr. Flett says in the letter that he was going to instruct Ms. Mason's Coordinator (EM) to provide an update in two weeks to see if her performance had improved, and he

reminds her to follow the “line of communication”, meaning she must speak to her Coordinator first about any concerns.

[33] Ms. Mason testified that it was not true that she was absent from her post, although she admits that she was often late for work, which she said was normal for everyone in the office. She said she had been going to work every day despite her anxiety and feeling uncomfortable working with EM. She needed her job in order to take care of her family. She said she was not surprised to receive the letter, however, because she had already been told that EM was complaining about her.

[34] Ms. Mason testified that, about a year after she was dismissed, she was in Winnipeg and saw Mr. Flett and asked him why he had written the Reprimand Letter. He told her he was sorry and that it was EM who had complained about her and wanted her out of the Health Authority.

[35] In July of 2018, Ms. Mason signed a Code of Ethics which was part of STPFN's Human Resource Policy. She also signed an Oath of Confidentiality agreeing not to disclose records or communications she received in the course of her employment.

[36] Between April of 2017 when she received the Reprimand Letter, and January of 2019, when her employment was terminated, Ms. Mason says EM did not advise her of any issues he had with her performance and she received no updates or further reprimand letters. No one ever talked to her about breaching the Code of Ethics or the Oath of Confidentiality or about making inappropriate comments on social media.

[37] On January 15, 2019, Ms. Mason was given a “Notice of Disciplinary Dismissal from Job Position” signed by Stewart McDougall, who had become the Executive Director of STPFN (the “Dismissal Letter”). The Dismissal Letter states that Ms. Mason was being immediately terminated from her job as the IRS Traditional Support Worker. The reason given for her dismissal was that she had breached the Human Resource Policies, specifically the Employee Conduct and Standards of Performance, the Code of Ethics, and the Communications/Social Media Policy.

[38] The Dismissal Letter says that “there were previous concerns in the past that were brought to you by your immediate supervisor regarding your overall work performance”, including tardiness, insubordination, poor work attitude and “failure to seek approvals from your immediate supervisor for work action”.

[39] The Dismissal Letter also refers to two social media posts Ms. Mason made in November and December of 2018. With regard to the November post, Mr. McDougall says Ms. Mason posted about community issues and made unprofessional comments about her employer, the Chief and Council of STPFN. He says that, with regard to the December post, Ms. Mason had commented on social media about drugs and needles and made “unprofessional comments as a health care worker for our community members.” Mr. McDougall says, “this is not the first time you have been approached for this specific matter.”

[40] The Dismissal Letter reminds Ms. Mason that she signed the Code of Ethics Policy, Oath of Confidentiality and Social Media Policy from the STPFN Human Resource Policy Manual in July of 2018. Mr. McDougall says that employees and community members are obligated by custom and tradition to have the utmost respect at all times for their community leadership, the Chief and Council of STPFN. Mr. McDougall says that anything that can hinder a health care worker’s relationship with their client is not acceptable by the employer as they want community members to feel comfortable and welcomed to seek their services.

[41] Mr. McDougall summarizes by saying Ms. Mason was being terminated for breaching the Code of Ethics Policy, breaching the Social Media Policy, and for her overall work performance. Along with the referred-to policies and social media posts, he attached to the letter a copy of a “list of concerns brought forward and identified by your immediate supervisor.” The list of concerns that was entered as an exhibit at the hearing consists of ten points, including that she was hardly in the office, did not file progress reports or financial reports, that she did not consult with her supervisor or the staff, that she was only interested in travel, did not listen to her supervisor, that she was “backstabbing” and talked behind peoples’ backs, was insubordinate, and had possibly moved into the Healing Centre without consulting with her supervisor, among others.

[42] Ms. Mason testified that she was surprised when she saw the list of concerns document and denies that they are true. She said that this was the first time she had seen this list. She denies that EM or anyone else ever spoke to her about these issues or any other job performance issues, aside from the reprimand letter she received in 2017, which did not come directly from EM.

[43] Ms. Mason said that EM knew that she was working out of the Healing Centre, which was an old hotel that had been given to the Traditional Healing Program to house some of the many homeless people in the community. She had cleaned and fixed up the building and says she was told to start running programs out of there, which she did. She started a volunteer breakfast program, which had a good turnout. She testified that EM knew what she was doing.

[44] The Dismissal Letter advises Ms. Mason to improve her “work skills and general attitude in a workplace” and says that, if there are personal issues that are contributing to the past work performance concerns, she should address them. The letter says that Ms. Mason may not work for STPFN for the next six months, that she is encouraged to use this disciplinary measure as a constructive tool, and concludes by saying, “we look forward to having you back with our team of efficient workers for our community”. The letter states that she may have the opportunity to appeal the dismissal decision and that she may send an appeal letter to Mr. McDougall but that she would not necessarily be granted an appeal hearing, as this “depends on an individual case”.

[45] Ms. Mason testified that, while her brother Elvin told her to appeal and he would support her, she told him she would not be successful anyway and so she did not bother. Ms. Mason did, however, meet with Mr. McDougall at some point after receiving the Dismissal Letter and he told her that “all of this is coming from your supervisor [EM].” He said that EM had been coming to see him to try to have Ms. Mason fired since Mr. McDougall’s first day as the Executive Director.

[46] Ms. Mason says that they have a teaching in STPFN that they are not supposed to disrespect Elders and she thinks this is why her reprimand and termination were allowed to happen, as no one would stand up to EM on her behalf.

[47] With regard to her social media posts, although the Dismissal Letter says that this was not the first time Ms. Mason had been approached about this issue, she says no one had ever spoken to her about this before she received the Dismissal Letter. The two posts mentioned in the Dismissal Letter were entered as exhibits. Ms. Mason pointed out that the person who had printed them off to attach to the Dismissal Letter was Angela, the Director of Operations who worked for her brother, and who knew about what EM had done to her.

[48] In the November 2018 social media post, Ms. Mason says she supports a “bi-election (*sic*) because the leaders are not doing anything to protect the community, they just allow so many drugs and meth to happen ... we need strong leaders who will fight for our community’s well being. [T]hose who are not affected by meth addictions have no idea what its like, we do what we can at home with our children and grandchildren” [as written]. In the December 2018 social media post, Ms. Mason is responding to a post by someone who had identified suspected drug dealers in the community by saying: “it’s okay, they can supply drugs and needles, its allowed in stp. [S]o any outsiders who want to come sell drugs and needles too, youre most welcome!!” [as written]

[49] Ms. Mason testified that these two posts were made in her capacity as a member of MADD. STPFN is a dry community and, despite the MADD group making reports to the Band Office and the police station about who the suspected drug dealers in the community were, the MADD group felt nothing was being done to stop them. Ms. Mason said that there was no support for MADD from the Chief and Council or the local police and so they eventually “gave up”. She testified that neither of these posts was related to her work for STPFN.

[50] Ms. Mason said that she is entitled to have her political opinions and can support a referendum for a by-election. With regard to the December 2018 post, she said she was being sarcastic. She was frustrated because the names of these suspected drug dealers had been provided to the police and to the Chief and Council, but nothing had been done about them. She said she made these posts on behalf of the community, to raise awareness about the drug crisis affecting STPFN.

[51] Ms. Mason said that her messages were posted on a public Facebook wall where everyone could see them. No one from her workplace, including her Coordinator EM or the Health Director, spoke to her about her posts.

[52] Ms. Mason does not think she breached the Employee Code of Ethics or Social Media Policy or the Oath of Confidentiality, as stated in the Dismissal Letter. No one approached her with any concerns relating to these policies prior to her termination. She said she never talked about her work in any social media posts, or shared information that she learned about through her job.

(iii) *Prima facie* discrimination

[53] STPFN has provided no response to the complaint and did not participate in the hearing. As such, the Tribunal's task is to consider all the evidence and arguments presented by Ms. Mason and the Commission to determine if Ms. Mason has proven the three elements of a discriminatory practice on a balance of probabilities (see *Quebec (Commission des droits de la Personne et des droits de la jeunesse) v Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 [*Bombardier*] at paras 56 and 64; see also *Peel Law Association v Pieters*, 2013 ONCA 396 at paras 80-89).

i. Ms. Mason has a characteristic protected under the CHRA

[54] Ms. Mason has met the first element of the *prima facie* test. She alleges that she was treated unfavourably and terminated from her employment at least in part because she is a woman. Sex is a prohibited ground of discrimination under section 3 of the CHRA.

ii. Ms. Mason experienced an adverse impact with respect to her employment

[55] Ms. Mason has also met the second element of the *prima facie* test. Not only did STPFN reprimand Ms. Mason for what she says were unsubstantiated reasons that had never been raised before EM started working as her supervisor, but it also terminated her employment for what she says were similarly unsubstantiated reasons.

iii. Ms. Mason's sex was a factor in the adverse impact she experienced

[56] To prove the third element of the *prima facie* discrimination test, Ms. Mason must show that there is a connection between the first two elements. The protected characteristic need not be the only factor that led to the adverse treatment and a causal connection is not required (*First Nations Child and Family Caring Society of Canada v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at para 25).

[57] The Tribunal has acknowledged many times that proving discrimination by way of direct evidence is often difficult. As overt discrimination is rare, the Tribunal "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 v Gambler First Nation*, 2018 CHRT 26 at para 59 referring to *Basi v Canadian National Railway*, 1988 CanLII 108 (CHRT)). A complainant is also not required to prove that discrimination was done intentionally (*Bombardier* at paras 40-41). The Tribunal is not concerned with intention but rather with the effect of the discrimination.

[58] Indeed, the evidence in this case does not lead to the conclusion that STPFN intended to discriminate against Ms. Mason or that its actions to reprimand and terminate her were consciously done *because* she is a woman. This is not a case where the discriminatory nature of the conduct is "glaringly obvious" (see *Young v Via Rail Canada Inc.*, 2023 CHRT 25 [*Young v Via Rail*] at para 156). However, when I consider all of the circumstances surrounding the adverse treatment Ms. Mason experienced, I accept that it is more likely than not that her sex was a factor in both the reprimand and her dismissal.

[59] While neither of the Executive Directors' letters are overt in linking her reprimand or termination to her sex, both letters rely mainly on the issues EM raised about Ms. Mason.

[60] The Reprimand Letter says that Mr. Flett had been told that Ms. Mason was absent from her post on a daily basis and that she had not been available to perform her duties as the Secretary to the IRS program. Ms. Mason says this is untrue, but that she was not surprised to receive the letter because she had already been told by her brother and by the Band Councillor that EM was complaining about her. Mr. Flett confirmed this when she

confronted him later about the Reprimand Letter. He apologized to her and said it was EM who had complained and that he wanted her gone.

[61] The Dismissal Letter summarizes the reasons for her termination as her overall work performance, her breach of the Code of Ethics Policy, and her breach of the Social Media Policy.

[62] With regard to the work performance complaints, the evidence shows that EM was targeting Ms. Mason, apparently since he first became her supervisor. Ms. Mason's evidence was that she had not received any negative performance reviews or reprimands prior to working with EM.

[63] In the Dismissal Letter, Mr. McDougall says that concerns regarding Ms. Mason's work performance were raised by her "immediate supervisor", who was EM. Ms. Mason said that when she inquired about her dismissal, Mr. McDougall explained that it was coming from EM, who had been complaining about her and pushing for her to get fired since Mr. McDougall's first day as Executive Director.

[64] The documentary evidence also indicates that the complaints against Ms. Mason stemmed from something other than genuine performance issues. The list of ten concerns included as part of her Dismissal Letter that apparently came from EM are quite vague when one considers the seriousness of the consequence to Ms. Mason of losing her job. Some are apparently unconfirmed. For example, concern number seven says: "Moved in at the healing center? Did she consult with supervisor?" Four separate concerns on the list relate to Ms. Mason not consulting with or listening to her supervisor. The inclusion of uncertain or unverified information on a list of concerns given as a reason for terminating her employment, along with the repetition of the same or substantially similar concerns, underlines the targeted nature of EM's complaints.

[65] Moreover, the emphasis on this alleged "insubordination" implies an inability to control Ms. Mason. EM had previously demonstrated a desire to control Ms. Mason when he sexually assaulted her several years earlier, and then told her that she would not be believed if she told anybody. While sex was evidently a factor in the sexual assault that took place, that incident is not attributable to STPFN. However, it provides important context to

the current complaint, especially since the complaints and concerns about Ms. Mason that led to her reprimand and termination largely came from EM (see *Connors v Canadian Armed Forces*, 2019 CHRT 6 at paras 44-48).

[66] In *André v Matimekush-Lac John Nation Innu*, 2021 CHRT 8 [André], the Tribunal found that the circumstantial evidence before it allowed it to infer, on a balance of probabilities, that sex was a factor in the adverse impact in that case. The evidence considered included the following factors that share similarities with Ms. Mason's case: the respondent used his authority and his powers to control the complainant (para 98); the complainant had never had any problems during the seven-year period before the respondent arrived at her workplace (para 99); the complainant was afraid of the respondent and she feared the moment he would arrive to work (para 101); other women in the community experienced similar attitudes and inappropriate, misplaced behaviour from the respondent (para 102); and the respondent "had and wanted to have control over" the complainant and the other women in the community (at para 103).

[67] Although Ms. Mason's evidence was that EM had tried something similarly inappropriate with her sister at some point, the Tribunal does not need to determine whether EM exhibited discriminatory behaviors against women generally. In *Young v Via Rail*, the complainant testified that she believed the respondent was targeting her and was exhibiting "a pattern of behaviour [...] intended to assert control and dominance over her in the workplace" (para 102). The Tribunal noted that the question before it was not whether the respondent "has disdain for all women, or whether he is unable to work with women at all." Rather, the question was whether sex was one of the factors that played into the discriminatory behaviour (para 192). The same is true in this case. Ms. Mason's sex does not need to be the primary factor or an intentional cause of STPFN's actions, it need only be a factor.

[68] I accept that EM, through his actions, discriminated against Ms. Mason because she is a woman and notably because she is a woman he had previously sexually assaulted. Ms. Mason testified to dreading the day EM would start working at the Health Authority and to feeling anxious and scared while working with him. She had no work-related concerns or reprimands in the five years she worked at the Health Authority before EM was her

supervisor. The evidence shows that EM complained excessively about Ms. Mason, and he began doing so as soon as he arrived, apparently with the goal of having her terminated. None of his complaints about her appear to be related to improving Ms. Mason's work performance since he did not do any assessments or evaluations of her performance during the nearly three years that he was her supervisor. Rather, the evidence leads to the conclusion that EM sought to exercise control over Ms. Mason and over the work environment by placing unwarranted pressure on STPFN's Executive Directors to reprimand her and terminate her.

[69] EM used his authority as a supervisor and his influence within the community to have Ms. Mason terminated just as, apparently, he had used his influence to be hired for the job in the first place, given that he placed fourth in the job competition, while Ms. Mason placed second. Moreover, Ms. Mason was the only female working in the Traditional Healing Program and EM targeted her while treating the male staff well. After she was fired, the Health Authority hired a man to fill Ms. Mason's position.

[70] STPFN may claim to have been merely following recommendations made by Ms. Mason's supervisor. However, the Health Authority was aware that EM was specifically targeting Ms. Mason. Ms. Mason's brother Elvin told her that EM was complaining about her and trying to get her fired. STPFN's Executive Directors Mr. Flett and Mr. McDougall confirmed this. Ms. Mason had also informed not only Angela, who worked for the Health Director, but also Charlene from human resources about EM's previous sexually inappropriate conduct towards her. Despite this, the Health Authority abruptly ended Ms. Mason's employment in January 2019, without first cautioning her or seeking to better understand the situation or to determine her position with regard to the complaints about her performance. Angela even printed off Ms. Mason's social media posts that supported her termination. As an employer, STPFN cannot excuse discriminatory employment practices of co-workers or supervisors, and it certainly cannot base termination decisions on these practices (*Imberto v Vic and Tony Coiffure*, 1981 CanLII 4320 (ON HRT) at para 23).

[71] Ms. Mason testified that the only other negative feedback she had received prior to being terminated was the Reprimand Letter. The Dismissal Letter cannot reasonably be interpreted as a follow-up to the Reprimand Letter since more than 1.5 years had passed in

between them and the Reprimand Letter was about her being absent from her post almost daily and not being available to perform her duties as the secretary to the IRS program. The Reprimand Letter references instructing her Coordinator (EM) to provide an update in two weeks to see if her performance had improved. Ms. Mason said no one ever followed up with her again about the issues in the Reprimand Letter. There is no reference in the termination letter to her being absent from her post or not performing her job duties, although the unsigned and undated list of concerns does say "Hardly at office". Ms. Mason testified that her job duties had taken her to the Healing Centre to run programs for which she had approval from her superiors, who were well aware of what she was doing there.

[72] As such, based on the evidence before the Tribunal, Ms. Mason's work performance does not appear to be a valid reason for terminating her employment, although determining this is not the Tribunal's role. The Tribunal need only conclude that her sex was a factor in the termination.

[73] With regard to the allegation that she breached the Code of Ethics Policy, I note that the Code of Ethics entered as evidence is very general and addresses everything from employee performance to conflicts of interest. The Dismissal Letter does not specify exactly how Ms. Mason breached the Code of Ethics. If it was for poor work performance, this does not appear to be legitimate for the reasons noted above (the lack of work performance issues raised with her before EM arrived, the targeted nature of the complaining, and Ms. Mason not being told about the concerns until her termination, etc.). The Dismissal Letter states: "In reference the Code of Ethics Policy. ... 'Employees who breach the Code of Ethics will be disciplined as per the Discipline and Dismissal Policy'" [as written]. While that statement does not appear in the Code of Ethics document provided as evidence, the fact remains that any discipline should be proportional to the breach. It is not clear how Ms. Mason breached the Code of Ethics and why it would warrant something as severe as termination, especially without a warning or investigation first.

[74] I note also that the Oath of Confidentiality referred to throughout the Dismissal Letter appears to be irrelevant because it relates to divulging confidential information such as records and communications received as an employee of STPFN. There are no allegations related to Ms. Mason doing this in the Dismissal Letter or anywhere else.

[75] With regard to the Social Media Policy, paragraph 6(h) of this Policy states: “the Employees must be aware that the Employer will consider any breach of the social media and communications policy to be significant and will take **appropriate disciplinary action, considering the severity of the breach**, which may include termination from employment” [emphasis added]. The Dismissal Letter says that, in her November post, she wrote about community issues and made unprofessional comments about her employer, the Chief and Council of STPFN. The Social Media Policy does not say employees cannot post about community issues. In any event, if her November 2018 post was considered serious, she should have been given a warning or caution after that. Despite Mr. McDougall’s assertion in the letter that “this is not the first time you have been approached for this specific matter”, Ms. Mason testified that it was in fact the first time her employer spoke to her about her social media use.

[76] With regard to the December 2018 post, Mr. McDougall says in the Dismissal Letter that she had written about drugs and needles and made “unprofessional comments as a health care worker for our community members.” Ms. Mason admitted that her December 2018 post was made in a sarcastic tone and was written in frustration with STPFN’s leadership not doing enough in MADD’s view to address the illegal drug crisis in the community. While not professional, it was not written in her capacity as an STPFN employee, but as a community member and a member of MADD.

[77] Using these two Facebook posts to terminate her employment without taking any action to address the issue when it first arose is indicative of using the information to justify the overall goal of wanting to terminate her, which was EM’s goal from the start of his employment at the Health Authority.

[78] Finally, I note that Ms. Mason was made to sign these policies (Code of Ethics, Oath of Confidentiality, Social Media Policy) on July 25, 2018, and a few months later, those same documents were used to terminate her. Given that they were policies put in place just months prior, it would have been reasonable for her to be properly warned or given more fulsome explanations as to what they entailed and how she may have breached them before being terminated. This, when combined with EM’s campaign to have her fired apparently from the time he started working with her in 2016, make her termination suspicious. As the

Commission said in its closing submissions, the lack of detail about the critical decision of terminating her employment suggests STPFN's reasoning may be pretextual.

[79] Because STPFN did not participate in the hearing or file a response to the complaint at any stage, the Tribunal lacks the benefit of an explanation about why they accepted the perspective of EM without putting his concerns directly to Ms. Mason, an employee who had worked for the Health Authority for five years without performance issues prior to EM being hired to work there. STPFN apparently did not question why all of a sudden Ms. Mason's work performance had begun to suffer only after EM started working as her supervisor.

[80] Rather than confirming whether any of EM's allegations about Ms. Mason were true – or according her the most basic level of procedural fairness by putting the concerns to her to address – the male STPFN Executive Directors, Health Director, and Band Councillor all accepted the word of another man (EM) that Ms. Mason was a poor employee deserving of reprimand and, ultimately, termination. The only verifiable evidence that supports any of the concerns raised in the Dismissal Letter are Ms. Mason's two social media posts, which she admits to writing in her role as a concerned mother and grandmother.

[81] Ultimately it is not up to the Tribunal to decide that Ms. Mason's sex was the only reason for her termination. I find that the circumstantial evidence presented allows me to infer, on a balance of probabilities, that Ms. Mason's sex was a factor in her reprimand and termination. In coming to this conclusion, I have accepted that the evidence presented makes the inference that Ms. Mason's sex was at least a factor in her reprimand and termination more probable than other possible inferences or hypotheses (see *Young v Via Rail* at para 32).

(iv) Conclusion

[82] I accept that it is more likely than not that Ms. Mason's sex played at least some role in the adverse impact she experienced, including her termination. As such, Ms. Mason's complaint is substantiated, as she experienced discrimination contrary to section 7 of the CHRA on the basis of her sex.

[83] Ms. Mason's complaint was filed against STPFN, not against EM or any other employee. As STPFN did not participate in this inquiry, it did not raise a defence under the CHRA, nor did STPFN rebut the presumption of liability under subsection 65(1) of the CHRA. STPFN is therefore responsible for the actions of the individuals involved in the events that led to the complaint, including Ms. Mason's reprimand and termination.

[84] I will now consider the remedies available pursuant to the Tribunal's remedial and preventative jurisdiction established by section 53 of the CHRA.

Issue 2: Ms. Mason is entitled to the Following Remedies

[85] Section 53(2) of the CHRA states that if, at the conclusion of the inquiry the Tribunal finds that the complaint is substantiated, the Tribunal may make an order against the person found to have engaged in the discriminatory practice. In this case I have found that STPFN engaged in a discriminatory practice under section 7 of the CHRA.

[86] The purpose of a remedial order under the CHRA is not to punish the respondent, but to make the complainant whole – i.e. to return them to the position they would have been in had the discrimination not occurred (*Hughes v Canada (Attorney General)*, 2019 FC 1026 [Hughes] at para 36). The Tribunal also has an interest in eliminating and preventing discrimination by crafting remedies designed to educate individuals about the rights enshrined in the CHRA.

[87] Ms. Mason asks the Tribunal to award her \$20,000 for the pain and suffering she experienced as a result of the discrimination, as well as \$20,000 in special damages. She also seeks lost wages for the period of time from her termination until she was reemployed.

[88] The Commission seeks public interest remedies related to policies and training, to prevent the same or similar discriminatory practices from occurring in the future. The Commission also asks the Tribunal to remain seized of the matter and to retain jurisdiction to receive evidence and/or to make such further orders as may be required until the parties confirm that all remedies have been implemented.

(i) Damages for Pain and Suffering

[89] The Tribunal may award up to \$20,000 for pain and suffering experienced as a result of a discriminatory practice (section 53(2)(e) of the CHRA). Ms. Mason asks the Tribunal to award the maximum amount for her pain and suffering and the Commission argues that Ms. Mason should receive compensation at or near the maximum amount of \$20,000. The Commission argues that the Tribunal should consider that the result of the discrimination was to deprive Ms. Mason of the employment she held for seven or eight years, on extremely short notice, and that she was banned from applying for employment with STPFN for six months. The Commission argues that living in a small and remote community with few options for employment aggravated the impact of her dismissal.

[90] Damages for pain and suffering are meant to compensate complainants, to the extent possible, for the harm and the hardship they have endured as a result of the discrimination, including any injury to their dignity (*Young v Via Rail* at para 308).

[91] The Tribunal has stated many times that the maximum award of \$20,000 tends to be reserved for the most blatant or egregious discrimination (*Young v Via Rail* at para 307). There must also be a causal connection between the damages claimed and the discriminatory practice (*Chopra v Canada (Attorney General)*, 2007 FCA 268 at para 32).

[92] I accept that Ms. Mason experienced pain and suffering as a result of the discrimination she faced. Ms. Mason testified that being terminated from her job in this way was devastating and she felt mad and hurt and could not function normally at home or bring herself to find another job right away. She said that losing her job in this way affected her relationships with her family. She said she was always drained and wanted to be left alone, especially during the first year. Ms. Mason testified that she saw the mental health therapist in the community twice, saying she decided to get help for her family's sake.

[93] Ms. Mason said it took her 21 months to find another job because she was overwhelmed and depressed and angry. She became employed again on October 30, 2020. Also, at the time of the hearing, she had only recently started going to the STPFN Band Office again, some four years after her termination.

[94] Ms. Mason testified that, as she could not apply for employment insurance because she had been fired, she had to go on social assistance, which was significantly less than her employment income. She said she still owed \$13,000 for her vehicle at the time of her dismissal and, due to the loss of her employment income, she could no longer make her vehicle payments, which she had been making biweekly. As she could not continue to make the payments, a collection agency started calling her and this affected her credit rating. Before this happened she had good credit. Ms. Mason testified that, since she became employed again she has been able to recover everything she lost, except for the vehicle, which continues to affect her credit rating.

[95] In *Young v Via Rail*, the Tribunal awarded the complainant \$12,000 for her pain and suffering. While Ms. Young did not present medical evidence pertaining to her mental health, the Tribunal determined that her testimony at the hearing left little doubt that the events described in her complaint were serious and ongoing and had impacted her dignity and sense of well-being (para 313).

[96] In *André*, where the Tribunal awarded \$17,000 the complainant submitted medical documents and psychologists' reports that included diagnoses of adjustment disorder, generalized anxiety and post-traumatic stress disorder. The reports substantiated the effects of the discrimination and harassment on her life. Ms. André's symptoms included distress, sadness, recurring fatigue, loss of appetite, insomnia, hopelessness and even suicidal thoughts (at paras 177-178).

[97] The Tribunal in *André* determined that the actions of her supervisor "destroyed" her and caused her to suffer from major mental health problems, while the respondent employer was told about the discriminatory conduct but failed to act and also terminated her employment. The Tribunal determined that the respondent's actions added to the harassment the complainant experienced and did not help to improve her mental health.

[98] In the present case, Ms. Mason did not provide any medical evidence to support the impact of the discrimination on her health, although such evidence is not required. I accept Ms. Mason's evidence that the impact of the discriminatory termination on her was very serious and the impact on her mental health, family life, dignity and her financial situation all

caused her pain and suffering deserving of compensation in the amount of \$13,000, which I find to be appropriate in the circumstances of this case.

(ii) Special Compensation for Wilful or Reckless Discrimination

[99] The Tribunal may also award up to \$20,000 if it determines that STPFN has engaged in the discriminatory practice wilfully or recklessly (section 53(3)) of the CHRA). Ms. Mason is claiming the maximum amount of \$20,000 under subsection 53(3) of the CHRA. The Commission does not take a position with respect to this request for special compensation.

[100] The Federal Court has interpreted subsection 53(3) as a “punitive provision intended to provide a deterrent and discourage those who deliberately discriminate” (*Canada (Attorney General) v Johnstone*, 2013 FC 113 at para 155, aff’d 2014 FCA 110 [*Johnstone*]). Willfulness requires a finding that “the discriminatory act and the infringement of the person’s rights under the Act is intentional”, whereas recklessness usually involves “acts that disregard or show indifference for the consequences such that the conduct is done wantonly or heedlessly” (*Johnstone* at para 155).

[101] When deciding whether or not to award special compensation, the Tribunal is to analyze the respondent’s actions, not the effects of those actions on the victim (*Beattie and Bangloy v Indigenous and Northern Affairs Canada*, 2019 CHRT 45 at paragraph 210, aff’d 2021 FCA 245).

[102] I have already determined that STPFN’s discriminatory actions were not intentional, and so I cannot conclude that it acted wilfully. However, I do conclude that STPFN engaged in the discrimination recklessly.

[103] Both of STPFN’s Executive Directors relied on information from EM to make their respective decisions to reprimand Ms. Mason and to terminate her employment. Given the lack of previous performance concerns in the five years before EM started as Ms. Mason’s supervisor, along with their admissions that EM had been coming to them to try to have Ms. Mason terminated, I find that their willingness to rely on EM’s complaints as a basis for their decisions to reprimand and terminate her does show indifference for the consequences such that the discriminatory conduct was done heedlessly. While they may not have known

what EM had done to Ms. Mason in 1996, they apparently took his targeted complaints about her at his word without putting them to Ms. Mason before acting on them. This shows a careless indifference to an employee who, prior to EM's employment as her supervisor, had an unblemished performance record.

[104] Ms. Mason testified that they are taught in STPFN not to disrespect Elders, which she thought was the reason that her reprimand and termination were allowed to happen, as no one would stand up to EM on her behalf. However, this does not excuse the failure of the Executive Directors to inquire further into EM's targeting of Ms. Mason before it resulted in such serious consequences for her.

[105] In both *Young v Via Rail* and *André*, the employers were aware of the deteriorating situation between the complainants and the individuals who were harassing them and did not act appropriately to step in and resolve situations that were toxic and harmful to the complainants.

[106] While Ms. Mason did not tell either the Health Director or the Executive Director of STPFN about how EM had sexually assaulted her years earlier, she did tell Charlene and Angela. Their job descriptions as a human resources employee and Director of Operations working for the Health Director reasonably placed some responsibility on them to communicate what they knew about EM, especially when it became apparent that his targeted complaints would result in Ms. Mason's termination.

[107] The facts in the present case do not show that STPFN's conduct was of such a nature as to warrant an award of special damages at the high end of the range, as requested by Ms. Mason. In *Young v Via Rail*, the Tribunal was satisfied that the respondent's "diminishing of the abusive and dangerous conduct within the workplace ... and its delay in providing an effective and comprehensive response to what was an increasingly toxic and harmful workplace dynamic was 'indifferent to the consequences.'" (at para 323). The Tribunal concluded that that indifference allowed the discriminatory conduct to persist for too long. The Tribunal in *Young v Via Rail* found that much of the most egregious conduct fell outside the scope of the adjudication of the complaint and, since the Tribunal accepted that the connection between the complainant's identity as a woman and her coworker's

conduct was perhaps not obvious to the respondent at the time that she raised her complaints, the Tribunal's award of special damages under s.53(3) was limited to \$3,000 (at para 324).

[108] Ms. Mason did not raise complaints about EM as directly with her employer as the complainant did in *Young v Via Rail*. At the same time, STPFN did not think to question EM's targeted complaints about a female employee who had a good employment record prior to EM's arrival. Nonetheless I accept that the connection between EM's complaints about Ms. Mason and her identity as a woman were likely not obvious to STPFN, and I find that an award of special damages under section 53(3) in the amount of \$1,500 is appropriate in the circumstances.

(iii) Lost Wages

[109] The Tribunal can compensate a complainant for some or all of the wages they were deprived of as a result of the discriminatory practice, pursuant to subsection 53(2)(c) of the CHRA. In her Statement of Particulars, Ms. Mason requests that the Tribunal order STPFN to pay her \$31,500.18 in lost wages. She describes this as being the difference between what she would have earned if she had continued to work for STPFN in her role earning \$1153.85 biweekly until she obtained a new job on October 30, 2020 (being \$52,500.18) and what she received from social assistance for 21 months at \$1,000 per month (being \$21,000). As noted earlier, Ms. Mason said it took her 21 months to find another job because she was overwhelmed and depressed and angry about being terminated from the Health Authority.

[110] In its closing submissions, the Commission says that, if the Tribunal agrees to order lost wages from the date of Ms. Mason's termination to the date of her new employment, the Tribunal should not offset the amount of social assistance received as Ms. Mason should deal with any repayment amounts on her own. The Commission says the only relevant deduction to be considered in the lost wages calculation should be mitigating income. The Commission also disagrees with Ms. Mason's calculation of the total amount of potential earnings from her Health Authority job being \$52,500.18. It says the correct amount should

be \$70,769.16 because her biweekly wage had actually been \$1,538.46 for the 11 pay periods prior to her termination (not \$1153.85 as she stated). This was confirmed by documentary evidence provided by Ms. Mason following the hearing.

[111] The Commission refers in its closing submissions to jurisprudence that has considered the Tribunal's authority to award lost wages, noting that some limits should be placed on liability for the consequences flowing from a discriminatory act. The Commission argues that, if the Tribunal decides to award Ms. Mason lost wages, it should take into consideration the scarcity of employment opportunities in STPFN, STPFN's six-month prohibition on employment with them as stipulated in the Dismissal Letter, the pain and suffering caused by the circumstances of her termination and the depression impeding her ability to quickly bounce back and search for new employment to mitigate her losses.

[112] When an employee is terminated from their employment for a discriminatory reason, the purpose of compensation is to place the employee in a position they would have been in, but for the discrimination. The "quantum of such loss is determined by assessing the circumstances of each case, but there must always be a causal connection between the discrimination and the loss of income" (*Hughes* at para 37). The onus is on the complainant to show and establish this connection (*André* at para 126).

[113] The Tribunal must exercise its discretion to award lost wages on a principled basis and the time during which a causal connection exists is a matter to be determined by the Tribunal considering the facts of the particular case (*Abadi v TST Overland Express*, 2023 CHRT 30 at para 250). The Tribunal in *Christoforou v John Grant Haulage Ltd.*, 2021 CHRT 15 at para 51, *aff'd* 2022 FCA 182 [*Christoforou*] determined that, in awarding lost wages, the Tribunal must consider when, after a grace period, the discrimination suffered by the victim stopped having an effect on his or her income-earning capacity.

[114] The Tribunal must rely on the evidence presented at the hearing and, in this case, the additional two financial documents provided by Ms. Mason on November 10, 2023, following the hearing, which were submitted without objection from the Commission and which the Tribunal accepts as evidence. These documents are Ms. Mason's Record of Employment issued by STPFN on February 22, 2019 showing that her final pay period

ended on January 25, 2019 and that her biweekly income (“insurable earnings”) since January 26, 2018 had been \$1,535.85. The second document is a report dated November 9, 2023 for Ms. Mason’s husband that shows the family received social assistance from STPFN in the amount of \$838 monthly from March of 2019 until January of 2021 (21 months).

[115] I have concluded that there was a connection between Ms. Mason’s sex and her termination. I accept that she would have continued to work at the Health Authority had she not been terminated on January 15, 2019.

[116] Ms. Mason’s evidence was that she was unable to look for employment following her termination because of the impact the termination and the circumstances surrounding the termination had on her, including a period of depression for which she went to a mental health counselor twice.

[117] I accept that Ms. Mason is entitled to a reasonable recovery or grace period following her termination during which time she was not expected to mitigate her losses. I also accept that the impact of her termination had a serious effect on Ms. Mason’s mental health and the allegations in the Dismissal Letter were very upsetting for her, as she had not been given notice beforehand of any performance issues or that she had breached any workplace policies. Having her employer of several years listen to complaints about her and believe the person who had sexually assaulted her was extremely hurtful for Ms. Mason. I accept that the discrimination impacted Ms. Mason’s ability to start mitigating her losses, especially since the community is small and remote and STPFN is the major employer in the community, and she was prohibited from applying for any jobs with STPFN for six months after her termination.

[118] Based on the facts before the Tribunal, I am unable to conclude that there is a causal link between the discriminatory act and any loss of income beyond the six-month prohibition put in place by STPFN, plus three additional months to obtain employment. While I appreciate that, even after six months, Ms. Mason was likely still very upset with STPFN, there is insufficient evidence before the Tribunal about Ms. Mason’s personal situation and health that may have prevented her from seeking comparable employment once the

prohibition ended. Given that the Dismissal Letter said she could not apply for further employment with STPFN for six months, I accept that she would require an additional period beyond the six months to actually obtain comparable employment.

[119] Ms. Mason is obviously a very smart and capable woman who has been the main breadwinner in her family for many years. She did in fact eventually obtain further employment with STPFN in a different department. In the absence of evidence about the jobs that were available in STPFN during the relevant time period, I conclude that it would be reasonable to grant Ms. Mason an additional three months beyond the six-month prohibition to obtain comparable employment.

[120] Ms. Mason is therefore entitled to \$1,538.46 in wages biweekly for a period of nine months from January 26, 2019 (the date following the last day for which she was paid by the Health Authority of January 25, 2019) to October 26, 2019, which is equal to \$769.23 per week for a period of 39 weeks, which totals \$29,999.97. I agree with the Commission that the Tribunal should not offset the social assistance amounts received by Ms. Mason's family during this time, as it is up to Ms. Mason to deal with any amounts that may need to be repaid.

[121] The respondent is ordered to pay Ms. Mason \$29,999.97 in lost wages, from January 26, 2019 to October 26, 2019, minus any statutory deductions.

(iv) Interest

[122] The Tribunal can make an award of interest on an order to pay compensation (section 53(4) of the CHRA). Any award of interest shall be simple interest calculated on a yearly basis, at a rate equivalent to the Bank of Canada rate (monthly series) (*Christoforou* para 112). Rule 46 of the Tribunal's Rules of Procedure state that interest accrues from the date on which the discriminatory practice occurred until the date of payment of the award of compensation. However, the Tribunal has the ability to vary compliance with a Rule pursuant to Rule 8, if doing so ensures the informal, expeditious and fair determination of every inquiry on its merits in accordance with Rule 5.

[123] STPFN has thus far not participated in this human rights proceeding. The Tribunal does not know why STPFN has made that choice. However, given that the Tribunal is ordering STPFN to make all payments within 90 days of the date of this Decision, I consider it fair to both the Complainant and Respondent to order that interest starts to accrue 90 days after the date of this decision until the date that payment of these award is made. It is hoped that this will act as an incentive for STPFN to comply with the order and to pay what is owing to Ms. Mason immediately. This would be in the best interest of both parties.

(v) Public Interest Remedies

[124] The Commission notes that, pursuant to section 53(2)(a) of the CHRA, the Tribunal has wide discretion to make remedial orders consistent with the broad purposes and goals of human rights legislation. It points out that the Tribunal may order a respondent, in consultation with the Commission, to review and revise policies and training materials, and/or provide training to staff on their human rights responsibilities.

[125] In the interest of trying to prevent similar discriminatory practices from occurring in the future, the Commission asks the Tribunal to order, pursuant to section 53(2)(a), that STPFN, in consultation with the Commission, take the following measures:

- a) That STPFN draft, create and implement one or more policies concerning harassment and discrimination in the workplace, including procedures or a mechanism for officially lodging complaints regarding workplace harassment and discrimination, or for reporting it, and another mechanism for its administration to respond to and process such reports and complaints;
- b) If STPFN already has such policies in place, then an order requesting STPFN to provide these policies to the Commission to review and provide recommendations, and for STPFN to implement the Commission's recommendations;
- c) That STPFN hire an external expert to provide all of its officers, directors, and agents, including the Chief and Council, as well as its employees, with training on the new policies, with a special focus on harassment and discrimination in the workplace, the complaint and reporting mechanism, and its administration's response and processing mechanism;
- d) That STPFN complies with the order regarding the policies, including training, within no more than 12 months from the date of the Tribunal's decision.

[126] The Commission submits that these public interest remedies are justified, and that the Tribunal should retain jurisdiction over the matter, because it is unclear what anti-

discrimination policies are in place in STPFN, and what mechanisms exist, if any, to respond to harassment and discrimination in the workplace. The Commission also argues that, because STPFN did not provide training on the human resources policies Ms. Mason was asked to sign and because it did not follow its own policies of progressive discipline with regard to Ms. Mason, this justifies the remedies sought by the Commission.

[127] Aside from compensating victims of discrimination, the Tribunal's authority to order remedies serves another important societal goal: "preventing discrimination and acting as a deterrent and an educational tool" (*Christoforou* at para 119). I agree that the requested public interest remedy of policy review and/or implementation will help prevent future acts of discrimination by STPFN by ensuring compliance with the CHRA.

[128] The Tribunal was only provided with portions of STPFN's human resources policies. The Employee Code of Ethics and Oath of Confidentiality are appendices to an apparently larger policy and do not mention discrimination or human rights, nor does the portion of the STPFN Human Resource Policy provided as evidence. As such, the Tribunal is unaware of whether STPFN has policies in place to deal with discrimination and harassment in its workplaces.

[129] I therefore order STPFN to work with the Commission to review and revise any of its existing anti-discrimination and anti-harassment human resources policies. If no current policies address discrimination or harassment, the Tribunal orders STPFN to work with the Commission to draft and implement such a policy, which should include a mechanism for reporting and responding to complaints.

[130] I decline to order STPFN to hire an external expert to provide training on the new policies, but I do order STPFN to provide the revised or new policies (after consultation with and approval by the Commission) to all of its employees, directors, agents and officers, including the Chief and Council. STPFN must also notify the Commission when the approved policy or policies have been shared with its employees, etc.

VII. Retaining Jurisdiction

[131] The Commission suggests that, because STPFN did not participate in the human rights proceedings, this may prejudice the implementation of orders should the Tribunal not retain jurisdiction. It asks the Tribunal to remain seized of the matter and retain jurisdiction to receive evidence and possibly make such further orders as may be required, until the parties confirm that the remedies ordered by the Tribunal have been implemented.

[132] It is unclear how having the Tribunal retain jurisdiction in a case where the Respondent has consistently ignored the Tribunal will assist in achieving these goals. I concur with the Tribunal's comments in *Lock et al. v Peters First Nation*, 2023 CHRT 55, a case in which the respondent First Nation had shown that it was resistant to change even when directed by a court. The Tribunal in that case concluded that that was not "a proper situation in which the Tribunal should retain jurisdiction", finding that "retaining jurisdiction in this case would be an inappropriate expansion of why this Tribunal has retained jurisdiction in previous cases" (at para 263). The Tribunal noted that the usual reasons for retaining jurisdiction include when the Tribunal needs to continue to decide something that is uncertain or in cases where the hearing is bifurcated to determine liability first and then remedies. Neither of these reasons applies to the present complaint, nor are there other compelling reasons to retain jurisdiction.

[133] The CHRA provides recourse for complainants if respondents do not follow the Tribunal's orders. Section 57 states that an order of the CHRA may, for the purpose of enforcement, be made an order of the Federal Court and that the Commission can assist with this by filing a copy of the Tribunal's order in the Registry of the Court. Given that the Federal Court possesses enforcement powers that the Tribunal does not, this would be the proper and most effective path to enforcing compliance with the Tribunal's orders. I decline to retain jurisdiction over this matter.

VIII. Order

[134] Within 90 days of this decision, the Respondent STPFN is ordered to pay to Ms. Mason the following amounts:

- a. \$13,000 for pain and suffering experienced as a result of the discriminatory practice;
- b. \$1,500 for reckless discrimination;
- c. \$29,999.97 in compensation for lost wages, subject to any withholdings for statutory deductions;
- d. Interest on the above amounts, calculated at a simple rate on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada, calculated as of 90 days after the date of this decision, up to the date of payment of compensation.

[135] Within 12 months of the date of the Tribunal's decision, STPFN shall work with the Commission to either review and, as recommended, revise existing policies or to create a new policy addressing workplace harassment and discrimination, including a mechanism for officially lodging complaints or reporting such behaviour, and a mechanism for the administration of STPFN to respond and process such reports and complaints. This policy must be approved by the Commission, after which STPFN is to provide the policy to its workforce, including directors and the Chief and Council, and confirm with the Commission when the approved policy has been distributed.

Signed by

Colleen Harrington
Tribunal Member

Ottawa, Ontario
June 18, 2024

Canadian Human Rights Tribunal

Parties of Record

File No.: HR-DP-2927-23

Style of Cause: Shirley Mason v. St. Theresa Point First Nation

Decision of the Tribunal Dated: June 18, 2024

Date and Place of Hearing: October 30, 2023

By Zoom Videoconference

Appearances:

Shirley Mason, Self-represented Complainant

Laure Prévost, for the Canadian Human Rights Commission