

CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIAN DES DROITS DE
LA PERSONNE

CORRINE MCADAM

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

BIG RIVER FIRST NATION

Respondent

DECISION

MEMBER: Athanasios D. Hadjis 2009 CHRT 2
2009/01/13

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[1] The Complainant, Corrine McAdam, (Corrine) is a First Nation member of the Big River First Nation, which is situated about 120 km northwest of Prince Albert, near Debden, Saskatchewan. She alleges in her complaint (which she filed with the Canadian Human Rights Commission on May 11, 2004) that the "Big River Band Chief and Council and members of their staff" discriminated against her on the basis of disability and family status, in the provision of

services to her. Given that a good number of the individuals involved in this case share the same family names, I will be referring in this decision to some persons, including the Complainant, by their first names.

[2] At the opening of the hearing into the complaint, Corrine specified that she was making her complaint against the Big River First Nation band (the Band) and not any particular individuals on the Band Council or members of the Band's staff. I accepted this clarification as it was consistent with the context of her complaint's allegations and with the "complaint summary" that the Commission had prepared and attached to her complaint when it was processed. The complaint summary clearly indicated that the named respondent was "Big River First Nation".

[3] Corrine was not represented by counsel at the hearing, and the Commission opted not to participate. The Band was represented by legal counsel. As is sometimes the case with self-represented litigants like Corrine, she was unfamiliar with the Tribunal's process and presenting her evidence proved somewhat challenging for her. At the outset of the hearing, I outlined to her how to present her case and make submissions. Not surprisingly though, there was still a certain lack of continuity in the manner that she led her evidence. It should be noted that no evidence was introduced at the hearing with respect to several of the incidents referred to in Corrine's human rights complaint.

I. WHAT FORM OF DISCRIMINATORY PRACTICE IS ALLEGED IN THE COMPLAINT?

[4] Corrine did not identify in her complaint which sections of the *Canadian Human Rights Act (CHRA)* the Band had allegedly breached. However, as I indicated above, the Commission prepared a "complaint summary", which it attached to Corrine's complaint form. It constituted part of the complaint material that was sent to the Tribunal when the Commission referred the complaint over for inquiry. The complaint summary specifies that s. 5 is the provision of the *Act* applicable to this case. Section 5 addresses discriminatory practices in relation to the provision of goods, services, facilities or accommodation customarily available to the public.

II. WHAT IS THE BASIS FOR CORRINE'S DISCRIMINATION CLAIM REGARDING "FAMILY STATUS"?

[5] As mentioned above, Corrine invokes two grounds of discrimination, family status and disability, each of which requires some preliminary discussion. According to s. 3 of the *CHRA*, family status is a prohibited ground of discrimination. Corrine claims that she and her relatives were discriminated against by the Band merely because they are members of a particular family. She is the daughter of Francis McAdam (Francis Sr.) and Juliette McAdam, née Whitefish or SeSeWaHum (Juliette). Corrine's great-grandfather, Chief SeSeWaHum, was the hereditary chief of the Band (also known as the Kenemotayo Band) when it adhered to Treaty No. 6 in 1878. The treaty resulted in the establishment of the Big River First Nation Reserve. Both Francis and Juliette are descendents of Chief SeSeWaHum.

[6] Juliette testified that a number of families living on the reserve today can trace their hereditary lines back to the original signatories of Treaty No. 6, including the McAdams, the Whitefishes, the Smallboys, the Netmakers, and a few others. She also testified that at some point following the treaty, Chief SeSeWaHum agreed to allow a number of other families from nearby communities into the "clan", out of "compassion". These people were, in Juliette's words, "destitute". The names of these families include Morin, Dreaver and Lachance.

[7] The leadership of the Band was handed over from Chief SeSeWaHum to other clan members along the same blood lines for a couple of generations, in keeping with band custom. However, at some point (which was not specified in the evidence), the Band's administration passed to an elected band council made up of a chief and councillors, in accordance with the *Indian Act*, R.S.C., 1985, c. I-5. Corrine and Juliette McAdam claim that non-hereditary Band members within the entire population outnumber those from the hereditary line, and that as a result, council is controlled by this other group. Bruce Morin has been Chief since October 1999. Juliette testified that she considers the Chief and all of the current councillors to be "destitute immigrants" as they are the descendents of the families that her grandfather, Chief SeSeWaHum, allowed to join the clan several generations ago.

[8] It is against this backdrop that Corrine filed her present complaint. She claims that she has been denied services by the Band due to her "family status" as a McAdam/Whitefish (i.e. due to her being the daughter of Francis Sr. and Juliette). Corrine conceded, however, that the animosity shown towards her and her family also relates to the fact that she, her mother, and her father are outspoken members of the community. All three of them have frequently opposed actions and decisions taken by the Band Council over the years.

III. WHAT IS THE BASIS FOR CORRINE'S DISCRIMINATION CLAIM REGARDING "DISABILITY"?

[9] On the first page of her complaint form, Corrine wrote the words "family status" and "disability" on an otherwise blank portion of the sheet, without any further explanation. I surmise that she was alleging discrimination based on both of these enumerated grounds of discrimination under s. 3 of the *Act*. I note, however, that on the Commission's complaint summary, which I referred to earlier, the only "relevant prohibited ground" listed is "family status". There is no mention of disability.

[10] In her final submissions, Corrine seemed to argue that disability was a factor in the alleged denial of funding assistance to her, to accompany her son when he was hospitalized in Saskatoon. This incident, however, does not relate to any disability linked to her. She made no other submissions regarding her claim of discrimination based on disability. In any event, I will examine her claim of discrimination on the basis of disability solely with respect to the incident relating to this alleged denial of funding assistance.

IV. WHAT ARE THE LEGAL PRINCIPLES APPLICABLE IN THIS CASE?

[11] Section 5 of the *Act* makes it a discriminatory practice to deny goods, services, facilities or accommodation to any individual, or to differentiate adversely in this regard, on the basis of a prohibited ground:

<p>5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public</p> <p>(a) to deny, or to deny access to, any such good, service, facility or accommodation to any</p>	<p>5. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :</p> <p>a) d'en priver un individu;</p>
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<p>individual, or</p> <p>(b) to differentiate adversely in relation to any individual,</p> <p>on a prohibited ground of discrimination.</p>	<p>b) de le défavoriser à l'occasion de leur fourniture.</p>
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As I indicated earlier, family status and disability are prohibited grounds of discrimination (s. 3).

[12] The initial onus is on a complainant to establish a *prima facie* case of discrimination (*Ont. Human Rights Comm. v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 at para. 28 ("*O'Malley*"). A *prima facie* case is one which covers the allegations made, and which, if believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent. Once the *prima facie* case is established, it is incumbent upon the respondent to provide a reasonable explanation for the otherwise discriminatory practice. If the respondent does provide a reasonable explanation, the complainant has the burden of demonstrating that the explanation was pretextual and that the true motivation behind the respondent's actions was, in fact, discriminatory.

V. WHAT INCIDENTS OF DISCRIMINATION HAS CORRINE ALLEGED?

[13] Corrine adduced a significant amount of evidence in this case. In the interest of providing a coherent decision, I have separately outlined and analyzed the evidence relating to each of the issues or incidents of alleged discrimination referred to in her complaint. However, I have also considered each of the allegations in the context of the totality of the evidence, in order to determine if an inference of discrimination may be drawn.

[14] I note, in passing, that the Band did not contest the issue of whether each of the alleged instances of discriminatory conduct actually falls within the ambit of s. 5 of the *Act* (i.e. discriminatory practices in the provision of goods, services, facilities or accommodation customarily available to the general public).

[15] In any case, I have found that Corrine's discrimination complaint has not been substantiated, for the reasons set out below.

A. Denial of housing

[16] The principal allegation in Corrine's complaint relates to the alleged denial of housing by the Band to her and her family. Corrine is 43 years old. She was raised on the Big River First Nation Reserve. She is the mother of five children, two of whom unfortunately have passed away. She claims that she began applying to the Band for housing for herself ever since her first child was born in 1982. She was not assigned a house until August 2001. It was an older house in a section of the reserve known as the "Teacherages". She has never been allotted a new house.

[17] The allocation of housing on the reserve apparently used to be the responsibility of the Government of Canada (Department of Indian Affairs and Northern Development, also known as Indian and Northern Affairs Canada (INAC)). The decisions were made at INAC's offices in Shelbrook, Saskatchewan. At some point, these duties were handed over to the Band Council, but the government continued to fund the construction of new homes. Tom Bear, a current Band

Councillor who has served intermittently on council since 1979, testified that the Band historically used to receive housing funding from INAC that was sufficient to construct eight to twelve homes per year. Today, the funding is only sufficient to build about two to three homes annually. However, in 2007, the Band managed to secure a special bank loan that enabled it to build and allocate 36 new homes.

[18] Corrine alleges that she has never been allocated a new home. She claims that her family status was a factor in this alleged denial of new housing.

[19] Although the Band denies Corrine's allegations regarding discriminatory practices in the allocation of housing, it contends that its decisions regarding housing allotment are immune from the operation of the *CHRA* anyway, pursuant to s. 67, which provides as follows:

<p>67. Nothing in this Act affects any provision of the <i>Indian Act</i> or any provision made under or pursuant to that Act.</p>	<p>67. La présente loi est sans effet sur la <i>Loi sur les Indiens</i> et sur les dispositions prises en vertu de cette loi.</p>
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[20] The Big River First Nation is a band within the meaning of the *Indian Act*. In order to invoke s. 67, a band must demonstrate that the sections of the *CHRA* that are engaged by the Tribunal's inquiry into the complaint will affect a provision of the *Indian Act*, or a provision made under or pursuant to that act. In the present case, the Band claims that s. 20 of the *Indian Act* would be directly affected by Corrine's claims of discriminatory practices in the allocation of housing, i.e., the Band's alleged denial to her of new or better housing. Section 20(1) provides the following:

<p>20. (1) No Indian is lawfully in possession of land in reserve unless, with the approval of the Minister [of Indian Affairs and Northern Development], possession of the land has been allotted to him by the council of the band.</p>	<p>20. (1) Un Indien n'est légalement en possession d'une terre dans une réserve que si, avec l'approbation du ministre [des Affaires indiennes et du Nord canadien], possession de la terre lui a été accordée par le conseil de la bande.</p>
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[21] The same issue was dealt with in *Canada (Human Rights Commission) v. Gordon Band Council* [2001] 1 F.C. 124 (F.C.A.). The complainant was a status Indian who lived on the Gordon First Nation Band reserve with her non-Indian spouse. Her request for housing from the band was denied, and she filed a complaint alleging discrimination on the basis of sex and family status. The Gordon Band raised a s. 67 defence, similar to the one brought forward by the Band in the present case. The Federal Court of Appeal agreed with the Tribunal's finding that it lacked jurisdiction to hear the case, because the Band's decision was made in the exercise of its authority to make housing decisions, under s. 20 of the *Indian Act*. This s. 20 authority, ruled the Court, includes by necessary implication a decision *not* to allot housing. It follows that s. 67 of the *CHRA* precluded the Tribunal from granting any remedy to the complainant in that case, the Court concluded.

[22] I see no basis to distinguish *Gordon* from Corrine's case. She pointed out that in *Gordon*, the band had a housing policy whereas in the present case, the evidence is that no formal housing policy existed. When the Band Councillors met to consider the numerous applications for housing that were submitted annually, they made their assessments based on their own understanding of the applicants' needs and situation. The community is relatively small and the Band argued that the councillors were therefore familiar with every applicant's particular circumstances and would have had no difficulty making such determinations.

[23] I do not think that the absence of a housing policy on the Big River First Nation reserve is sufficient to distinguish this case from *Gordon*. Section 20 of the *Indian Act* does not specify that a formal or written housing policy must be adopted by a band. Corrine led some evidence suggesting that the Band had previously received Government funding to draft a formal housing policy, but that it never followed up on this. However, even if there existed some procedural requirement that a policy be adopted, the Court in *Gordon*, at para. 30, held that procedural flaws do not detract from the conclusion that the housing allocation decision itself is one that Parliament has, under s. 20 of the *Indian Act*, expressly entrusted to band councils. Besides, as the Court also noted in the same paragraph, the immunity that s. 67 gives a band council does not depend on whether "some aspect of the decision-making process was based on a housing policy".

[24] I therefore find that, pursuant to s. 67, the Band is immune from the allegations in Corrine's human rights complaint of discriminatory practices with respect to housing allocations.

B. Eviction of Corrine's son, Darrell McAdam, from her home

[25] As I mentioned earlier, the Band allocated an older house to Corrine in August 2001. It is a detached building located in an area known as the "Teacherages", situated adjacent to the reserve's high school (Se-Se-Wa-Hum School). The area consists of buildings that were constructed decades ago to house teachers who worked in the school. Many of the units are no longer occupied by teachers, so the Band has assigned them to Band members. Corrine resides in the unit known as Teacherage #4.

[26] Darrell McAdam (Darrell) is one of Corrine's sons. He lived at her home at Teacherage #4 from 2001 until 2007. On January 20, 2004, the Band's Administrator and Manager, Derek Klein, sent a letter to Darrell. The subject line read, "Re Eviction out of teacherage - BRFN [Big River First Nation]". The letter went on to state the following:

Dear Mr. McAdam,

You have been constantly warned about the parties and heavy traffic at your residence, which is disturbing to neighbours. You have not complied with any of these warnings, so this shall serve you as an eviction notice.

You are requested to be out of the teacherage no later than Monday, January 26, 2004.

Respectfully

[sgd]

Derek R. Klein

[27] Darrell was 21 years old at the time. Corrine was not regularly residing at home during this period. Her other son, Francis McAdam (Francis), (who has since passed away) was disabled and was being cared for at a chronic care facility in Saskatoon. His condition had begun to worsen in 2003, so Corrine was spending a lot of time with him in Saskatoon.

[28] Darrell acknowledged in his testimony that he has had a problem with drug and alcohol abuse since he was a teenager. He also agreed that prior to receiving the letter, he had been drinking heavily at the house and that there were a lot of "parties" being held there. He denied having been visited or warned by Band officials about any disturbances prior to receiving the letter. He testified that he did not show the letter to his mother, nor tell her about it. He decided to just ignore it and continued to reside at the house. He also testified that on January 26, 2004 (just a few days after he received the letter), Mr. Klein entered the home uninvited, along with another community member, and told Darrell that he must leave the house. Darrell did not elaborate any further on the incident in his testimony, but it would appear from the rest of his evidence that he did not accede to Mr. Klein's direction and that he continued to live at Teaherage #4.

[29] On April 8, 2004, Mr. Klein sent another letter to Darrell, requesting that he move out of Corrine's home:

Dear Mr. McAdam,

You have been constantly warned about the parties and heavy traffic at your residence, which is disturbing to your neighbours. You have not complied with any of these warnings, so this shall serve you as an eviction notice. You are to leave the residence immediately. Next week you can contact the R.C.M.P. and Jack Rabbitskin to pick up your belongings.

Respectfully,

[sgd]

Derek R. Klein
Band Administrator

[30] The letter was hand delivered to Darrell at the house by two Band employees (Leo Jack and Harvey Netmaker), who were accompanied by a member of the R.C.M.P. Corrine was in Saskatoon at the time. Mr. Netmaker testified that Darrell did not appear surprised upon receiving the letter and that he was cooperative. On Mr. Jack's instructions, Mr. Netmaker changed the locks to the house. Mr. Jack, who is the Band's housing coordinator, took the new keys. The visitors did not remove any of Darrell's belongings from the house. Darrell left and went to his grandmother Juliette's home.

[31] The evidence led regarding what happened over the ensuing days was unfortunately somewhat disjointed. Juliette testified that Darrell showed her the April 8th eviction letter. She advised him to ignore it and just "stay put". For her part, Corrine learned of the incident while she was still in Saskatoon. She called Chief Morin, who informed her that it was only Darrell that had been evicted, and that there would be no problem with Corrine returning home. On April 10th, she returned to the reserve and went back to her home, accompanied by Darrell. It is

not clear from the evidence before me whether the home's doors were locked after the band had changed the locks, and if so, how Corrine and Darrell managed to enter.

[32] In any event, shortly after Corrine arrived at the house, an R.C.M.P. officer showed up and told her that she was trespassing and should leave the premises forthwith. A more senior R.C.M.P. officer soon arrived on the scene, however, and apparently decided not to pursue the matter any further. On April 24, 2004, Juliette sent a letter to Mr. Klein advising him that until such time as he brings evidence of Darrell's alleged wrongdoings, Corrine and her children, including Darrell, would "continue to reside at the house they are in". Indeed, Darrell apparently ended up continuing to reside there.

[33] On April 27, 2004, the Band's education coordinator, Marlene Morin, sent a letter to Mr. Klein expressing concern about the activities going on at Corrine's house, stating:

I have received numerous concerns about the number of students wandering over to Corrine McAdam's during school breaks and lunch hours. There are a number of complaints [sic] from our School Administrator's [sic] about students skipping classes and hanging out at the house. We are asking you for the betterment of our school population to please evict Mr. McAdam from his teacherage. There also have been several complaints of loud high school parties on the weekend at his residence.

I look forward to your positive response.

[34] This letter was followed up by another letter dated May 3, 2004, from the school's principal, Doug Nordick, to Mr. Klein, in which he called attention to "some activities of a suspicious nature" going on at Corrine's residence. He went on to explain that over the previous three months, students had been observed entering the home during the school day when they should have been in class. He had received reports that this location is "known for weekend parties and as a place to hang out", adding that he was concerned because there were "drugs in the neighbourhood". Mr. Nordick further explained that, on a number of occasions, attempts were made to find out if there was a "responsible adult at home during the school day" with whom to discuss the situation. However, these efforts at contacting the "principal resident" were "unsuccessful". He ended his letter in the hope that Mr. Klein would be able to contact the "principal resident" to address these matters.

[35] On May 2, 2004, Corrine returned to the reserve after a visit to Saskatoon. She found her residence locked and no one there. She did not have the keys to enter, as they remained in the Band's possession ever since the locks had been changed on April 8th. She had to spend the evening at her mother's home, where she learned that earlier that day, two Band members (Sidney Morin and Harry Bear) had visited Corrine's house. Her nephew (who lives with her family) was there at the time. The nephew told Corrine that Messrs. Morin and Bear had instructed him to leave the premises. They apparently then locked the house and, according to Corrine, nailed the windows shut, presumably to prevent access into the house from these points of entry. The nephew was not called to testify.

[36] Mr. Bear testified at the hearing. He recalled being asked to visit Corrine's house on the day in question because of a "brawl" that had taken place the night before. He went to "check it out". He does not recall who asked him to go or with whom he went. He said it was easy to see that a

brawl had taken place outside Corrine's house: there were bottles strewn about outside. He claimed that "everyone knew what had been going on there". He does not recall escorting anyone out of the house or nailing any windows shut.

[37] Corrine called Mr. Klein on May 3, 2004, to complain about the incident. Mr. Klein apparently told her that the Band Council had decided to evict her from the house along with her son. Indeed, Mr. Klein prepared and sent a letter dated May 6, 2004, addressed to Corrine (not to Darrell), which stated:

Dear Ms. McAdam,

You have been constantly warned about your son and friend's partying over at the teacherage. Now that the locks have been changed on that teacherage that teacherage will be allocated to another band member.

Respectfully,

[sgd]

Derek R. Klein
Band Administrator

[38] Chief Morin testified that Corrine telephoned him to complain as well. He told her that the Band Council was, in fact, only seeking to evict Darrell, not her.

[39] Few details are in evidence about what exactly transpired regarding Darrell's eviction after these calls were made in early May 2004. Darrell testified that after Chief Morin informed Corrine during their telephone call that she was not being evicted, she acquired from the Band the keys to the house's new locks. She has continued to reside in Teacherage #4 to this day. Darrell also continued to live there until he moved out voluntarily in 2007.

[40] Has Corrine established a *prima facie* case of discrimination on the basis of family status in regard to the eviction notices?

[41] Corrine alleges that she and her son, Darrell, were singled out and targeted because they are members of the McAdam family. She claims that the Band never tried to evict other persons who were engaged in activities similar to Darrell's alleged activities, but who were not McAdams. Aside from this assertion in her testimony, what evidence did she lead which, if believed, would be sufficient to support a finding of discrimination?

[42] Corrine filed photos taken at a nearby house in the Teacherages in April 2008 (i.e. around the time of the present hearing). The house is occupied by someone whose last name is McAdam, but who is a relative of Chief Morin. It is not clear if the occupant is also a relative of Corrine. The scenes depicted in the photos consist of several smiling people in a very messy house, drinking beer and smoking. Corrine said that the photos were taken during a party that ended at 5:30 AM. She said that similar parties had been ongoing over several days. A guest at one of these parties came to her door one night with a bleeding hand wrapped up in a towel. She argued that despite this activity, the Band Council had not evicted the occupant from the house.

[43] Darrell testified that he knows of several Band members who deal in drugs but who, to his knowledge, have never been evicted. A number of Corrine's other witnesses testified in some way with regard to this issue as well. Leonard Lachance, a Band councillor, said that he had never been involved in an eviction of someone with a drug or alcohol problem. Tom Bear, who is also a Band councillor, stated that to his knowledge, no Band member has ever been evicted from their home due to drug or alcohol usage.

[44] Corrine also called Chief Morin to testify. He stated that he had never participated in the eviction of anyone from the Teacherages because of that person's drug or alcohol use. However, Chief Morin also stated that in 2001, the Band Council received a report that a certain individual (whom I will refer to as "Mr. A") had been selling drugs from his residence across the road from the Teacherages area. The Council met and passed a resolution to evict him. Mr. A was living in the home of a Band member at the time, but he was neither First Nation nor a Band member.

[45] I note that Darrell not only acknowledged that he was using drugs, he also admitted that he sold some drugs, though he claimed that he sold just "one ounce of weed...from that house". He said that he did not want to be known as a "drug dealer". Darrell acknowledged in his evidence that at the time when the house's locks were changed, he was abusing drugs and alcohol, and that when he is in this state, his ability to remember is affected. He also stated that around the time of the eviction, his mother was frequently away in Saskatoon, and that "drinking" and "parties" were going on at the house while she was away.

[46] Darrell also agreed with the proposition that had he ceased his "drinking" and "partying" practices at the house, he would not have been evicted. He also conceded that as of May 6, 2004, when Mr. Klein sent Corrine the eviction letter, nothing had changed with regard to his "partying" activities, as the letter had alleged.

[47] Taking all of the circumstances into account, I am not persuaded that Corrine has demonstrated *prima facie* that the Band discriminated against her (or her son, Darrell, for that matter), in respect of eviction attempts. In order to establish a *prima facie* case, a complainant cannot just put forward her abstract beliefs or suspicions that she is a victim of discrimination, without presenting some concrete observations or independent information to support or confirm that belief (see *Filgueira v. Garfield Container Transport Inc.*, 2006 FC 785 at paras. 30-31). Corrine was unable to support her allegation that other "non-McAdam" residents engaging in activities similar to Darrell's had not been evicted. In fact, the evidence suggests that in 2001, the Band decided to evict Mr. A, who was not a McAdam, and who was also thought to have sold drugs from his residence, which was adjacent to the Teacherages area where Darrell lived. Corrine tried to distinguish that decision on the basis that Mr. A was not a First Nation Band member. She failed, however, to demonstrate any evidentiary basis for treating the two individuals differently, such as the existence of any by-laws or policies that establish different entitlements based on First Nation status. What is noteworthy is that, just like Mr. A., Darrell was not the "registered" occupant of the Teacherage house that he was required to leave.

[48] The remaining evidence adduced by Corrine on this matter is not directly relevant to the issue. It suggests that no other persons had been evicted due to their drug or alcohol use. The assertion made against Darrell, however, was not only that he was using these substances but that he was selling drugs (a claim that was admitted by Darrell if only to a very limited extent) and that he was attracting students from the nearby school to his house to also use these substances,

as well as hosting disruptive "parties". Darrell himself admitted that had he not engaged in the drinking and partying practices, he would not have been evicted.

[49] The evidence adduced by Corrine, even if believed, fails to demonstrate that the Band tolerated the occupancy of non-McAdams in situations comparable to Corrine's and Darrell's. Nor, for that matter, does the remaining evidence support her assertion that their status as McAdams was a factor in the eviction decision. The evidence, even if believed, is not complete and sufficient to justify a verdict in favour of Corrine.

[50] However, even if the evidence adduced by Corrine were sufficient to establish a *prima facie* case of discrimination, I am satisfied that the Band has provided a reasonable explanation.

[51] Chief Morin testified that the school's administrators had been making numerous requests to the Band Council that something be done about the activities at Teacherage #4. They were particularly concerned about the sale of drugs going on in such proximity to the school. Chief Morin pointed out that this concern set Darrell's case apart from other situations where loud parties and heavy drinking had been reported to Council. Consequently, the Band Council had no choice but to intervene.

[52] Mr. Nordick, the high school's principal, has over 40 years' experience in education. He testified that his staff had reported observing many students circulating back and forth between Teacherage #4 and the school grounds. This was a matter of concern for the school's administration, principally as a question of safety, but also because parents had an expectation that their children would stay in class and not wander off the school grounds. Mr. Nordick and his staff were also suspicious that if students were leaving school grounds to frequent a nearby dwelling, "questionable" activities, including drug usage, were likely to have been going on.

[53] As a result, Mr. Nordick tried to contact the adult person who was responsible for Teacherage #4 to discuss the matter. The principal was informed that the house had been assigned to Corrine. He made numerous telephone calls to the house, but was repeatedly told that she was out of town. He and his vice-principal then decided to walk over to the house and hopefully meet up with Corrine at a time when she was home. They made two such attempts in April 2004, but there was no answer at the front door.

[54] Mr. Nordick testified that given the difficulty he had in reaching Corrine, he spoke to Mr. Klein about his ongoing concerns. Mr. Klein advised him to put his concerns in writing, so Mr. Nordick wrote his May 3, 2004, letter to Mr. Klein, which I excerpted earlier. The Band's education coordinator, Marlene Morin, had sent a similar letter a few days earlier. Of note, Ms. Morin is Darrell's first cousin on his father's side.

[55] The school was not alone in making complaints about Darrell's activities at the house. Mr. Klein testified that the Band Council had also received complaints from Leon McGilvery who, along with his family, had moved in to the house next to Corrine's in December 2003. Mr. McGilvery testified that Teacherage #4 had "non-stop traffic" at all hours of the day. There were young people going in and out, and he would often see 15 to 30 youths hanging around outside the house, many of them drunk. He saw old furniture, broken bottles and other garbage strewn around outside. He recalls that Corrine was rarely home in the months after he moved in. On one occasion, Mr. McGilvery saw two police "paddy wagons" parked near his house. He was

told by the police to go straight home and stay inside because a "lot of action" was going on in Teacherage #4. Mr. McGilvery testified that now that Darrell no longer resides at Corrine's house, things are quiet. Mr. McGilvery pointed out that his grandmother is Juliette's sister. He is thus related to Corrine.

[56] Mr. Klein, in his testimony, acknowledged that Darrell is not the only person on the reserve with a substance abuse problem. The specific concern in Darrell's case, however, was that he had allowed Corrine's home, in her absence, to become a "hangout" that was also situated next to the school. Mr. Klein recalled that no other location on the reserve was the scene of "daily problems" like her home. Based on the complaints that the Band Council received about Darrell's activities at the house, the Council instructed Mr. Klein to send Darrell an eviction notice. He pointed out that Corrine was constantly away from the reserve, so the Band had no option but to take action directly against her son. Mr. Klein also testified that after Corrine began staying at home, the Band Council ceased getting complaints about Teacherage #4, even though Darrell was still living there.

[57] I am satisfied that the Band's explanation is reasonable. Faced with the complaints it had received and the nature of Darrell's activities, it was within reason for it to react by requiring Darrell to leave. I have not been persuaded that his membership in the McAdam family was a factor in the Band's decision.

[58] Corrine appeared to suggest, in some of the questions that she asked Darrell during his testimony, that the Band's second attempt at evicting him, in April-May 2004, came about in reaction or even retaliation to her human rights complaint. While the Commission's complaint summary indicates that the complaint was received on May 11, 2004, Corrine's actual complaint form is dated March 19, 2004. No explanation was given in the evidence for this discrepancy. More importantly, I have no evidence to suggest that the Band had any knowledge of the human rights complaint's existence or of its content, prior to May 11, 2004. The Band's eviction measures all occurred prior to this date. The Band sent its reply or "defence" regarding the complaint to the Commission investigator on February 25, 2005. Consequently, the evidence does not support the contention that the Band's actions against Darrell, ostensibly brought about due to the excessive and undesirable activity taking place at Corrine's house, were in fact a pretext to strike back at Corrine for having filed a complaint. Furthermore, she never made any request to amend her complaint to include an allegation of retaliation pursuant to s. 14.1 of the *Act*.

[59] On a balance of probabilities, I therefore find that Corrine's allegation that the Band committed a discriminatory practice in attempting to evict Darrell has not been substantiated.

C. Denial of education funding

[60] Corrine alleged in her complaint that the Band denied her funding for some of her post-secondary education. In 1998, she commenced studies at the Saskatchewan Indian Institute of Technology (SIIT) in Saskatoon. Her tuition was being paid by the Band under its Post Secondary Student Support Program. She was unfortunately involved in a car accident in July 1999, which left her with painful injuries that temporarily prevented her from continuing her studies. Corrine testified that she therefore spoke to Bev Morin (Bev), who was the Band's education coordinator at the time, and asked if the Band would continue paying her tuition and a

living allowance when she would be healthy enough to return to her studies. According to Corrine, Bev said the funding would remain available.

[61] Corrine testified that she did not feel ready to return to regular classes until 2003. She was accepted into a program at Yellowhead Tribal College in Edmonton, for the 2003-2004 academic year. She therefore contacted Bev to request financial support for her studies. Bev informed Corrine in writing, on July 30, 2003, that her application for post-secondary funding had been placed on a "wait list". She was the 12th ranking person on the list. Consequently, she would not be getting any funding at that time.

[62] Corrine testified that she then applied for entry into another educational institution called ATS (also known as Viatech Solutions). According to Corrine, Bev informed her that in this instance, no funding for tuition would be made available because ATS was a "private" institution that is not "recognized". I note that the Band's handbook regarding its post-secondary student support program, which Corrine filed in evidence during her cross-examination of a Band councillor, sets out the priority ranking for funding in three categories of post-secondary education candidates. The group with the lowest priority (i.e. the last group to be considered for funding approval) includes students attending "private institutions". Corrine testified that Bev advised her to speak to Mr. Klein, presumably to appeal this funding decision. Corrine claims that after speaking to Mr. Klein, she was "bounced around" but was ultimately told she would not receive the funding.

[63] In 2004, Corrine was accepted by the University of Regina as a student. She then applied to the Band's Post Secondary Student Support Program for sponsorship (i.e., funding). On November 16, 2004, the post secondary coordinator, Patsy Keenatch, informed Corrine in writing that her application for funding had not been approved by the Band's "Post Secondary Board". The letter stated that the Board had received 36 applications for financial support, but that funding was only available for two "spots". Thus, all available funding had been "fully allocated" for the January 2005 intake.

[64] Corrine testified that having been again denied funding for her education, she just "gave up" applying and decided to no longer pursue a post secondary education.

[65] I am not persuaded that Corrine has established a *prima facie* case of discrimination with respect to her education funding. Even if her evidence is believed, all that has been demonstrated is that when she applied for funding, she was either put on a waiting list, was turned down because there were insufficient funds available given the number of applications, or was refused because she was trying to enter a private, non-recognized institution. There is no evidence before me even tending to indicate that her family status, as a McAdam, was a factor in any of these decisions.

[66] Corrine took particular issue with the fact that she was not approved for funding despite the assurances made to her by Bev that the financial assistance would be made available for her once she recovered from her injuries related to the 1999 auto accident. However, it is not apparent to me how this situation is indicative of discrimination based on Corrine's family status. As I stated elsewhere in this decision, in order to establish a *prima facie* case, a complainant cannot just put forward her abstract beliefs or suspicions that she is a victim of discrimination, without some

concrete information or observations from which discrimination could at least be inferred. Corrine did not present the Tribunal with any such confirmatory information or observations.

[67] Moreover, it would appear that the Band did not really fail to respect its alleged assurances to her to continue the funding, as emerged from Corrine's own testimony. Corrine never sought to re-activate the funding for her continued studies at the SIIT. Instead, she sought funding to attend other institutions. The Band apparently treated these requests as new sponsorship applications. Corrine explained in her evidence that she could not return to SIIT due to an altercation she had had with another student there, which had given rise to legal proceedings of some sort. In any event, I have no evidence of the Band having refused to re-activate Corrine's funding for her education at the SIIT.

[68] Besides, the Band's Post Secondary Student Support Program provided that every student had the right to appeal an education funding decision. The entire appeals process was set out in the Program's manual that was made available to all applicants. Corrine admitted that she never appealed any of the education funding decisions that she has complained about in the present case.

[69] It is also important to consider the evidence of Corrine's sister, Sylvia McAdam, whom Corrine called as a witness at the hearing. Sylvia testified that she has pursued a fairly extensive post-secondary education. She obtained a university degree in human justice (four-year program), and she is a few credits away from completing a three-year law college program. She also participated in a one-year program in social work. She testified that all of these studies were funded by the Band's post-secondary funding program. The financial assistance covered the cost of tuition, rent, as well as the acquisition of a computer. She received a total of over \$29,000 in financial assistance for her education. Sylvia's evidence indicates that she did not experience any adverse differential treatment, nor was she denied any educational funding, due to her family status as a McAdam. Similarly, Nora McAdam (Nora), who "married in" to the McAdam family (she is the spouse of Corrine's uncle), testified that her daughter received post-secondary funding from the Band to complete two university degrees.

[70] In fact, in the complaint itself, Corrine appears to acknowledge that the cause of the Band's alleged denial to her of funding was poor management of the Band's finances, not her family status. She writes, "Chief and Council took money from the education account and used it to pay their administration account that was in deficit that they created." She goes on to say that it is the band members who end up having to "pay" for the "[Band] leadership's actions", which results in Band members being prevented from exercising their "inherent right to education".

[71] In sum, therefore, I find that Corrine has not established *prima facie* that the Band's decisions regarding the funding of her post-secondary education constitute a discriminatory practice. In any event, had she established a *prima facie* case, the Band's explanations (i.e. that Corrine had failed to take measures to re-activate her original SIIT funding and that there were insufficient funds available when she made her subsequent requests) are reasonable. Corrine did not present evidence to establish that these explanations were a pretext for discriminatory conduct.

D. Receiving a reduced graduation allowance from the Band

[72] The Band provides Band members with an allowance when they graduate from an educational program. Corrine asserted in her testimony that the Band ordinarily grants \$500 to members who complete their Grade 12 education or an equivalency. In April 1997, Corrine successfully completed the one-year University and College Entrance Program at Concordia University College of Alberta (which presumably constitutes a Grade 12 equivalency). She applied for an allowance but was only given \$300 from the Band. She testified that Marcella Morin (Marcella), another student in the same class as her, told Corrine that she had received \$500. Corrine testified that she was "not sure" if Marcella is related to her, but she certainly is not part of her immediate family. For the purpose of this analysis, I will accept that Marcella is not a member of the McAdam family. Corrine did not call Marcella as a witness.

[73] Is this evidence, if believed, sufficient to establish a *prima facie* case of discrimination? A similar issue arose in *Filguiera, supra*, where the Federal Court upheld the Tribunal's decision granting the respondent's non-suit motion for the dismissal of the complaint. According to the Tribunal, the only piece of evidence led by the complainant that could have given rise to an inference of discrimination arose from the complainant's own testimony. The complainant testified that he heard another employee say that he earned one dollar more per hour than the complainant. The Tribunal held that this testimony did not establish that the other employee was, in fact, paid more than the complainant. The Federal Court, at para. 30, agreed with the Tribunal's finding that the complainant's evidence fell "well below the standard needed to sustain a legal claim".

[74] As in *Filguiera*, the only evidence before me of any discrepancy in graduation allowances is Corrine's testimony about what Marcella allegedly told her. I find that this evidence is similarly "well below the standard needed to sustain a legal claim". Corrine did not present any concrete observations or independent information to support or confirm her belief. A *prima facie* case has therefore not been established.

[75] However, even if the *prima facie* case had been made out, I find that the Band has provided a reasonable explanation. The Band apparently asked Marcella to testify at the hearing, but she was extremely unwilling to attend. A subpoena was issued requiring her attendance, however the Band was reluctant to take additional measures to compel her to appear. Instead, the Band produced a written statement sworn under oath by her, before a commissioner of oaths, in which she declares that she in fact only received a \$300 allowance from the Band after graduating from the program. She also stated that she did not recall speaking to Corrine about the amount she had received.

[76] The Band also directed the Tribunal to Appendix D of the Band's post-secondary student support program, which contains a table setting out the amounts of the graduation allowances. They vary between \$200 and \$1000, depending on the level of the educational program from which the member has graduated. For instance, a Band member who obtains a certificate is entitled to \$200, while someone who receives a Ph.D. is entitled to \$1000. The table indicates that a person who graduates with a diploma is entitled to \$300. Corrine acknowledged in cross-examination that she graduated with a diploma in 1997. She and Marcella would thus, according to the table, have been entitled to receive \$300, not \$500.

[77] The Band also produced, as part of its disclosure, printouts from its computerized records of "payment histories" to Corrine and Marcella for the period in question. The records show that

both Marcella and Corrine each received a cheque in the amount of \$300, respectively in March and April 1997. There is no indication of Marcella having received \$500. Corrine questioned the completeness of this disclosure, since the records reflect payments from only one of the Band's accounts. Curtis Bear, who is the current post-secondary coordinator, testified that the Band asked him to only produce records reflecting the issuance of any \$300 cheques to Corrine and Marcella. It is possible that records of cheques issued in different amounts were not disclosed.

[78] In assessing the Band's explanation, I am mindful that Marcella's sworn written statement constitutes hearsay. However, pursuant to s. 50(3) of the *CHRA*, the Tribunal member may, as he or she sees fit, accept evidence by affidavit, whether or not the evidence or information is or would be admissible in a court of law. Furthermore, I note that the only evidence that Corrine has led regarding the sum of \$500 that Marcella Morin allegedly received, is itself hearsay, based on what Corrine claims that Marcella Morin told her back in 1997.

[79] Considering the competing hearsay evidence, combined with the clear indication in the Band's funding policy that both women would only have been entitled to \$300, as well as the Band's payment records, which show that they both received \$300 within weeks of each other, I am satisfied, on a balance of probabilities, that the Band has provided a reasonable explanation in answer to the *prima facie* case. There is no evidence to suggest that this explanation was pretextual. Corrine's claim regarding her graduation allowance has therefore not been substantiated.

[80] I would add, in passing, that this claim was not mentioned in either Corrine's complaint or her Statement of Particulars that she prepared pursuant to the Tribunal's Rules of Procedure. The graduation allowance issue dates back to 1997, some seven years prior to the filing of the complaint.

E. Failure to provide adequate renovations to Corrine's home

[81] Corrine testified that when she moved into the house that the Band allocated to her in 2001 (Unit #4 in the Teacherages), it was in "horrible condition". She immediately wrote a letter of complaint to the Band, listing some of the problems that she found. They included holes in the entrance hallway, missing closet doors, missing light fixtures, damaged linoleum, and peeling paint. In addition, there was a foul smell, traces of vermin, and leftover garbage in the basement. It took her and her family and friends many days to clean up the house. She demanded that the Band compensate them for their time and efforts. The Band did not do so. She claims that the Band has never fixed the broken items in the house, nor has it ever performed any renovations.

[82] Some of Corrine's family members also complained, in their testimony, about the renovations issue in regard to their homes. Juliette testified that in the 30 years since she received her then newly constructed house, the only renovations that the Band has completed in her home have been to the basement's sub-floor. She is dissatisfied with the renovation work, claiming that the floor is still mouldy. She also complained about the poor quality of the Band's repairs to her malfunctioning furnace.

[83] Corrine's brother, Dion McAdam (Dion), gave evidence about the house that he was residing in until 2007. He claimed that it was very mouldy. In 2005, he was spending time in his basement trying to clean and remove the mould. He found himself constantly sick with cold-like symptoms. He was admitted to hospital a number of times and was eventually diagnosed with a

form of rheumatoid arthritis. He now uses a wheelchair to get around. Dion alleges that his condition was caused by the black mould in his house, although no expert evidence was led to confirm this allegation. Dion also alleged that the Band never did any work on his house to deal with the mould, until he got sick in 2005. In 2007, he was allocated a new house and moved out of his old home.

[84] Corrine's other brother, Anthony McAdam (Anthony), testified that his home's kitchen floor is warped, the floor tiles are coming out, and there is mould present. His furnace is malfunctioning and releases noxious fumes. Anthony says that he filed "paperwork" with the Band to obtain renovations numerous times over the last three years. He was always told that there were insufficient funds available and the renovations were not provided.

[85] Nora (who, as I mentioned earlier, had "married in" to the McAdam family) testified that a house had been allotted to her in 1991. About ten years later, problems developed with its furnace. She claims that she contacted the Band office several times to have the furnace serviced, to no avail. Her name was just added to a list of Band members complaining about problems with their homes. In October 2004, the furnace backfired and black smoke filled the house. According to Nora, the Band sent several "trainees" to fix it. Several days later, something apparently went wrong with the furnace again, this time sparking a fire. The entire house burned down. In 2007, the Band provided her with an older house as a replacement (a former Teacherages unit that had been moved to a new location). She complained that this home was in ill repair (leaky roof, wall cracks, garbage strewn about, and plumbing problems, which resulted in the house being without running water for five months and caused flooding that rendered the heating system non-functional for two months).

[86] Corrine filed into evidence a table listing the names of Band members who had received funding for renovation work, and the amounts given, from 2000 until 2008. While there are quite a few persons with the McAdam and Whitefish family names listed, Corrine's name does not appear. Juliette's name is listed five times, but always for amounts well under \$1000. The table does not detail whether these renovation amounts relate to Juliette's basement sub-floor repairs, or something else. Juliette received a total, over the eight years, of about \$1800, Nora received a total of \$3370 and Dion a total of \$2270.

[87] The parties did not provide a detailed analysis of this fairly lengthy table, but after reviewing the document, by my estimation, at least a quarter of the recipients received between \$1000 and \$4000. Only a handful appear to have received over \$10,000, but this group notably includes Chief Morin, who received a sum in excess of \$41,000, in three disbursements, and his son, who received over \$16,000 in one disbursement. Factoring in the smaller sums that these gentlemen also received from 2000 to 2008, Chief Morin received a total of \$49,000, while his son was in receipt of \$25,000 in total.

[88] Corrine's allegations with respect to the housing renovations bear a similarity to her other claims, in that she simply suspects that the reason the homes belonging to Juliette, Dion, Nora and her were not adequately renovated was due to their occupants' membership in the McAdam family. I have already reiterated that mere suspicions of discrimination, without some concrete observations or information from which discrimination can be inferred, are insufficient to establish a *prima facie* case. In this instance, however, her claims are supported by the table indicating that she did not get any sums at all for housing renovation since moving into

Teacherage #4. Her relatives, Juliette, Nora and Dion received comparatively modest sums, particularly in relation to Chief Morin and his son. In these circumstances, I am satisfied that this evidence, if believed, would be sufficient to establish a *prima facie* case.

[89] On the other hand, I find that the Band has put forward a reasonable explanation to rebut the *prima facie* case. More than ample evidence was provided demonstrating that Corrine and her relatives' experience with respect to housing renovations was hardly unique to the McAdam family. These problems were widespread throughout the community. The Band filed in evidence statistical data regarding the Big River First Nation, compiled by INAC and published on the department's website. In 2001, there were 255 dwellings on the reserve, of which 160 were constructed before 1991. Out of the 255 dwellings, 80 were said to require minor repairs only, while 145 required major repairs. INAC noted that it believed the information to be accurate, but accuracy could not be guaranteed. Corrine's sister, Sylvia, testified that she in fact believed that even more homes were in need of major repairs. Anthony acknowledged in his evidence that complaints like his about housing conditions and disrepair are common on the reserve. He has been to houses where conditions are worse than his. Juliette noted that there is a problem with mould "everywhere" on the reserve. And, as I indicated above, Nora testified that the Band placed her request for renovations on a long waiting list. She (as a McAdam) was not alone in receiving unsatisfactory service from the Band. There was no evidence to suggest that it was only members of the McAdam family who were in receipt of this unsatisfactory service.

[90] Corrine called Harvey Netmaker as a witness at the hearing. Mr. Netmaker is employed by the Band to perform maintenance work on its buildings. He is thus familiar with the Band's houses on the reserve. According to him, Corrine's home is neither the best nor the worst on the reserve. She has running water and electricity, which some other homes do not (they use cisterns for water instead). Her house is heated by natural gas, while others use fuel oil, which is considered less desirable. He testified that Corrine's complaints about her home's condition are similar to complaints made by other Band members about their homes.

[91] Leon McGilvery testified that when he moved into the Teacherage house, which is adjacent to Corrine's, it was also quite messy. He did not call upon the Band to clean it. He undertook to clean it up himself, including tearing out old rugs, washing the walls and mopping floors. Gerald Bear testified about a house that he moved into that was previously in the possession of Corrine's father, Francis. The house required extensive renovations, which he paid for from his own funds, without any assistance from the Band.

[92] Derek Klein, the Band manager, testified that after handing over the Teacherages homes to the Band in 1995, INAC has not provided any additional funding to renovate them. The Band has therefore been forced to draw from its general fund to pay for any renovations or improvements to these houses along with the costs of improving the other reserve homes.

[93] In sum, I am satisfied that the Band's explanation is reasonable and there is no evidence to suggest that the explanation is a pretext for an otherwise discriminatory practice. The homes of most Band members (which would include many non-McAdams) were in need of renovation and maintenance, which the Band was hard pressed to provide. There is some indication that the Chief and his son received a disproportionate amount of renovation funding, compared to other members, but there is no indication that this favouritism (if it is so characterized) was to the detriment of the McAdam family alone. All Band members would have been affected by such an

uneven distribution of renovation funding, not just Corrine's family. It has not been established that her family status was a factor in the alleged denial of this service (renovation funding) from the Band.

F. Denial of emergency funding

[94] Corrine alleges that the Band denied her emergency assistance that she required in order to care for her disabled son, Francis. He had cerebral palsy and was a resident at a chronic care facility in Saskatoon until his unfortunate passing in 2005. Corrine testified that she often found herself in situations where she needed emergency financial assistance to travel to Saskatoon and be by his side.

[95] The Band has a practice of assisting members who are in need of emergency financial help by advancing them some funds, often from the earnings of one of its businesses, the Miami Gas Bar. Shirley Mosquito, the gas bar's manager, testified that typically in such cases, the Band office contacts her and provides a document that she processes in order to advance the emergency cash to the designated Band member in need. She could not provide exact details about how often such advances are made, but in the three weeks preceding her testimony, she recalled having made two such payouts.

[96] The Band also apparently may provide similar emergency assistance from its medical services account.

[97] Corrine claims that the Band barely provided her with any such emergency assistance when she was in need. On one occasion, she was given \$200 in emergency assistance from the medical fund, to help pay for her travel to be with her son in Saskatoon. At other times, she has been refused. As a result, she has had to struggle to find transportation to and from Saskatoon, having had on occasion to hitchhike in cold weather.

[98] This evidence does not, in my view, establish that Corrine was the victim of differential treatment. There is no evidence to indicate that she received more or less in emergency assistance than anyone else in the Band. Moreover, there is nothing to indicate that, even if she received less than others, her family status or her son's disability affected the amount, as she alleges.

[99] Corrine took issue with the Band's failure to disclose to her, prior to the start of the hearing, the amounts that others may have received over the years in emergency assistance. The Band pointed out, however, that it did not organize its records in such a fashion as to identify emergency assistance. The Band could generate tables showing all amounts received by any given Band member, but emergency assistance could not be isolated as a separate line item. The Tribunal's Rules of Procedure require the disclosure of documents "in the possession" of a party that relate to a fact, issue or form of relief sought in the case. Generally speaking, the Rules do not require parties to generate new documents based on existing documents, in order to fulfil their disclosure obligations.

[100] I did, however, conclude at the hearing that the Band had been less than forthcoming in disclosing some of those existing documents, in the pre-hearing stage of the inquiry. In an attempt to remedy these lapses, during the first week of hearings, I ordered the Band to make all undisclosed records available to Corrine. She would be permitted to view these documents

during the six week period that separated the first week of hearings from the second. To further assist Corrine in conducting her research, the Band offered her \$2,000 without any conditions attached, to cover any expenses related to this research such as the purchase of stationery material. The Band also undertook to provide her with access to its office equipment, such as photocopiers, as well as the assistance of its office staff. Corrine, however, did not avail herself of this opportunity to research the Band's records until just a few days prior to the resumption of the hearing of the third set of hearing dates in April 2008 (i.e. over four months after I issued my order). Furthermore, she refused to accept any of the funds offered by the Band to cover her expenses.

[101] In the circumstances, I am not convinced that any finding should be made against the Band based on its alleged failure to fully disclose these records. In my view, Corrine had sufficient opportunity to view the Band's records and collect any potentially relevant evidence in support of this claim. She failed to take advantage of it.

[102] Therefore, based on the material before me, I find there is insufficient evidence, even if believed, to establish a *prima facie* case of discrimination in this regard.

G. Denial of holistic healing funding for Corrine's son, Francis

[103] In July 2002, Francis' health had begun deteriorating. Corrine wanted to bring a holistic healer from Alberta to try and heal him by traditional methods. She therefore met with the Band Council to request funding to pay for the healer's services. According to her testimony, the Band Council informed her that a sum of \$1,500 could be made available to her. She claims that the Band never followed through with the payment, however. She subsequently spoke to the Chief and several councillors, as well as Mr. Klein, and they all told her that there were no funds available. She alleges that she was ultimately denied the funding because of her family status.

[104] I find that a *prima facie* case regarding this allegation has not been established. Aside from her own beliefs or suspicions, what evidence did she lead in support of her assertion? She acknowledged in her evidence that the Band Council had explained that this funding would be obtained through the "Healing Foundation". Corrine pointed out that the Band's financial statements for 2003 showed that the Healing Foundation fund balance was in surplus (\$23,196). She argues therefore that there were more than enough funds to cover the cost of the holistic healer she wanted to engage.

[105] However, while the financial statements do make reference to the Healing Foundation, it is apparent from the evidence of a number of witnesses, including Juliette, that the Healing Foundation's funding was controlled by the Agency Chiefs Tribal Council (ACTC). The ACTC is a corporation that is held in three equal shares by the Big River First Nation and two other Saskatchewan First Nations. The ACTC's operations are based in the town of Spiritwood (i.e., outside the Big River First Nation reserve). The ACTC administers and provides a number of services to the communities of all three constituent First Nations, including the provision of health and social services for their members, the funding of which is received from the federal and provincial governments. The ACTC also runs a number of subsidiary corporations to manage the forestry and real estate holdings of the bands.

[106] In cross-examination, Corrine stated that the Band Council explained to her that the Healing Foundation was an "avenue they could access" to get the funding she was requesting.

Thus, her own testimony suggests that the ultimate decision on whether the funding would be forthcoming did not rest in the hands of the Band Council, but rather in the hands of the ACTC, which was managing the Healing Foundation funds.

[107] Furthermore, Corrine also admitted in cross-examination that when a Band member resides off the reserve, he or she receives health or social services from the province. In these circumstances, the ACTC ceases to be responsible for these services. Her son, Francis, had been living off the reserve since the 1980's, which means that he was simply not entitled to receive any health or social funding from the ACTC.

[108] As a final point, I note that Juliette testified that her son, Dion, (i.e. Corrine's brother) was granted funding to pay for the holistic healing treatment that he received regarding his illness. Thus, we see that a McAdam (who was living *on* the reserve) was not denied this type of funding. Corrine attempted to distinguish her brother's case from her son's, but I find this effort disingenuous on her part. With regard to her other allegations of discrimination, she readily put forward events relating to her siblings and parents as evidence in support of her own claims.

[109] In sum, therefore, I find that Corrine has not established *prima facie* that her family status was a factor in the denial of funding for Francis' holistic healer.

H. Denial of taxi service to Corrine's daughter, Angela

[110] Corrine's complaint refers to an incident involving her daughter, Angela, who fell ill in July 2001. Angela was pregnant at the time. Corrine telephoned the health clinic located on the reserve and asked them to send a medical taxi to pick Angela up and take her to the clinic. A regular taxi service is apparently not available on the reserve, so the clinic offers the services of a driver to transport people to the clinic. Corrine claims that the taxi did not come to pick up Angela, so she called the clinic back a couple of days later and asked more "forcefully" for the taxi to be sent. The taxi then did arrive and took Angela to the clinic, where a health professional determined that she should be taken to a hospital in Prince Albert to be admitted for treatment. The taxi transported Angela to the hospital and the following day, she was released.

[111] Corrine therefore called the clinic again and asked them to send a taxi to Prince Albert and pick Angela up. The taxi never showed up. Corrine had to make her own arrangements to have someone else bring Angela home instead. In the meantime, Angela had to spend the day walking around Prince Albert waiting to be picked up. She did not make it home to the reserve until 4:30 am.

[112] Corrine is convinced that the clinic refused to send a taxi on both occasions because her daughter is a McAdam. Unfortunately, as is the case with many of her other allegations, this view is based on her personal suspicions. She led no other evidence in support of this view. Thus, even if believed, all that Corrine's evidence establishes is that for some reason, the taxi service was unresponsive to her requests. There is no evidence to suggest that Corrine's or Angela's status as members of the McAdam family was a factor in the poor taxi service that they received. I would note, incidentally, that many of the health workers working in the community are either employed by ACTC or by the Government of Canada (Health Canada, First Nations and Inuit Health Branch). It is therefore possible that Corrine did not deal with a Band employee regarding the taxi service, and it would thus be difficult to impute any liability to the Band on

this issue. Corrine certainly did not lead any evidence establishing that a Band employee had, in fact, denied her this service.

[113] At any rate, I am not persuaded that Corrine has established *prima facie* that her family status or that of her daughter was a factor in this incident. This allegation has therefore not been substantiated.

I. Removal of Corrine's sister's (Sylvia's) children from Sylvia's custody

[114] Amongst the allegations in Corrine's human rights complaint is a reference to an incident involving her sister, Sylvia, which took place in September 1999. Sylvia was working as a social worker in Saskatoon at the time. She left her children back on the reserve, in the physical custody of her parents, Juliette and Francis.

[115] Saskatchewan's *Child and Family Services Act* is administered within the Big River First Nation by a corporation created under the ACTC, known as Child and Family Services (or CFS). CFS has a separate Board of Directors from the ACTC and functions at arm's length from the administrations of the ACTC and its constituent Bands. CFS has its own staff, but operates out of ACTC's building in Spiritwood, Saskatchewan.

[116] Sylvia testified that while she was away in Saskatoon, she learned that her children had been removed from her parents' custody and placed in the custody of their father, with whom she no longer had any relations. It was alleged in the documents filed by a CFS officer that the children were removed because they had suffered, or were likely to suffer, harm or a serious impairment of mental or emotional functioning. Sylvia disputed the claim and three weeks later, the children were returned to her custody after an adjudication of the dispute by the Court of Queen's Bench. The Court expressed concern that the apprehension of the children came about due to an anonymous complaint of physical abuse, and it found disturbing the fact that the children were removed from their mother's legal custody, when the allegations of abuse were not even directed against her.

[117] Sylvia is of the view that the Band Council is responsible for the child removal action. Her father, Francis Sr., was running for Chief at the time. She believes that this incident proved to be a factor in his failure to win the election. She claims that she asked the Chief at the time (Douglas Joseph) and Council for assistance in contesting the removal action, but they refused.

[118] This allegation regarding Sylvia (dating back some nine years to 1999) does not relate directly to Corrine. However, Corrine did allege at the top of her 2004 complaint form that both her "family" and herself have been subjected to discrimination for many years. Although she is not the direct victim of the alleged discrimination with respect to this particular allegation, s. 40 (1) and s. 40 (2) of the *CHRA* allow an individual who is not necessarily a victim but who has reasonable grounds to believe that a person has engaged in a discriminatory practice, to file a human rights complaint. Furthermore, evidence of the facts alleged in regard to her sister could potentially constitute circumstantial evidence in support of the allegations discrimination practiced against her personally.

[119] In my view, Sylvia's evidence, even if believed, does not establish a *prima facie* case of discrimination on the basis of her family status as a McAdam. Her conclusions regarding the incident are based on conjecture and suspicions. There is no evidence to suggest that the

anonymous complaint emanated from the Band's administration. I cannot therefore draw any inferences against the Band or the Band Council.

[120] However, even if I were to find that a *prima facie* case had been established, the Band presented a reasonable and non-pretextual answer. CFS is a distinct entity from the Band. The Band has no control over CFS's administration, let alone its staff. Sylvia disagrees, pointing out that some Band members work at CFS. She claims that one of the persons working at CFS today is a relative of Chief Morin. It was not clear in the evidence, however, whether that person was working there in 1999. It is worth noting, moreover, that the Chief at the time was not Bruce Morin (the current chief) but Doug Joseph. Corrine testified that Chief Joseph is her cousin, whom she usually refers to as her brother. It seems doubtful that the Chief would have been involved in the perpetration of discriminatory practices against members of his own family on the basis of their family status. It also bears repeating that Corrine did not lead any evidence to suggest that a particular Band agent, officer, employee, or councillor was behind the filing of the complaint to CFS.

[121] For these reasons, I find that this allegation of the complaint has also not been substantiated. Furthermore, I do not find that the evidence led in support thereof can assist me in making an inference of discrimination in the context of Corrine's other claims.

J. Denial of reimbursement of Francis' funeral costs

[122] During the hearing, Corrine testified that in January 2008, she was contacted by the funeral home that had taken care of her son's funeral in October 2005. The funeral director informed her that the funeral costs had yet to be paid. She had assumed that the Band had taken care of these fees. There were two invoices for these costs; the first was for the funeral services in general, which was made out to the name of ACTC, while the second was for an upgrade of the casket, which was made out to the name of the Band. Corrine testified that prior to the funeral, she had overheard her sister Sylvia speak to a Band councillor by telephone, and that Sylvia told her that the councillor had undertaken to have the Band pay for the upgrade. Corrine did not know who the councillor was, and although she called Sylvia to testify at the hearing, Sylvia did not give any evidence in regard to this conversation. Although the Tribunal may receive any evidence, whether or not it would be admissible in a court of law (s. 50(3)(c)), I am not prepared to accept Corrine's assertion that the above mentioned undertaking was given by a Band councillor. Moreover, Corrine had an opportunity to adduce testimony from Sylvia on this point, and yet she failed to do so.

[123] Does the non-payment of the funeral costs constitute a discriminatory practice on the basis of Corrine's family status? Again, it would appear that her claim is based on her abstract beliefs or suspicions. There is no evidence before me that, even if believed, would establish that her family status was a factor in the non-payment of the funeral costs.

[124] In any event, the Band led evidence providing a reasonable explanation of what had transpired. Norma Johnstone, who is employed by ACTC as the Manager of Social Development for Big River, testified that while her department provides social assistance (including the payment of funeral costs) to Band members who require it, this assistance does not extend to Band members living off the reserve, such as Corrine's son, Francis. That is the responsibility of the provincial Ministry of Social Services. She explained that although the funeral home's invoices had been sent to her office, she overlooked them by mistake. At the hearing, she

assumed full responsibility for the oversight, attributing part of the error to the fact that she had only been working part-time when the invoices were delivered. In January 2008, she forwarded the invoices to the provincial authorities, and the first invoice (for the general costs) was paid by February 2008. It appears that the provincial authorities were not going to assume the cost of the upgrade, but Corrine testified that the funeral home was not pursuing her for these additional costs.

K. Denial of milk vouchers to Angela

[125] Corrine claims that in March 2002, her daughter, Angela, was the subject of differential treatment with respect to the issuance of vouchers to acquire milk, after the birth of her new-born child. Health Canada provides funding for a pre- and post-natal nutrition program for mothers. Angela received these vouchers during the last six months of her pregnancy. However, several months after her child was born, she was informed that she would stop receiving any more vouchers.

[126] Corrine testified that she went with her daughter to the health clinic to learn why the vouchers were being discontinued. Corrine met with Irene Fine-Day, who was a nurse administering the program. According to Corrine, Ms. Fine-Day suddenly became angry and confrontational, asking Corrine why she is such a "troublemaker", and adding that "everybody at the Band office hates you around here". Corrine claims that Ms. Fine-Day accused her of doing drugs, and then called the police. Corrine wonders why her daughter was denied the vouchers - were other people more special?

[127] In my view, Corrine's evidence, even if believed, is insufficient to establish *prima facie* that she was the victim of a discriminatory practice. She may have her suspicions, but the evidence only demonstrates that Angela's vouchers were going to be cut off. There is no evidence that Corrine's or Angela's family status was a factor. At best, all that is established is that Ms. Fine-Day had an animosity towards Corrine.

[128] Besides, Ms. Fine-Day and a co-worker of hers who witnessed the discussion (Barbara Netmaker) both later testified and provided a reasonable explanation for what had transpired. The government program provides milk to pregnant women and to mothers who are breastfeeding their newborns, for a period of up to six months after birth. In order to benefit from this service, two separate assessments must be conducted (before and after the birth) and two forms must be completed and sent to an office in Regina. The clinic verifies the completion of the forms five months after birth. It seems that Angela had not had her second assessment, and her second form had never been filled out. So, she was invited to meet with Ms. Fine-Day to conduct the assessment and complete the form, in order to continue receiving the vouchers.

[129] According to Ms. Fine-Day, instead of coming in to complete the second assessment, Angela arrived with Corrine who immediately began screaming at Ms. Fine-Day, thereby preventing her from explaining the situation. After the meeting, Ms. Netmaker wrote an incident report, which was filed in evidence. The report confirms Ms. Fine-Day's recollection that she tried to explain the circumstances calmly to Corrine, who in turn refused to listen to the information being given, and instead began yelling at Ms. Fine-Day. Corrine is noted as having addressed the health staff with vulgar slurs and having threatened to take them all to court. I would point out that Ms. Netmaker clearly indicated in her evidence that she does not get along

with Ms. Fine-Day. Nevertheless, Ms. Netmaker was not prepared to contradict her own incident report, which she had written contemporaneously with the event back in 2002.

[130] It should also be noted that Ms. Fine-Day was employed by Health Canada, and that the milk voucher program is administered by ACTC. Ms. Fine-Day was not a Band employee. Incidentally, Ms. Netmaker decided to distribute the one remaining month's allocation of milk vouchers to Angela anyway, despite the confrontation that had taken place with Ms. Fine-Day. Thus, Angela was not in fact denied the full allotment of vouchers.

[131] For the above reasons, I find that this allegation has also not been substantiated.

L. Garnishment of Corrine's salary for payment of rent regarding Teacherage #4

[132] Corrine worked as a sales clerk at a Band-operated business (the Miami Gas Bar) between October 2001 and August 2002. In her testimony, Corrine complained about the fact that a portion of her salary had been deducted to pay for rent regarding her house at Teacherage #4. She claimed that others did not pay rent at the time. However, in cross-examination, she explained that when she complained to the Band Council about the deductions, she was told that persons on social assistance are exempt from paying rent at the Teacherages. But during the period she held paid employment, she was required to pay rent.

[133] Since the end of her employment, she has not paid any rent for her house. She worked again for a time in 2007. It would seem, however, that the Band has ceased requiring the occupants of the Teacherages to pay rent in any circumstances. Mr. McGilvery testified that when he first moved into his house, he was paying rent (he was not on social assistance), but that at one point, the Band stopped collecting rent. Prior to that point, he recalls having complained to the Band about being required to pay rent while others were not. Another witness, Roy Morin, who also resided at the Teacherages until the summer of 2007, testified that he did not pay rent. Mr. Klein confirmed in his evidence that rent is currently only being collected from two non-Band member residents at the Teacherages, who are teachers at the school. Rent is not being collected from Band members.

[134] Thus it would appear that Corrine's treatment with respect to the requirement to pay rent in 2001-2002 was no different than that of other residents who were not on social assistance (e.g. Mr. McGilvery). The evidence therefore does not suggest that Corrine's family status was a factor in the decision to charge her rent through deductions on her wages. This claim has not been substantiated.

M. Disconnection of Corrine's electricity supply in October 2004

[135] In October, 2004, the power supply to Corrine's home was unexpectedly discontinued. When she contacted the utility company, SaskPower, to have her power reconnected, she learned that the service had been cut off due to non-payment of prior bills. Corrine could not understand how this could have happened. As a person on social assistance, her power was being paid by ACTC. The bills were in her name but were being sent to ACTC's office in Spiritwood. SaskPower told Corrine that in May 2004, it was notified that the bills should now be issued in the name of "Big River Band Education" and that the address should be changed to the Band's post office box. Corrine contacted ACTC to inform them of what had occurred. ACTC paid SaskPower the arrears, and the power was restored, but only after the Thanksgiving long weekend had passed, during which time Corrine's home remained without electricity. Corrine

suspects that this incident is demonstrative of efforts by the Band to deny her services due to her family status.

[136] The facts, however, indicate otherwise. Corrine was unable to learn from SaskPower who had instructed the utility company to change the customer name on the account. Mr. Klein claimed in his evidence not to have any idea who could have done this. Nevertheless, from the circumstantial evidence, it appears more likely than not that the change came about as a result of the efforts to evict Darrell, since the eviction measures were being taken at the same time, in May 2004. The earlier SaskPower invoices show both Darrell and Corrine as the customers. On May 11, 2004, SaskPower issued its final billing on that account. This is just days after the second eviction notice was sent. It appears more likely than not that the Band staff, in accordance with the eviction notice, informed SaskPower to change its records accordingly.

[137] I have already determined, however, that the Band's conduct regarding the eviction was not discriminatory. The facts relating to the electricity disconnection are just an extension of the same issue. Accordingly, I do not find that this incident constitutes evidence of a discriminatory practice either.

VI. CONCLUSION

[138] For all of the above reasons, I have concluded that Corrine McAdam's human rights complaint has not been substantiated. The complaint is therefore dismissed. It is obvious that Corrine has some serious misgivings about how the Band manages its operations, and the manner in which its leadership should be determined. However, she has not established that she has been the victim of differential treatment, or that she has been denied services on the prohibited basis that she alleged in the complaint.

"Signed by"

Athanasios D. Hadjis

OTTAWA, Ontario
January 13, 2009

PARTIES OF RECORD

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APPEARANCES:	
Corrine McAdam	For herself
No one appearing	For the Canadian Human Rights Commission
Roh Cherkewich	For the Respondent