

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation: 2018 CHRT 26**

**Date: August 31, 2018**

**File No.: T2152/2616**

**Between:**

**Gordon Ledoux**

**Complainant**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**Gambler First Nation**

**Respondent**

**Decision**

**Member: Alex G. Pannu**

## Table of Contents

I.	Complaint.....	1
II.	Elements of adverse differential treatment and retaliation .....	2
III.	Testimony.....	3
	Gordon Ledoux .....	3
	David Ledoux .....	5
IV.	Issues and Analysis .....	6
V.	Decision .....	18
VI.	Remedy.....	20

## I. Complaint

[1] Gordon Ledoux is the Complainant in this case. He alleges adverse differential treatment, discriminatory practice and denial of service by the Respondent, Gambler First Nation (“Gambler”), contrary to sections 5 and 6 of the *Canadian Human Rights Act* (*CHRA*). Mr. Ledoux also alleges retaliation by the Respondent, contrary to section 14.1 of the *CHRA*.

[2] The Respondent submits that the Complainant has failed to establish a case of discrimination. In the alternative, the Respondent submits that if Mr. Ledoux did establish a case of discrimination, it has established a *bona fide* and reasonable justification for the discrimination.

[3] The complaint was filed under sections 5 and 6 of the *CHRA*. Section 5 says it is a discriminatory practice to deny access to the provision of goods, services, facilities or accommodation customarily available to the general public or to differentiate adversely in relation to any individual, on a prohibited ground of discrimination. Section 6 says it is a discriminatory practice in the provision of commercial premises or residential accommodation to deny occupancy or differentiate adversely in relation to any individual on a prohibited ground of discrimination.

[4] Mr. Ledoux, who suffers from heart and mobility issues, is a disabled individual. Disability is a prohibited ground of discrimination.

[5] Mr. Ledoux added a claim of discrimination under section 14.1 of the *CHRA* which says it is a discriminatory practice for a person against whom a complaint has been filed or any person acting on their behalf, to retaliate or threaten retaliation against the individual who filed the complaint or the alleged victim.

[6] Both parties were represented by counsel at the five-day hearing held in Russell, Manitoba. The Canadian Human Rights Commission (“Commission”), with its public interest mandate to seek public interest remedies designed to address discriminatory practices and prevent similar future practices, participated at the hearing. Both parties called a number of witnesses to testify and provide evidence.

## II. Elements of adverse differential treatment and retaliation

[7] In the interest of providing greater clarity to the area of law with respect to the burden of proof expected of a complainant, the Tribunal is moving away from describing a complainant's burden as a "*prima facie*" one. Rather, a complainant must establish a case which covers the allegations made and which, if believed, is complete and sufficient to justify a decision for the complainant.<sup>1</sup>

[8] To establish a complainant's case, a complainant must show that he had a characteristic protected from discrimination under the *CHRA*; that he experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact.<sup>2</sup>

[9] The Supreme Court of Canada elaborated on this definition in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*[*Bombardier*].<sup>3</sup>

[56] ... the proof required of the plaintiff is of a simple "connection" or "factor" rather than that of a "causal connection", he or she must nonetheless prove the three elements of discrimination on a balance of probabilities. This means that the "connection" or "factor" must be proven on a balance of probabilities

[10] The Supreme Court went on to say that in practical terms, this means that the Respondent can either present evidence to refute the allegations of discrimination, put forward a defence justifying the discrimination or both. If no justification is established by the Respondent, proof of these three elements on a balance of probabilities will be sufficient for the Tribunal to find that the *CHRA* has been violated. If, on the other hand, the Respondent succeeds in justifying his decision, there will have been no violation, not even if the complainant meets their case.<sup>4</sup>

---

<sup>1</sup> *Ont. Human Rights Comm. v. Simpsons-Sears*, [1985] 2 SCR 536 at 558; see also *Emmett v. Canada Revenue Agency*, 2018 CHRT 23 at paras. 53-54.

<sup>2</sup> *Moore v. British Columbia (Education)* 2012 SCC 61 at para. 33 [*Moore*].

<sup>3</sup> 2015 SCC 39 at para. 56.

<sup>4</sup> *Ibid* at para. 64.

[11] Gordon Ledoux is required to prove, on a balance of probabilities that, he suffered adverse impacts because of actions by the Respondent; and that his disability was a factor in the adverse impacts.

[12] Gordon Ledoux also filed a complaint of retaliation. In *Tabor v. Millbrook First Nation*<sup>5</sup> the Tribunal noted that retaliation complaints are not founded on a prohibited ground of discrimination but rather a complainant's previous rights complaint. Therefore, for a complainant to establish their case of retaliation, a complainant is required to show that they previously filed a human rights complaint under the *CHRA*, that they experienced an adverse impact following the filing of their complaint and that the human rights complaint was a factor in the adverse impact. However, a complainant is not required to show proof of intent by a respondent.

### **III. Testimony**

#### **Gordon Ledoux**

[13] Gordon Ledoux is a former Chief of Gambler. After a career spent in various provinces primarily in construction, he moved back to Gambler in 2001 following a second heart attack. He became a welfare administrator, then a councillor and finally Chief in 2008. He resigned as Chief in 2012 because of poor health including diabetes and neuropathic pain which requires him to use a wheelchair much of the time.

[14] According to Mr. Ledoux's testimony, after he retired as Chief, Gambler was providing \$200 a month in payments to a homecare worker for him. The homecare worker would do some cooking, laundry, light cleaning and change his bandages. He says he never asked for the homecare. Payments to Mr. Ledoux's homecare worker ceased in September 2012. He testified that he was never consulted about nor notified about the cessation of his homecare services.

[15] In 2012, with deteriorating health and recovering from a broken hip, Mr. Ledoux required the use of a wheelchair. It was difficult for him to access his house on Gambler

---

<sup>5</sup> 2015 CHRT 9 and 2015 CHRT 18 aff'd 2016 FC 894.

because of stairs. His brother David Ledoux, who succeeded him as Gambler Chief, installed a makeshift skidoo ramp to improve wheelchair access. He also received a motorized scooter from David. While Gordon could use the scooter on the ramp, he required help from others if he wanted to use his wheelchair on the skidoo ramp.

[16] Gordon testified that he asked David for a better, permanent ramp when he got out of the hospital in February 2012. He says the new ramp was partially built in March 2013 but was not finished until May 2013.

[17] Gordon said that Gabe Tanner, responsible for housing issues on Gambler, advised him in 2013 that there was a problem with Gordon's water tank at his house. Gordon testified that Gabe told him he would bring it to the attention of Chief and Council. Gordon's water tank was replaced on October 7, 2013, two days after he left to live at the Dakota Oyate Lodge ("Lodge").

[18] Gordon testified that he wanted to try assisted living at the Lodge and told David about his plan who encouraged Gordon to try it since he could return to Gambler if he did not like the experience. Gordon says he wrote David and Council a letter on September 20, 2013, saying he would be staying at the Lodge for some time and that Robert Tanner would stay in Gordon's house during his absence.

[19] Gordon said his neighbour Diane Ford called him two days after he left Gambler to tell him that the RCMP evicted Robert Tanner from Gordon's house. He said he learned his sister Roxanne Brass moved into his house a short time after. He says he subsequently received a letter dated November 25, 2013, from Gambler alleging he had breached his housing agreement by failing to seek prior approval to have Robert Tanner stay in his house.

[20] Sometime after he filed his human rights complaint in 2016, Gordon said that he received from a Gambler member, a copy of a memo from Chief and Council dated March 16, 2016, to Gambler residents that said "Due to the high cost incurred regarding human rights complaints against Gambler First Nation, Gambler First Nation will no longer be in a position to pay for household water jugs. Commencing immediately, Gambler First Nation members will be responsible to pay for their own household water jugs".

**David Ledoux**

[21] David Ledoux succeeded his brother Gordon Ledoux as Chief of the Gambler First Nation in May 2012.

[22] After becoming Chief, David testified that he was advised in 2012 by a Financial Services Officer from Indian and Northern Affairs Canada (INAC) that the home support payments to Robert Tanner for Gordon's home care were being spent from funds that were meant to be spent on nursing or other health-care providers for in-home care. If Gambler continued to pay for home care to unqualified persons from that health care account, that money would be "clawed back" by INAC meaning repayment by Gambler. Based on that advice, David said he made the decision to cut the home-care payment to Robert Tanner in August 2012. He did not tell Gordon of the decision. He does not remember when Gordon raised the issue with him.

[23] By the time David had become Chief, he said Gordon had mobility issues requiring the use of a wheelchair and a cane. When Gordon expressed a desire to David that he would not mind getting out and visiting people, David bought Gordon a motorized scooter with his own money. When Gordon also mentioned he did not want to leave his wheelchair outside because of potential theft, David said he brought Gordon an old skidoo ramp to his house so he could move his wheelchair from the house more easily. David said he warned Gordon not to use his wheelchair on the skidoo ramp.

[24] Although he does not remember the date, David said that Gambler's nurse Shawna Susinski asked him to visit Gordon to see what he needed for his health needs. He said it was at this meeting that Gordon requested a proper wheelchair ramp to replace the skidoo ramp. David said Gambler did not have funding for Gordon's ramp so he looked for various funding sources. David said he contacted Canada Housing and Mortgage Corporation ("CMHC") which funded a program called Home Adaption for Seniors Independence ("HASI") to provide equipment for healthcare but the eligible age was over 65 years of age. The HASI program also did not have funds available until the next fiscal year i.e. after March 31.

[25] David found money for the ramp from funds INAC had allocated to upgrade Gambler's band office. He used money intended for a wheelchair ramp at the band office to build a wheelchair ramp for Gordon. Gordon's ramp was installed in March 2013 and completed in May 2013.

[26] On the issue of the broken water tank at Gordon's house, David testified that Gordon never mentioned it to him nor does he recall Nathan Tanner, the Gambler councillor responsible for housing, informing him of problems with water tanks needing replacement on Gambler. He said it would probably have been Gabe Tanner, who delivered water to Gambler, who told him about the water tanks. David says it was not he but Jason Smith, responsible for maintenance on Gambler, who ordered the tanks.

[27] David said that he did not know Gordon had left for the Lodge as he had not read his letter of September 20, 2013 at the time of Gordon's departure. He testified that he first learned of Gordon's departure on October 5, 2013, when an elder phoned him to say Gordon had left his house, leaving Robert Tanner there. The elder demanded David remove Robert to prevent damage to the house. David said he went that day to Gordon's house with the RCMP and Roxanne Brass, their sister and evicted Robert Tanner. According to David, the RCMP advised him to put someone in the house to prevent squatters from moving into it. Roxanne moved in that day or shortly afterward.

[28] David admitted that he authorized the memo notifying band members that Gambler would no longer pay for water jugs because of "the high cost of human rights complaints". He said it was in reaction to Gambler having to pay an amount stemming from a different human rights complaint from another member.

#### **IV. Issues and Analysis**

[29] The issues for the Tribunal to consider are:

- A. Did the Respondent discriminate against the Complainant contrary to section 5 of the *CHRA* by ceasing a \$200 monthly payment for homecare services?



- B. Did the Respondent discriminate against the Complainant contrary to section 6 of the *CHRA* by not building him a wheelchair ramp when requested?
- C. Did the Respondent discriminate against the Complainant contrary to section 5 of the *CHRA* by not repairing or replacing his water tank?
- D. Did the Respondent discriminate against the Complainant contrary to section 6 of the *CHRA* by denying him re-entry to his house when he left for the Lodge?
- E. Did the Respondent retaliate against the Complainant contrary to section 14.1 of the *CHRA* by sending a memo to Gambler members stating that it would no longer pay for water jugs because of the cost of human rights complaints?

[30] In analyzing all these issues, some useful context can be found in the testimony of the two main witnesses Gordon and David Ledoux, with respect to their view of governance of the Gambler First Nation.

[31] Gordon Ledoux said that when he became Chief of Gambler, he already had a good understanding of the governing process through his prior involvement as a welfare administrator and then councillor. He said he was very familiar with the various programs and financial reporting requirements. Gordon said he knew how to move money around various programs to fund specific projects. He described how under his administration, there was much activity on Gambler including the building of houses and employment of many members.

[32] David Ledoux in contrast, seemed overwhelmed when he first became Chief saying he and the councillors had to manage the various portfolios - finance, housing, health, education with little support. He described that when he started his term, Gambler was in stage two management with INAC because Gambler had exceeded its budget. He explained that the more serious third stage management meant INAC would assume administration of Gambler. He described his efforts to reduce the number of employees at Gambler and return Gambler's finances back into black.

[33] Another factor is the family dynamics. Some of the siblings were close to each other. Others were not. The coolness between some of the siblings, for example between Gordon and David Ledoux, exacerbated the lack of communication between parties, contributing to mutual suspicion and misconceptions.

[34] This context helps to understand the actions of the parties in considering the various issues under consideration.

[35] In analyzing the following issues, the parties agreed and the evidence established that Gordon's health and mobility issues were a disability and thus a protected characteristic under the *CHRA*.

**Did the Respondent discriminate against the Complainant contrary to section 5 of the *CHRA* by ceasing a \$200 monthly payment for homecare services?**

[36] Gordon testified that he did not ask for homecare, it was the health care nurse who suggested it. The financial records of the band show that Gordon started receiving the homecare services in 2011 when he was still Chief. However, Gordon said that the services would have been ordered by the health nurse who operated at arm's length from the band council despite being its employee. Nevertheless, given all the other evidence provided, final approval would likely have been required by Chief and Council.

[37] According to the documents entered into evidence, there were two programs in which homecare services could be provided to band members. One was the Assisted Living program funded by INAC. It was available to all persons "residing on-reserve...who have been formally assessed by a qualified professional...as requiring non-medical social support services and who do not have the means to otherwise obtain these services". In-homecare provided financial assistance for non-medical personal care for adults needing assistance with everyday activities such as housekeeping, meal preparation and attendant care. The eligibility criteria were for band members receiving social assistance.

[38] The other program was for home and community care services, known as First Nations and Inuit Home and Community Care (FNIHCC) funded by Health Canada.

According to the testimony of Abbey Vorlicek, Gambler's current home and community care nurse and healthcare director, funds from this program were exclusively for nurse's wages and other qualified medical personnel. The type of personal home care services being provided by Robert Tanner, who is not a qualified medical professional, would not have been eligible under this program.

[39] Financial documentation introduced as evidence at the hearing show that payments for Gordon's homecare services came from the FNIHCC program of Health Canada. Gordon admitted that in his testimony. Based on the criteria under the program and the fact that Robert Tanner and previous providers were not qualified healthcare professionals as defined, Gordon was not eligible for the payments.

[40] Even if the payments had come from INAC's Assisted Living program, Gordon would still not have been eligible because he was not on social assistance. Gordon should not have been receiving homecare services paid for by Gambler. Both David Ledoux and Abbey Vorlicek testified that such eligible payments could be clawed back by the federal government. David Ledoux testified that on the advice of INAC, he ceased the homecare payments because they should not have been made.

[41] Since Gordon was not eligible for homecare services, cutting off the homecare funding does not constitute an adverse impact or differential treatment within the meaning of the analysis outlined in *Moore*.

[42] Although there was some suggestion in policy manuals that it may have been possible to ask informally about homecare services despite ineligibility, Ms. Vorlicek testified that one had to know to ask specifically for such an exemption. There was no evidence to show David Ledoux knew about this possibility. I am satisfied that based on the facts and eligibility criteria for homecare services under Health Canada or INAC, Gordon was not eligible and was not being discriminated against when payment for the services ceased.

[43] In fact, Gordon said that he did not ask for the homecare and later in his testimony, that he did not need it. He said that when the payments ceased for homecare, he did not protest the issue with David Ledoux or Council. Furthermore, Gordon did not provide any

evidence that the ceasing of his homecare payments was connected in any way to discrimination by the Respondents. In fact, the evidence showed that the homecare payments ceased because Gordon was not eligible to receive them.

[44] It would have been preferable had David consulted in advance with Gordon before ceasing the homecare payments. And had Gordon communicated to David that he required the services, perhaps some other solution could have been found. Neither did.

[45] Based on the evidence before me, I do not find that the Complainant has made out a case of discrimination when his homecare payments were cut off.

**Did the Respondent discriminate against the Complainant contrary to section 6 of the CHRA by not building him a wheelchair ramp when requested?**

[46] Gordon Ledoux alleges that Gambler discriminated against him by not providing him with a wheelchair ramp at his house when requested and further, that the ramp when supplied was not fully functional.

[47] The origins of this ramp came sometime after David Ledoux became Chief of Gambler in 2012. Gordon mentioned to him that he did not want to leave his wheelchair and scooter outside of his house because of fear of theft. David brought over and set up an old ski-doo ramp to allow Gordon to move his wheelchair and scooter inside his house at night warning him that it was not strong enough for Gordon to use them on the makeshift ramp.

[48] Both David and his wife Rose Ledoux testified that Gambler's nurse Shawna Susinski asked them to visit Gordon to determine if he needed anything for his health issues. Although the evidence from all the parties of the date is imprecise (e.g. not winter), I believe it was likely in the fall of 2012. At this meeting in Gordon's house, he made a request for a proper wheelchair ramp for the first time to Gambler.

[49] Gambler constructed a wheelchair ramp at Gordon's house in March 2013 although it was not finished until May 2013.

[50] I do not accept the Respondent's contention that, because Gambler had no general or specific housing policies requiring the provision of wheelchair ramps for members, the construction of a wheelchair ramp at a member's on-reserve residence cannot properly be considered a good, service, facility, or accommodation available to the general public. Rather than viewing the issue as a possible violation of section 5 of the *CHRA*, I think it is more appropriate to view it under section 6 – whether Gambler, in providing residential accommodation to its members, was required to provide a wheelchair ramp to a member who needed one.

[51] The Supreme Court of Canada set out the general principle in *Council of Canadians with Disabilities v. VIA Rail Inc.* that “reasonable accommodation recognizes the right of persons with disabilities to the same access as those without disabilities”.<sup>6</sup>

[52] The delay from the likely earliest request for the ramp until its construction was an adverse impact on the Complainant. However, I do not find on the evidence that Gordon's disability was a factor in the length of time it took to provide the ramp.

[53] The Complainant alleges that the Respondent discriminated against him because of his disability by ignoring or delaying the building of the ramp. I find that allegation unsupported by the evidence. Instead, the evidence shows that the Respondent, especially David Ledoux, undertook actions that allowed the ramp to be built despite financial and bureaucratic restrictions.

[54] Upon the request of Gordon Ledoux, David Ledoux purchased a scooter for Gordon from his own funds. He installed an old ski-doo ramp at Gordon's house to replace the boards Gordon had been using as a ramp. When a proper wheelchair ramp was requested by Gordon, David immediately set out to find the funding to have the ramp built.

[55] It is easy to look at Gambler's financial statements in hindsight and say that there was money available in its budget during the relevant period to fund building the wheelchair ramp. But at the time of the request, building a wheelchair ramp at Gordon's house was unfunded and money needed to be found to fund the ramp.

---

<sup>6</sup> 2007 SCC 15 at para. 121 [*Via*].

[56] David contacted CMHC to see if there was funding available under their HASI program. However, Gordon was not eligible under the HASI program because he was not yet 65 years of age. The financial records show that Gambler was in a deficit and new funding would only be available after March 31 when the new fiscal year began.

[57] David found some money earmarked for a wheelchair ramp at the band office that he was able to use for a wheelchair ramp at Gordon's house. Jason Smith testified that although it was still winter, and the ramp could not be finished because the ground at the bottom of the ramp was frozen, he built the ramp in March 2013 because the money had to be spent before the end of the fiscal year. Instead of spending money on Gordon's ramp that was unbudgeted or waiting for the next fiscal year, the Respondent creatively found a way to pay for Gordon's ramp. I find that the Respondent had a *bona fide* justification for the delay in finding funds to pay for Gordon's ramp. To have simply gone into a deficit to pay for Gordon's ramp would have been an undue hardship.

[58] When the ground had thawed sufficiently, Smith completed the ramp in May 2013. Despite Gordon's complaints about the unfinished ramp, the evidence shows he could use his motorized scooter on the unfinished ramp and move his wheelchair on it. It was only the wheelchair that required help to move it off the partially-finished ramp and that was only for a few months. It may not have been ideal but as stated in *Central Okanagan School District v. Renaud*, it was certainly a reasonable accommodation.<sup>7</sup>

[59] It is often noted in human rights jurisprudence that proving discrimination by direct evidence is difficult. Since overt discrimination is rare, much of the evidence is circumstantial. In *Basi v. Canadian National Railway Company [Basi]*, the Tribunal itself suggested adjudicators should consider all the circumstantial evidence to determine whether what is described as "the subtle scent of discrimination" can be drawn from the evidence.<sup>8</sup>

[60] In considering all of the evidence presented including circumstantial evidence, I am not able to detect the subtle scent of discrimination in the actions of the Respondent in

---

<sup>7</sup> *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 SCR 970

<sup>8</sup> [1998] CHR D No 2, 9 CHRR D/5029 CHRT.

providing the wheelchair ramp. The evidence does not show that discrimination was a factor in the adverse impact of not building the ramp when Gordon first requested it. However, it does show that the Respondent had a *bona fide* justification for the delay in providing the ramp (s. 15 of the *CHRA*).

**Did the Respondent discriminate against the Complainant contrary to section 5 of the *CHRA* by not repairing or replacing his water tank?**

[61] The Complainant alleged that the Respondent did not repair or replace a broken water tank at his house and he suffered an adverse impact as a result. The allegation advanced by Gordon Ledoux is that Gambler's failure to do anything about the water tank was part of a pattern of discrimination by the Respondent based on his disability in an attempt to force him to move out of Gambler. Gordon points to the cessation of homecare and the delay in providing him with a wheelchair ramp, discussed above, as part of this pattern. Gordon further claims support for his allegation in that his water tank was replaced after he moved off Gambler to the Lodge.

[62] Gordon testified that it was Gabe Tanner who delivered water to the houses with tanks on Gambler who told him he had a crack in his tank. He said he told Gabe that he needed a new tank and Gabe informed him later that he let Chief and Council know of his request for a new water tank. Gordon said this occurred about six months before he left for the Lodge in October 2013. During cross-examination he admitted that he did not inform either David Ledoux or Nathan Tanner, who was in charge of the water portfolio, about his request.

[63] David Ledoux testified that he did not order the water tank for Gordon's house, along with two other tanks. Jason Smith testified that he coordinated the delivery of three water tanks for Gambler. The new water tank was installed on October 7, 2013, although it is not clear from any of the evidence when the tank was ordered. Smith testified that he had been discussing the issue of faulty water tanks on Gambler with Gabe Tanner for some time. Smith testified that the approval for the tanks would have come from David Ledoux or Nathan Tanner.

[64] The evidence showed that Gabe Tanner became aware of some faulty water tanks during his duties. He discussed these faulty tanks and the need for their replacement with Jason Smith who in turn discussed it with David Ledoux and Nathan Tanner. The date is unclear but at some point, approval was given by Chief and Council to purchase new water tanks for three houses on Gambler including Gordon's house.

[65] The evidence did not show that there was any attempt, deliberate or otherwise, to delay installation of the water tanks as part of an effort or on its own, to force Gordon to leave his house on Gambler. Rather the evidence showed that a problem with Gordon's water was discovered by Gabe Tanner, not Gordon. That information was passed onto Jason Smith who advised Chief and Council on a variety of construction and maintenance issues. Chief and Council decided that new water tanks for Gordon and others were required, and subsequently ordered and installed same. All this happened within the space of approximately six months.

[66] The Complainant did not provide evidence that showed an adverse impact from his faulty water tank as he continued to use the water from that source. The Complainant did not provide evidence that there was any connection with any impact he may have suffered by the Respondent based on his disability. I find the fact that the water tank for Gordon's house was installed after he left for the Lodge was coincidental.

**Did the Respondent discriminate against the Complainant contrary to section 6 of the CHRA by denying him re-entry to his house when he left for the Lodge?**

[67] Gordon Ledoux alleged that the Respondent discriminated against him on the basis of his disability by giving Roxanne Brass possession of his home one day after he left to try out assisted living at the Lodge. Gordon testified he received a call on October 5, 2013 from his neighbour Diane Ford that David and Roxanne were at his house with the RCMP evicting Robert Tanner.

[68] Gordon says the eviction was a pre-determined effort to remove him from Gambler because of what he alleged was David's view that Gordon's disability was a "burden to



Gambler”. In support of this contention, he cited the testimony of Curtis Ducharme, a former health director for Gambler.

[69] Ducharme testified that during a drive with David Ledoux, the date is not specified but it was likely in 2013, the subject of Gordon’s wheelchair ramp came up and David said that Gordon was a burden to the community. In his testimony, David denied he said Gordon was a burden to the community. He said he was referring to another matter. Ducharme was clear in his testimony about remembering David’s “burden on the community” comment. David’s memory was imprecise. No other evidence was introduced to corroborate either of these conflicting answers.

[70] Gordon said when he was informed of Robert Tanner’s eviction from his house he tried calling David to protest. He claimed he tried calling multiple times on his visiting brother-in-law Ken Oertel’s phone. However, the phone records do not show any calls to either the Gambler office or David’s house.

[71] David said he went to Gordon’s house, bringing along Roxanne Brass and getting the RCMP to evict Robert Tanner because of a call from elder Vitaline Tanner. Until the call, David said he didn’t know Gordon had left. The evidence doesn’t indicate how elder Tanner knew Gordon had left for the Lodge leaving Robert Tanner alone in Gordon’s house.

[72] David testified that his motivation in removing Robert Tanner was to protect Gordon’s house because of Robert’s previous involvement in a house he squatted in on Gambler that was damaged. David said it was on the advice of the RCMP that he had Roxanne move in to prevent squatters (presumably Robert Tanner or others) from moving in.

[73] In her testimony, Rose Ledoux corroborated that Vitaline Tanner called David to complain about Robert Tanner being left alone in Gordon’s house. Roxanne Brass testified that David brought her along to Gordon’s house because he did not want to confront Robert Tanner alone.

[74] The evidence about the Respondent's version of events leading up to Robert Tanner's eviction was not contradicted during cross-examination. The evidence does not support the allegation that the eviction of Robert Tanner was pre-meditated by the Respondent in order to deprive Gordon of his house.

[75] However, the actions of the Respondent after the eviction lead me to a different conclusion about whether there was discrimination.

[76] Gordon was not able to provide evidence that he tried to contact David after Robert Tanner's eviction from his house, despite claiming to have done so. Yet neither David nor Roxanne Brass, who described herself as Gordon's primary caregiver, made any effort to contact Gordon immediately after the eviction either.

[77] Instead a letter dated October 15, 2013, from the Respondent was sent to Gordon at an incorrect address claiming that by failing to obtain permission beforehand for Robert Tanner to live in his house, Gordon had violated Gambler's housing policy. When another letter about rental arrears dated November 25, 2013, finally reached Gordon at the Lodge, he sent an appeal of his eviction to Gambler but never received an answer. In November 2013, Chief and Council also executed a memorandum allocating Gordon's residence to Roxanne Brass.

[78] The Respondent asserted that it was entirely entitled to evict Gordon not only because of rental arrears but because Gordon contravened a term of his housing agreement by not asking Chief and Council's permission for Robert Tanner to stay in his house during his absence. Yet Gambler never raised the issue of rental arrears until after Gordon left for the Lodge. And despite claiming he never read Gordon's letter saying he was leaving to try out the Lodge prior to Gordon leaving, David certainly knew when the October 15 letter to Gordon was sent that Gordon had not abandoned his house but left for an undefined period at the Lodge. It seems to me that the Respondent's post-departure reasons for its actions were simply to provide a rationale for moving Roxanne Brass into Gordon's house and forcing Gordon to stay at the Lodge.

[79] The Respondent argued that Gordon could have checked out of the Lodge at any time and moved back to Gambler. Indeed that happened once with unfortunate

circumstances in which Gordon stayed briefly with relatives in Gambler but suffered a relapse which forced him to be hospitalized and then he returned to the Lodge.

[80] It is possible that the Respondent genuinely believes that Gordon is better off at the Lodge where he receives the care he needs. But it could not have known that when it took advantage of his departure for the Lodge to take his house. And it is disingenuous for the Respondent to suggest that Gordon can come back to Gambler whenever he likes when he has no home or the support required to live a normal life.

[81] The Respondent argues that this case is analogous to *Stewart v. Elk Valley Coal Corporation*, in that denying Gordon occupancy of his residence is only related to his violation of Gambler's housing agreement and housing policy, not his disability. However, unlike the Alberta Court of Appeal's decision in *Stewart*<sup>9</sup> I find that the Complainant's disability was a factor in denying the Complainant's ability to return to Gambler without a suitable house or required support.

[82] The Respondent has failed to satisfactorily refute the case of discrimination made out by the Complainant. Although I do not find the evidence sufficient to support a finding of a pre-meditated plan to evict Gordon when he left for the Lodge, the actions of the Respondent in solidifying Roxanne Brass' occupancy of Gordon's house, for example by transferring responsibility to her to pay for utilities, constituted discrimination by denying Gordon occupancy of his residential accommodation based on his disability, contrary to section 6 of the *CHRA*. The circumstantial evidence of the Respondent's actions post-eviction do indeed lead me to detect the "subtle scent of discrimination" as outlined in *Basi*.

**Did the Respondent retaliate against the Complainant contrary to section 14.1 of the *CHRA* by sending a memo to Gambler members stating that it would no longer pay for water jugs because of the cost of human rights complaints?**

[83] The Respondent's memo to Gambler residents on March 16, 2016, saying it was no longer paying for bottled water because of the "high cost of human rights complaints" was clearly a retaliatory act against Gordon contrary to section 14.1 of the *CHRA*.

---

<sup>9</sup> 2015 ABCA 225 aff'd 2017 SCC 30.

[84] Gordon's complaint against the Respondent was filed in September 2014 so it was well-known to Gambler residents by the time of the memo that Gordon had filed a complaint against Gambler.

[85] The Respondent has claimed that the memo was directly tied to a payment it had to make to another complainant at the time in a separate human rights matter. Even if that was the motive, intent does not matter in deciding whether discrimination has occurred. The Respondent's action was rightly seen by the Complainant and other Gambler members such as Curtis Ducharme and Peter Vermette who testified, as punishment for his human rights claim and other's claims, as well as potential deterrence for future human rights claims.

[86] In *First Nations Child & Family Caring Society of Canada v. Attorney General of Canada*, the CHRT reviewed the law on retaliation and concluded that there must be at least a reasonable perception that retaliation has occurred.<sup>10</sup>

[87] I do not accept the Respondent's argument that there was no discrimination because the water bottles were a luxury, not a service, and that since all members stopped receiving them, Gordon was not singled out. Instead I view the act of discontinuing a service that members were accustomed to receiving by blaming one member, at least in part, as punishing a whole group because of the actions of a few. Gordon was affected even though he did not reside on Gambler because some band members, knowing he had filed human rights complaints against the Respondent, would have blamed him. That falls within the definition of discrimination under section 14.1.

## **V. Decision**

[88] I do not find based on the evidence that the Respondent discriminated against the Complainant under section 5 of the *CHRA*.

[89] With respect to home care services that the Respondent ceased providing to the Complainant, I do not find that it was discriminatory based on the Complainant's disability.

---

<sup>10</sup> 2015 CHRT 14; see also *Millbrook First Nation v. Tabor*, 2016 FC 894 at paras. 62-64.

The action was based on the fact that under either of the programs from which services were funded, the Complainant was not eligible.

[90] The Complainant also claims that it was discriminatory on the part of the Respondent to not build a wheelchair ramp he requested in the time frame and quality that he expected. Based on the evidence provided I do not agree with the Complainant. I find that the Respondent first provided a temporary wheelchair ramp when it became aware of a need. Then when the Respondent learned that a better ramp was required in order for the Complainant to access his house with his motorized scooter as well, it found the funds and built a quality ramp in a reasonable time. The fact that the ramp was not built immediately or that because of the frozen ground, there was a two-month gap before the ramp was completely finished does not demonstrate discrimination by the Respondent contrary to section 6 of the *CHRA*.

[91] The Complainant tried to paint a picture of a pattern of deliberate discriminatory actions intended to drive him away from Gambler. One of those actions or omissions is the failure to repair or replace the broken underground water tank at his house. The evidence showed that the Complainant's water tank was one of a number on Gambler that needed replacing. The Complainant's issue is that his tank was replaced only two days after Roxanne Brass moved into his house.

[92] However, I do not find from the evidence that there was a deliberate attempt to delay replacement of the Complainant's tank in an attempt to drive him from his house. I am satisfied that the evidence shows a routine process in discovering the damage, requesting approval and funds from Gambler for new tanks and eventual replacement of several water tanks at the same time including Gordon's. I do not find discrimination by the Respondent based on the Complainant's disability nor adverse differential treatment.

[93] Although the Complainant had his designated house sitter evicted and his house occupied by his sister only a day after he left for the Lodge, the evidence is not sufficient to show a pre-meditated attempt to remove Gordon from Gambler. The Respondent provided a reasonable explanation of its actions during the actual eviction.

[94] However, I am persuaded that the Respondent's attempts to cite rental arrears and violation of Gambler's policy as well as ignoring Gordon's appeal were pretexts designed to deny Gordon the ability to return to his house. It is not reasonable to accept the Respondent's claim that Gordon could return to Gambler any time when it actively took steps to prevent Gordon from reclaiming his house. Although never explicitly said in the evidence, even if the Respondent genuinely believed that Gordon was better off at the Lodge, that intention does not absolve it of discriminatory behaviour. It is clear to me that the Respondent did not want the Complainant to return to Gambler and by having Roxanne Brass occupy his house, it denied Gordon his residential accommodation and discriminated against him on the basis of his disability.

[95] At the time of Gambler's memo to band members that bottled water was no longer to be supplied for free "because of the high cost of human rights complaints", Gordon's human rights complaint was broadly known in Gambler. It is not plausible to suggest that the memo was directed solely against another member's earlier human rights complaints. The memo was clearly intended to blame Gordon, at least in part, for the loss of a service to band members. That constitutes an act of retaliation contrary to section 14.1 of the *CHRA*.

## **VI. Remedy**

[96] I find the Respondent discriminated against the Complainant by denying him the occupancy of his house contrary to section 6 of the *CHRA*. For that action I award the Complainant \$5,000 for pain and suffering. I do not find the Respondent's actions to be wilful in the sense that it deliberately intended at the outset to deprive Gordon of his home. Yet its actions in finding rationale for evicting Robert Tanner and occupying the Complainant's house after the fact, thereby erecting barriers to Gordon's return, were at the very least, reckless. I award a further \$2,500 to the Complainant.

[97] In terms of the costs incurred by the Complainant in remaining at the Lodge rather than being able to return to his house on Gambler, the Complainant has asked for the costs of residential accommodation for four (4) years at the Lodge at a cost of \$1,100 per

month for a total of \$52,800. However, had the Complainant remained at his house on Gambler, he would have had to pay for rent, food and other living costs. A more reasonable award requires those costs be taken into consideration.

[98] In addition, the testimony of the Complainant and Della Mansoff, head nurse at the Lodge, makes it clear that Gordon would not have been able to return to Gambler for some time because of his medical condition. Therefore, I award the Complainant for out of pocket costs, the sum of \$500 per month for 3.5 years for a total of \$21,000 (paragraph 53(2)(d) of the *CHRA*).

[99] I further order the Respondent to place Gordon's name, with priority status, on the list for housing on Gambler for a wheelchair-accessible house that reasonably accommodates Gordon's needs. Obviously it is for Gordon to decide whether he will return to Gambler.

[100] I find the Respondent committed an act of retaliation against the Complainant by its memo to Gambler members, which essentially blamed Gordon in part, for the cessation of providing bottled water. For the act of retaliation under section 14.1 of the *CHRA*, I award the Complainant under paragraph 53(2)(e), the sum of \$2,500. Although I do not find the action to be wilful, the wording of the memo and the fact that Gambler had already been cited by the Tribunal previously for an act of retaliation in a previous, unrelated human rights matter makes it reckless. Under subsection 53(3) of the *CHRA*, I award the Complainant an additional \$2,500.

[101] Simple interest shall be payable on the monetary awards at the average annual bank rate established by the Bank of Canada (subsection 53(4) of the *CHRA*). The interest will run from the date of complaint until the date of payment of the awards of compensation and out of pocket costs.

[102] There is also the matter of the public interest. I agree with the submission of the Commission on the subject of public interest remedies. I therefore make an order under paragraph 53(2)(a) that the Respondent cease any discriminatory practices and, in consultation with the Commission, take measures to ensure future discrimination does not take place. These measures shall include submitting for the Commission's review and

approval, human rights policies that include an internal review process and are publicized for Gambler members. Furthermore, Gambler shall consult with the Commission to engage a human rights specialist to provide training to Gambler Chief and Council, employees and any interested Gambler members.

*Signed by*

Alex G. Pannu  
Tribunal Member

Ottawa, Ontario  
August 31, 2018



# Canadian Human Rights Tribunal

## Parties of Record

**Tribunal File:** T2152/2616

**Style of Cause:** Gordon Ledoux v. Gambler First Nation

**Decision of the Tribunal Dated:** August 31, 2018

**Date and Place of Hearing:** July 31 to August 4, 2017

Russell, Manitoba

### Appearances:

Jason Stitt, for the Complainant

John Unrau, for the Canadian Human Rights Commission

Kevin Hoy, for the Respondent